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Lucinda McDaniel

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COMMENT

TITLE III OF THE BANKRUPTCY AMENDMENTS ACT OF 1984: THE SUBSTANTIVE CHANGES

Lucinda McDaniel

Congress completely revised American bankruptcy law through the Bankruptcy Reform Act of 1978. However, following implementation of the Act, problems with the bankruptcy laws persisted. In order to correct existing errors in the bankruptcy laws and to effectuate needed changes in the provisions, Congress enacted the Bankruptcy Amendments Act of 1984.

The Bankruptcy Amendments Act of 1984 consists of three titles. Title I of the Act deals with bankruptcy jurisdiction and procedures. Title II creates bankruptcy judgeship positions, and title III makes substantive changes in the Bankruptcy Act. Only title III, the substantive changes, will be addressed in this comment.¹

Title III of the Bankruptcy Amendments of 1984 alters prior law by amending existing provisions of the Bankruptcy Act and by adding new provisions to deal with the increasing variety of suits falling under bankruptcy jurisdiction. The amendments can be divided into six major categories: consumer credit, grain storage facilities, leasehold management, timeshare interests, collective bargaining agreements, and a catchall miscellaneous section.

I. CONSUMER CREDIT AMENDMENTS

A. *Preventing Abuse*

Repetitive filing by the debtor was perhaps the most widespread abuse of the bankruptcy system. In a typical repetitive filing situation,

1. While all amendments to the Bankruptcy Act are, of course, important, discussion of amendments which apply to a very limited number of cases has been omitted. Areas not addressed in this comment include amendments to the referee salary and expense fund, amendments affecting repurchase agreements, amendments affecting claims subject to bona fide dispute, and a number of amendments falling into the miscellaneous category.

the debtor would default on a residential mortgage. The creditor would initiate foreclosure proceedings, and just before the sheriff's sale, the debtor would file a petition in bankruptcy. If the court later dismissed the petition or if the debtor later voluntarily dismissed the petition, the foreclosure sale was rescheduled, and immediately the debtor would file another petition. Thus, the debtor could by endlessly invoking the bankruptcy laws apparently prevent the creditor from ever obtaining possession of the property. In *Cashman Investment Corp. v. Robinson*,² the debtor was allowed to file four petitions for bankruptcy in the space of a little over a year. It was this abuse by repetitive filings that the first amendment to the consumer credit provisions of title 11 was designed to prevent.

The amendment to section 109³ added subsection (f) which prevents an individual from qualifying as a debtor if within the preceding 180 days his bankruptcy case was either dismissed by the court for willful failure to follow court procedure or voluntarily dismissed following the filing of a request for relief from the automatic stay.⁴ This new subsection prohibits an individual from filing more than one petition for bankruptcy within 180 days.

The amendment to section 707⁵ prevents abuse of the bankruptcy system by granting the court authority, on its own motion, to dismiss cases. Before being amended, section 707 provided for the dismissal of a case only for cause consisting of either unreasonable delay by the debtor or nonpayment of fees and charges.⁶ A new subsection (b) was added to section 707 to allow the court to dismiss a case when granting relief would be a substantial abuse of the provisions of the Bankruptcy

2. 38 Bankr. 425 (Bankr. C.D. Cal. 1984).

3. 11 U.S.C. § 109 (1982).

4. Bankruptcy Amendments Act of 1984, Pub. L. No. 98-353, 1984, U.S. CODE CONG. & AD. NEWS (98 Stat.) 352 (to be codified at 11 U.S.C. § 109) (hereinafter Bankruptcy Amendments Act) provides:

Notwithstanding any other provision of this section, no individual may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceeding 180 days if—

- (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
- (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

5. 11 U.S.C. § 707 (1982).

6. 11 U.S.C. § 707 (1982) read: "The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors; and
- (2) nonpayment of any fees and charges required under chapter 123 of title 28."

Act.⁷ The amendments do not define “substantial abuse” but instead state that the United States Supreme Court will be responsible for prescribing the substantial abuse standard.⁸

The amendment to section 1325⁹ establishes the minimum amount of future income a debtor is required to commit under his plan. Prior to amendment, subsection (a)(3) required only that the plan be proposed in good faith while subsection (a)(4) required that the plan be in the best interests of the creditors.¹⁰ To meet the best interests of the creditor criteria, a chapter 13 plan had to provide at least as much to the creditor as he would receive under a chapter 7 liquidation. Debtors took advantage of this best interests of the creditor standard to file “zero payment plans”—plans in which a debtor claimed no non-exempt assets to liquidate. Since the creditor would have received nothing in a chapter 7 liquidation, he was entitled to nothing under chapter 13.

Several courts upheld “zero payment plans.”¹¹ Other courts took a less debtor-oriented view. In *In re Estus*,¹² the Eighth Circuit Court of Appeals explained that the good faith requirement of section 1325(a)(3) did not impose a rigid and unyielding requirement of a substantial payment to unsecured creditors. However, the court explained, because repayment of debts is one purpose of the chapter 13 plan, a low percentage proposal may constitute an abuse of the bankruptcy laws.

Congress attempted to remedy this by adding a new subsection (b) to section 1325 which prohibits the court from approving a plan to

7. Bankruptcy Amendments Act, *supra* note 4, at 355. Subsection (b) states:

After notice and a hearing, the court, on its own motion and not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

8. Bankruptcy Amendments Act, *supra* note 4, at 357 explains: “The Supreme Court shall prescribe general rules implementing the practice and procedure to be followed under section 707(b) of title 11, United States Code”

9. 11 U.S.C. § 1325 (1982).

10. 11 U.S.C. § 1325 (1982) provided:

(a) The court shall confirm a plan if— . . .

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

. . .

11. *In re Esser*, 22 Bankr. 814 (Bankr. E.D. Mich. 1982); *In re Hildremyr*, 8 Bankr. 676 (Bankr. D. S.D. 1981); *In re Jenkins*, 4 Bankr. 278 (Bankr. D. Colo. 1980); *In re Sadler*, 3 Bankr. 536 (Bankr. E.D. Ark. 1980).

12. 695 F.2d 311 (8th Cir. 1982).

which the trustee or holder of an allowed unsecured claim objects unless either the claim will be paid in full or all the debtor's projected disposable income for the three year period will be used to fund the plan.¹³ Disposable income is defined as income received by the debtor which is not reasonably necessary to be expended for either the support of the debtor and his dependents or for the payment of necessary business expenses if the debtor is engaged in business.¹⁴

In order to encourage debtors to utilize the repayment provisions of chapter 13, Congress set up a system to ensure that debtors were apprised of the option of debt repayment under chapter 13. According to Senator Orrin Hatch, "[i]f debtors are aware of the option of debt repayment, it is more likely to become a more credible alternative to liquidation."¹⁵ Thus, section 342¹⁶ was amended by adding a new subsection (b) which requires that before a case is brought under title 11 by a consumer, the clerk must explain to the debtor the alternatives under chapters 7 and 13.¹⁷

B. *Restricting Exemptions*

The amendments to section 522¹⁸ force joint debtors to jointly elect either the federal or state exemptions. Before the amendments, section 522(m) provided that exemptions applied separately with respect to each debtor in a joint case.¹⁹ This allowed one spouse to elect the federal exemptions provided in section 522(d)²⁰ and the other spouse to choose the state exemptions authorized in section 522(b).²¹

13. Bankruptcy Amendments Act, *supra* note 4, at 356. As amended, § 1325(b)(1) reads:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

14. Bankruptcy Amendments Act, *supra* note 4, at 356.

15. 130 Cong. Rec. 5-8894 (daily ed. June 29, 1984) (statement of Sen. Hatch).

16. 11 U.S.C. § 342 (1982).

17. Bankruptcy Amendments Act, *supra* note 4, at 352. The amendment to § 342 adds: "(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed."

18. 11 U.S.C. § 522 (1982).

19. 11 U.S.C. § 522(m) (1982).

20. *See* 11 U.S.C. § 522(d) (1982).

21. *See* 11 U.S.C. § 522(b) (1982).

The Ninth Circuit Bankruptcy Appellate Panel in *In re Ageton*,²² held this practice proper even though it allowed the husband to exempt the maximum amount allowed under state law and the wife to exempt an additional maximum amount under federal law. The California bankruptcy courts agreed with this interpretation,²³ and in fact, held a state statute mandating that spouses elect the same type of exemptions, either both state or both federal, unconstitutional.²⁴

Congress amended section 522(b) to require, in joint cases, that the debtors elect either the state exemptions provided in section 522(b)(1)²⁵ or the federal exemptions provided in section 522(b)(2)(A).²⁶ If joint debtors cannot agree to the alternative to be selected, they are deemed to have elected the federal exemptions.²⁷

Subsection (d) of section 522 was also amended to limit the amount of personal, family, or household goods which may be exempted. Prior to the amendment, no limit existed on the total value of personal property a debtor could exempt so long as no item was valued at more than \$200.²⁸ Thus, a debtor could exempt virtually all his personal belongings by valuing each item at less than \$200. The amendment now limits the amount a debtor may exempt to an aggregate of \$4000.²⁹

In addition, section 522(d)(5) was amended to limit the unused federal homestead exemption. Prior to amendment, section 522(d)(5) allowed the debtor to exempt property worth up to \$400 and, in addition, utilize any amount not exempted under (d)(1) up to \$7500 in

22. 14 Bankr. 833 (Bankr. 9th Cir. 1981).

23. See *In re Skipwith*, 9 Bankr. 730 (Bankr. S.D. Cal. 1981).

24. *In re Lee*, 22 Bankr. 977 (Bankr. C.D. Cal. 1982).

25. 11 U.S.C. § 522(b)(1) (1982). Section 522(b)(1) allows the debtor to exempt eleven specific types of property listed in § 522(d).

26. 11 U.S.C. § 522(b)(2)(A) (1982). Section 522(b)(2)(A) allows the debtor to exempt "any property that is exempt under Federal law, other than subsection (d) of this section"

27. Bankruptcy Amendments Act, *supra* note 4, at 353. The amendment to § 522(b) provides:

[I]n joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered . . . one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). . . .

28. See 11 U.S.C. § 522(d)(3) (1982).

29. Bankruptcy Amendments Act, *supra* note 4, at 353. 11 U.S.C. § 522(d)(3) now allows exemption of the debtor's interest, not to exceed \$200 in value in any particular item or \$4000 in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

value.³⁰ The amendment limits the exemption of aggregate interest in property to \$400 plus up to \$3750 of any unused amount of the homestead exemption in subsection (1).³¹

C. *Limiting Discharge*

The amendment to section 523(a)(2)³² prevents the debtor from discharging some debts incurred immediately before and in contemplation of bankruptcy. Before the amendment, section 523(a)(2) required proof of false pretenses, false representation, or actual fraud to deny discharge of debts incurred immediately prior to bankruptcy.³³ A new subsection (c) is added to section 523(a)(2) to prevent the discharge of debts incurred by the consumer for luxury goods or services which aggregate more than \$500 and which were incurred on or within 40 days before the order for relief.³⁴ Luxury goods are defined as non-necessities: " 'luxury goods or services' do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor"³⁵

A second type of debt made nondischargeable by the amendment

30. 11 U.S.C. § 522(d) provided that the following property could be exempted:

(5) The debtor's aggregate interest, not to exceed in value \$400 plus any unused amount of the exemption provided under paragraph (1) of this subsection in any property.

Subsection (1) provided for an exemption of:

The debtor's aggregate interest, not to exceed \$7500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence

31. Bankruptcy Amendments Act, *supra* note 4, at 353. The amendment to 11 U.S.C. § 522(d)(5) allows the debtor to exempt his "aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

32. 11 U.S.C. § 523(a)(2) (1982).

33. 11 U.S.C. § 523(a)(2)(A) (1978) provided: "A discharge . . . does not discharge an individual debtor from any debt . . . for obtaining money, property, services, or an extension, renewal, or refinancing of credit, by . . . false pretenses, a false representation, or actual fraud"

34. Bankruptcy Amendments Act, *supra* note 4, at 353. The amendment to 11 U.S.C. § 523(a)(2) states:

[C]onsumer debts owed to a single creditor and aggregating more than \$500 for 'luxury goods or services' incurred by an individual debtor on or within forty days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; 'luxury goods or services' do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor

35. *Id.*

to section 523(a)(2) is the obtaining of cash advances aggregating more than \$1000 under an open end credit plan within 20 days before the order for relief.³⁶

The amendment to section 523(a) prohibits discharge of debts incurred as a result of drunk driving. Congress amended section 523(a) as a direct response to cases such as *In re Kuepper*.³⁷ In *Kuepper*, a judgment against the debtor resulting from the debtor's operating a motor vehicle while intoxicated was discharged in bankruptcy. The court explained that discharge under the Code was only precluded for a debt arising from willful and malicious actions.³⁸ Because drunk driving was not willful and malicious, that debt could be discharged. The new subparagraph (9) added to section 523(a) specifically denies the discharge of any debt incurred by the debtor as a result of his operating a motor vehicle while legally intoxicated.³⁹

D. *Procedural Changes*

A reaffirmation agreement must meet three requirements under the amendment to section 524(c). First, the agreement to reaffirm the debt must contain a clear and conspicuous statement of the debtor's rights regarding rescission.⁴⁰ Second, the agreement must be filed with

36. *Id.*

37. 36 Bankr. 680 (Bankr. E.D. Wis. 1983).

38. *Id.* at 682.

39. Bankruptcy Amendments Act, *supra* note 4, at 364. Subparagraph (9) denies discharge: to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred

40. Bankruptcy Amendments Act, *supra* note 4, at 354. The amendments to § 524(c) require that:

(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement—

(A) represents a fully informed and voluntary agreement by the debtor; and

(B) does not impose an undue hardship on the debtor or a dependent of the debtor;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; . . .

the court along with an affidavit filed by the attorney for the debtor stating that the reaffirmation agreement was entered into knowingly and voluntarily and does not impose undue hardship on the debtor.⁴¹ And, third, the debtor is given the right to rescind the agreement prior to discharge or within 60 days after the agreement is filed with the court.⁴²

Former section 524(c)(4) is redesignated section 524(c)(6) and amended to provide in subsection (A) for enforcement of an agreement entered into by one not represented by an attorney if the court finds the agreement does not impose undue hardship on the debtor and is in the best interest of the debtor.⁴³ This subsection (A), however, does not apply to a consumer debt secured by real property.⁴⁴ Thus, a debtor must be represented by counsel when reaffirming a debt secured by real property.

Extensive revisions have been made by Congress in the disclosure requirements of section 521. Before amendment, section 521 required the debtor to file a list of creditors, a schedule of assets and liabilities, and a statement of financial affairs.⁴⁵ The amendment to subsection (1) adds the additional duty of providing a schedule of current income and current expenditures.⁴⁶

A new paragraph (2) of section 521 sets out the procedural duties of a debtor whose schedule of assets and liabilities includes consumer debts secured by property of the estate. The debtor must within 30 days file with the clerk a statement of intention with respect to the retention or surrender of property subject to secured claims.⁴⁷ In this

41. *Id.*

42. *Id.*

43. Bankruptcy Amendments Act, *supra* note 4, at 354. The amendment to § 524(c)(6) reads:

(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

- (i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
- (ii) in the best interest of the debtor.

44. Bankruptcy Amendments Act, *supra* note 4, at 354. The amendment to § 524(c)(6)(B) reads: "Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property."

45. 11 U.S.C. § 521(1) (1982).

46. See Bankruptcy Amendments Act, *supra* note 4, at 352.

47. *Id.* at 352-53. The new provision of § 521 states:

(2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor

statement, the debtor may claim the property as exempt, state that he intends to redeem the property, or announce that he intends to reaffirm the debts secured by the property.⁴⁸ Additionally, within 45 days of the filing of this notice of intent, the debtor must perform his stated intention with respect to the property.⁴⁹ The end result of this procedure should be to assist the secured creditor in determining what the debtor will do with the collateral and save the creditor the costs of filing motions to force the debtor to commit to a decision.

Secured parties are allowed to proceed against property of the debtor following discharge. Prior to amendment, section 524(a)(2) provided that a discharge prohibited the commencement or continuation of an action to collect, recover, or offset a debt as a personal liability of the debtor and also prohibited a suit to collect from the property of the debtor.⁵⁰ The court in *In re Williams*⁵¹ construed this section to prohibit a creditor from enforcing pre-petition liens (not invalidated by bankruptcy) against debtors or their property unless the debtor reaffirmed his debt. Congress apparently overruled *Williams* by amending section 524(a)(2) to allow secured parties to levy against property serving as collateral once the order of discharge is entered.⁵²

E. *Protecting the Debtor*

Section 525 of the Bankruptcy Act prohibited public agencies from discriminating against individuals whose debts were discharged in bankruptcy.⁵³ The 1984 amendment to section 525 adds new subsection

shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property

48. *Id.*

49. *Id.*

50. 11 U.S.C. § 524(a)(2) (1982) provided that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor, or from property of the debtor, whether or not discharge of such debt is waived; . . ."

51. 9 Bankr. 228 (Bankr. D. Kan. 1981).

52. Bankruptcy Amendments Act, *supra* note 4, at 354.

53. 11 U.S.C. § 525 (1982) provided:

[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a

(b) which prohibits a private employer from either terminating the employment of or discriminating with the respect to employment of the debtor because the individual (1) is or has been a debtor under title 11 of the Bankruptcy Act, (2) has been insolvent before or during a case under title 11, or (3) has not paid a debt which is dischargeable under title 11 or that was discharged under the Bankruptcy Act.⁵⁴

The amendment to section 1322 allows special treatment of the unsecured claims of a co-debtor. Section 1322 requires that a chapter 13 plan not discriminate unfairly against any class of unsecured claims.⁵⁵ This restriction was interpreted to prohibit the debtor from separately classifying for favorable treatment unsecured claims on which there was co-debtor. In *In re Iacovoni*,⁵⁶ the court held that the bankruptcy code does not allow separate classifications of unsecured claims based solely on the presence of a co-debtor.⁵⁷ According to the court, it would be an arbitrary classification to pay one unsecured creditor 100% while the rest are paid nothing solely because of the existence of a co-debtor.⁵⁸

Congress overruled *Iacovoni* by amending section 1322(b)(1). The amendment expressly allows the payment plan to treat unsecured claims differently when a co-debtor exists.⁵⁹ Therefore, a co-debtor of a consumer debt may be paid in full to the exclusion of other unsecured creditors.

The amendment to section 362 codifies the practice of bankruptcy judges holding creditors in contempt for knowing and intentional violations of automatic stay and awarding any resulting damages to the debtor. The most prominent case setting out this judge-made rule is *Fidelity Mortgage Investors v. Camelia Builders*.⁶⁰ In *Fidelity*, a real estate investment trust petitioned for reorganization under chapter 11.

debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

54. Bankruptcy Amendments Act, *supra* note 4, at 355.

55. 11 U.S.C. § 1322(b)(1) (1982) stated that a plan may "(1) designate a class or classes of unsecured claims . . . but may not discriminate unfairly against any class so designated; . . ."

56. 2 Bankr. 256 (Bankr. D. Utah 1980).

57. *Id.* at 260.

58. *Id.* at 261.

59. Bankruptcy Amendments Act, *supra* note 4, at 356. The amendment to § 1322(b)(1) allows the plan to "treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims."

60. 550 F.2d 47 (2d Cir. 1976), *cert. denied*, 429 U.S. 1093 (1977).

The creditors sued the debtor in state court without first receiving the permission of the bankruptcy court. The court held this filing to be a willful violation of the procedure established by the bankruptcy rules and required the creditors to pay all costs, including attorneys' fees, resulting from the action.⁶¹

Congress added subsection (h) to section 362 to give the debtor statutory recourse against persons violating the automatic stay. The amendment permits the debtor to recover actual damages, including costs and attorneys' fees, and if appropriate, punitive damages, from one who willfully violates the stay.⁶²

An additional amendment expedites relief from the automatic stay. A new subsection (d) added to section 1301 provides that 20 days after the filing of a request for relief from an automatic stay, the stay will be lifted unless the debtor or some other party liable on the debt files a written objection to the termination of the stay.⁶³

F. *Conflict of Interest*

The amendment to section 1103 of the consumer credit provisions of the Bankruptcy Code clarifies when a conflict of interest exists for an attorney in a bankruptcy proceeding. Before amendment, section 1103(b) provided that any person employed to represent a committee could not represent any other entity in connection with the case.⁶⁴ The amendment narrows the language and application of this subsection.

The words "a person" are changed to "an attorney or accountant" making it clear that the persons restricted under this provision are only attorneys and accountants.⁶⁵ The amendment also emphasizes that an accountant or attorney may represent the committee and another entity unless an *actual* conflict of interest exists.⁶⁶ A new sentence was added to section 1103(b) to explain that representation of one or more creditors of the same class as the committee is not *per se* a conflict of interest resulting in automatic disqualification of the attorney or

61. *Id.* at 58.

62. Bankruptcy Amendments Act, *supra* note 4, at 352.

63. *Id.* at 355-56.

64. 11 U.S.C. § 1103(b)(1978) read: "A person employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity in connection with the case."

65. Bankruptcy Amendments Act, *supra* note 4, at 358.

66. *Id.* at 384.

accountant.⁶⁷

II. AMENDMENTS RELATING TO GRAIN STORAGE FACILITIES BANKRUPTCY

A. *Protecting the Grain Producer*

Prompted by cases such as *Missouri v. U.S. Bankruptcy Court*⁶⁸ and *In re Cox Cotton Co.*,⁶⁹ Congress amended the Bankruptcy Act to protect grain producers whose grain was stored in bankrupt grain elevators. The amendment to section 507(a) gives grain producers a priority claim of \$2000 per individual for the grain deposited or proceeds of the grain.⁷⁰

Amended section 546 protects a grain producer who sells his grain to an insolvent storage operator. A new subsection (d) of section 546 reserves to grain producers, as against the trustee, all statutory and common law rights to reclaim grain received by the debtor storage operator while insolvent.⁷¹ Two subsections qualify this grant. Section 546(d)(1) requires that the grain producer demand reclamation in writing within ten days after the debtor receives the grain in order to recover the grain.⁷² And, in section 546(d)(2) the bankruptcy court may deny reclamation if the court secures the claim by a lien.⁷³

67. *Id.* The new sentence added to § 1103(b) reads as follows: "Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest."

68. 647 F.2d 768 (8th Cir. 1981).

69. 24 Bankr. 930 (Bankr. E.D Ark. 1982). In both *Missouri v. U.S. Bankruptcy Court* and *In re Cox Cotton Co.*, bankruptcy courts authorized the sale of grain held in bankrupt storage facilities. The grain producers then used self help to recover possession of the grain.

70. Bankruptcy Amendments Act, *supra* note 4, at 358. The amendment to § 507(a) gives a priority to "allowed unsecured claims of persons—

(A) engaged in the production or raising of grain . . . against a debtor who owns or operates a grain storage facility . . . for grain or the proceeds of grain . . . but only to the extent of \$2000 for each such individual."

71. Bankruptcy Amendments Act, *supra* note 4, at 358-59. Section 546(d) reads as follows:

In the case of the seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business . . . the rights and powers of the trustee . . . are subject to any statutory or common law right of such producer . . . to reclaim such grain . . . if the debtor has received such grain . . . while insolvent, but—

(1) such producer . . . may not reclaim any grain . . . unless such producer . . . demands, in writing, reclamation of such grain . . . before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer . . . with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

72. *Id.*

73. *Id.*

B. *Expediting the Disposition of Grain*

A new section 557 was added to title 11 expressly to expedite the disposition of grain stored in bankrupt facilities. The expedited procedure is designed both to prevent spoilage of the grain and to avoid the effect of adverse market conditions. Section 557(c)(1) requires that rights in the stored grain be determined within 120 days.⁷⁴ This 120 day limitation may be extended only as allowed in subsection (f) which permits delay in two situations: when the interests of justice so require or when the interests of the claimants will not be materially injured.⁷⁵ Additionally, subsection (d)(2) of section 557 requires the trustee to process the claims of grain producers within the same expedited 120 day deadline.⁷⁶ Subsection (g) prohibits the court and the trustee from delaying any proceeding in the expedited case due to an appeal.⁷⁷

III. LEASEHOLD MANAGEMENT AMENDMENTS

A. *Maintaining the Status Quo in Shopping Centers*

The Bankruptcy Act of 1898 was interpreted to allow a landlord to include a termination provision in his lease. When a tenant filed a petition in bankruptcy, the landlord terminated the tenant's leasehold interest.⁷⁸ This termination provision was known as an *ipso facto* clause, as the mere fact that a tenant filed a petition in bankruptcy allowed the landlord to terminate the lease.

Finding this practice harsh, the courts fashioned exceptions to enforcement of the automatic termination clauses. In the leading case of *Queens Boulevard Wine & Liquor Corp. v. Blum*,⁷⁹ the court held that a lease provision permitting the landlord to terminate the lease on the debtor's filing for bankruptcy was grossly inequitable and, therefore, unenforceable. In the Bankruptcy Amendments Act of 1984, Congress made the *Queens Boulevard* doctrine applicable to all bankruptcy cases

74. Bankruptcy Amendments Act, *supra* note 4, at 359.

75. *Id.* at 360.

76. *Id.*

77. *Id.* A new subsection (g) is added to Bankruptcy Rule 3001 to make a warehouse receipt or equivalent document prima facie evidence of the validity and amount of the claim of ownership of a quantity of grain. The amendment to Bankruptcy Rule 3001 reads as follows:

To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility . . . shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

78. See Bankruptcy Act § 70(b) (1898).

79. 503 F.2d 202 (2d Cir. 1974).

thus preventing automatic termination of leases; however, special concessions were granted to shopping center developers under section 365 of the Bankruptcy Amendments Act.

Section 365(b)(3) was amended to expand the duty of the lessee to give adequate assurance of performance under a lease of real property in a shopping center.⁸⁰ Prior to amendment, section 365(b)(3)(A) required only that the lessee give adequate assurance of the source of rent and other consideration due under the lease.⁸¹ Now, the lessee must also give adequate assurance that, if he assigns the lease, the assignee will continue in the same financial condition and operating performance as the lessee.⁸²

Before amendment, section 365(b)(3)(C) required only that assurance be given that assignment of a commercial lease would not breach any provision in any other lease, financing agreement, or master agreement in the shopping center.⁸³ As amended, subsection (C) requires that all provisions in a lease remain intact on assignment and that the assignment not breach any provision contained in any other lease, financing agreement, or master agreement of the shopping center.⁸⁴

B. *Termination of the Lease Prior to Bankruptcy*

Some bankruptcy courts refused to allow a lessor to evict his lessee from a shopping center when the lease terminated before the institution of a bankruptcy action. Therefore, a new subsection (9) was added to section 362(b) to make clear that an automatic stay does not prevent any act by the lessor to obtain possession of property when the lease has terminated by its own terms before commencement of bankruptcy

80. Bankruptcy Amendments Act, *supra* note 4, at 362. Section 365(b)(3) now requires that the lessee give adequate assurance

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) That any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

81. 11 U.S.C. § 365(b)(3)(A) (1982).

82. 11 U.S.C. § 365(b)(3)(C) (1982).

83. *Id.*

84. *Id.*

proceedings.⁸⁵ This amendment allows the landlord to evict his tenant in state court without leave of the bankruptcy court when the lease has expired prior to the filing of the petition.

When a lease expires before or during a bankruptcy suit, the leasehold will no longer be included in the debtor's estate. A new subsection (2) was added to section 541(b) to exclude from the debtor's estate any interest of the debtor as lessee of nonresidential real property which has terminated either before the commencement of the bankruptcy suit or during the pendency of the case.⁸⁶

Though the amendments address only the termination of a lease through expiration of time, case law permits a landlord to evict his tenant following termination due to default on the lease prior to bankruptcy. In *In re Mimi's of Atlanta, Inc.*,⁸⁷ the lessee failed to make rental payments under a valid lease. The landlord terminated the lease, but the debtor filed for bankruptcy before the landlord could evict him. The court granted the landlord relief from the automatic stay and allowed him to proceed with his action to reclaim the property.

The termination of a lease prior to bankruptcy also restricts the rights of the trustee. A new subsection (3) is added to section 365(c)(1)(B) to prevent a trustee from either assuming or assigning an executory contract or unexpired lease of nonresidential real property if the lease has terminated under nonbankruptcy law before the order for relief.⁸⁸

C. Election as to Unexpired Leases

The amendments to section 365(d) force the debtor or trustee to make an election to assume or reject an unexpired lease within 60 days after the order for relief.⁸⁹ Prior to the amendment, the trustee or

85. Bankruptcy Amendments Act, *supra* note 4, at 364. The amendment to § 362(b) states that the filing of a petition does not operate as a stay "of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property."

86. Bankruptcy Amendments Act, *supra* note 4, at 363. The amendment to § 541(b) reads: Property of the estate does not include . . . (2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

87. 5 Bankr. 623 (Bankr. N.D. Ga. 1980).

88. Bankruptcy Amendments Act, *supra* note 4, at 362.

89. *Id.* at 362-63. The amendment to § 365(d)(1) provides:

debtor could wait until the confirmation of the plan to decide whether to assume an unexpired lease,⁹⁰ and if the lessor wanted an earlier decision, he was forced to apply to the court for an order compelling the debtor or trustee to assume, assign, or reject the lease.

The failure of the trustee to act within the prescribed time period is addressed in the amendment to section 365. A new subsection (4) is added to section 365(d) to provide that if the trustee does not assume or reject an unexpired lease of nonresidential real property within 60 days of the order of relief, the lease is deemed rejected.⁹¹ Failure to act within 60 days forces the trustee to immediately surrender the property to the lessor.⁹² In addition, a new subsection (1) supplements section 365 by permitting the lessor to require a deposit or other form of security for performance from the assignee of an unexpired lease just as he would have required from an initial lessee.⁹³

IV. AMENDMENTS TO PROTECT TIMESHARE CONSUMERS

The decision in *In re Sombrero Reef Club, Inc.*⁹⁴ led to the creation of the amendments to protect timeshare consumers. In *Sombrero Reef Club*, the court held that timeshare contracts were mere executory contracts and as such could be rejected by the debtor so that the property could be sold free of these interests.⁹⁵ Even where a purchase price had been paid in full, the court held the contract executory and recognized no possessory right in the timeshare participant.⁹⁶

To remedy this unconscionable result, Congress began by adding subsection (43) to section 101 to define a timeshare plan and timeshare interest. A timeshare plan is an arrangement whereby a purchaser, in exchange for consideration, receives a right to use accommodations, fa-

if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

90. See 11 U.S.C. § 365(d)(2) (1982).

91. Bankruptcy Amendments Act, *supra* note 4, at 363.

92. *Id.*

93. *Id.* at 373. The new subsection to § 365 reads:

If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

94. 18 Bankr. 612 (Bankr. S.D. Fla. 1982).

95. *Id.* at 616.

96. *Id.*

cilities, or recreational sites for a specific period of time which is less than a full year in any given year and which extends for a period of more than three years.⁹⁷ A timeshare interest is that interest purchased in a timeshare plan.⁹⁸

The holder of a timeshare interest has the option to be treated as a lessee or as a purchaser of real property. The timeshare participant who elects to be treated as a lessee is bound by the provisions of section 365(h). Section 365(h), before amendment, allowed a lessee to treat a lease as terminated on rejection by the debtor.⁹⁹ This same right of termination is granted by amendment to a timeshare participant when a trustee rejects a timeshare interest.¹⁰⁰ In the alternative, the timeshare participant may, as may the lessee, remain in possession of the property for the balance of the agreed term and for any renewal or extension under the timeshare interests.¹⁰¹

The amendment to section 365(h)(2) grants certain rights to the timeshare participant, or lessee, who elects to remain in possession of the timeshare interest following rejection by the trustee. The timeshare participant may, as may the lessee, offset against the payments due for the timeshare interest any damages occurring after rejection by the trustee caused by the nonperformance of the debtor of obligations due under the timeshare plan.¹⁰² However, after rejection, the timeshare participant's recovery against the estate is limited to the offset.¹⁰³

The timeshare participant who elects to be treated as a purchaser of real property is governed by section 365(i). The amendment to this section parallels the amendment to subsection (h) to allow the purchaser of a timeshare interest,¹⁰⁴ like the purchaser of real property, to consider the contract to purchase as terminated when the trustee rejects the executory contract.¹⁰⁵ In the alternative, the purchaser of the

97. Bankruptcy Amendments Act, *supra* note 4, at 366-67.

98. *Id.*

99. 11 U.S.C. § 365(h)(1) (1982).

100. Bankruptcy Amendments Act, *supra* note 4, at 367. Following amendment, § 365(h)(1) reads:

If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, or a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller, the lessee or timeshare interest purchaser under such lease or timeshare plan may treat such lease or timeshare plan as terminated by such rejection . . .

101. Bankruptcy Amendments Act, *supra* note 4, at 367.

102. *Id.* at 367.

103. *Id.*

104. 11 U.S.C. § 365(i)(2).

105. Bankruptcy Amendments Act, *supra* note 4, at 367.

timeshare interest, like the purchaser of real property, may remain in possession of the timeshare interest and set off his damages against the unpaid installments of the purchase price.¹⁰⁶

V. REJECTION OF COLLECTIVE BARGAINING AGREEMENTS

Inconsistent decisions in two cases prompted Congress to amend the Bankruptcy Act to establish standards for rejecting collective bargaining agreements. In 1975, the Second Circuit decided *Brotherhood of Railway Employees v. REA Express, Inc.*¹⁰⁷ In *REA Express*, the court characterized a collective bargaining agreement as an executory contract and allowed the debtor to unilaterally reject the contract only if rejection was necessary to prevent liquidation. Believing that the standard in *REA Express* was "fundamentally at odds with the policies of flexibility and equity built into" the bankruptcy code,¹⁰⁸ the United States Supreme Court handed down a new standard for rejection of collective bargaining agreements in *NLRB v. Bildisco & Bildisco*.¹⁰⁹ Instead of the strict test of *REA Express*, the court in *Bildisco* allowed the debtor to reject a collective bargaining agreement on a showing only that the agreement burdened the estate and that the equities balanced in favor of rejection.¹¹⁰

Congress created section 1113 of title 11 to control the rejection of collective bargaining agreements. Any proposal to alter a collective bargaining agreement must be needed to permit the debtor's reorganization and must assure that all parties are treated fairly and equitably.¹¹¹ To this end, subsection (b)(1) of section 1113 requires the trustee to follow specific procedural steps when seeking to reject a

106. Bankruptcy Amendments Act, *supra* note 4, at 365.

107. 523 F.2d 164 (2d Cir.), *cert. denied*, 423 U.S. 1017 (1975).

108. *NLRB v. Bildisco & Bildisco*, 104 S. Ct. 1188, 1196 (1984).

109. 104 S. Ct. 1188 (1984).

110. *Id.* at 1196.

111. Bankruptcy Amendments Act, *supra* note 4, at 390. Section 1113(b)(1) provides: Subsequent to filing a petition and prior to filing an application seeking a rejection of a collective bargaining agreement, the debtor in possession or trustee . . . shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide . . . the representative of the employees with such relevant information as is necessary to evaluate the proposal.

collective bargaining agreement. Under subsection (b)(1), the trustee must, subsequent to the filing of a petition and prior to filing an application seeking rejection of the agreement, (A) make a proposal to the authorized representative for modifications of employee benefits and protections and (B) provide the representative with all information necessary to evaluate the proposal.¹¹² Subsection (b)(2) forces the trustee or debtor-in-possession to meet with the authorized representative of the union to attempt in good faith to reach a mutually satisfactory modification of the collective bargaining agreement.¹¹³

Section 1113(c) sets out three requirements for allowing rejection of a union contract. The court may allow rejection of the agreement only if (1) the trustee has made the proposal required in (b)(1); (2) the authorized representative has without good cause refused to accept the proposal; and (3) equity clearly favors rejection of the agreement.¹¹⁴

The procedure to be followed when attempting to reject a collective bargaining agreement is set out in section 1113(d). Subsection (d)(1) requires the court to hold a hearing within fourteen days of the filing of an application for rejection of a collective bargaining agreement.¹¹⁵ All interested parties may appear, and notice must be given to such parties at least ten days before the hearing.¹¹⁶ “[W]here the circumstances of the case, and the interests of justice require” more time for negotiations, the court may extend the deadline for the hearing.¹¹⁷

Section 1113(d)(2) requires the court to rule on the application for

112. Bankruptcy Amendments Act, *supra* note 4, at 390.

113. *Id.*

114. *Id.*

115. *Id.* at 390-91. Section 1113(d) reads:

(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

116. Bankruptcy Amendments Act, *supra* note 4, at 390-91.

117. *Id.*

rejection within 30 days from the commencement of the hearing.¹¹⁸ If the court does not rule within 30 days, the trustee may terminate or alter the provisions of the collective bargaining agreement pending the ruling of the court.¹¹⁹

Section 1113(e) recognizes the interim changes in the provisions of the collective bargaining agreement may be necessary. After notice and a hearing, the court may allow such interim changes in the agreement if irreparable damage would result to the debtor's business or estate.¹²⁰ Subsection (f) makes clear that no trustee may unilaterally terminate or alter any provisions of the collective bargaining agreement without prior court approval.¹²¹

VI. MISCELLANEOUS AMENDMENTS

A number of amendments to the Bankruptcy Act, though they do not fall neatly into any given category, are important and deserve attention.

A. Preferences

Before the amendments, the trustee could set aside a transfer made between 90 days and one year before the date of the filing of the petition if the creditor was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer.¹²² The amendment to section 547(b)(4)(B) allows the trustee to avoid such transfers by the debtor to the creditor on proof only that the creditor was an insider.¹²³ Proof that the creditor had reasonable cause to believe the debtor was insolvent is no longer required to avoid the transaction.

118. *Id.*

119. *Id.*

120. Bankruptcy Amendments Act, *supra* note 4, at 391. Section 1113(e) provides:

If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement

121. Bankruptcy Amendments Act, *supra* note 4, at 391. Section 1113(f) reads: "No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section."

122. 11 U.S.C. § 547(b)(4)(B) (1982).

123. Bankruptcy Amendments Act, *supra* note 4, at 378. As amended § 547(b)(4)(B) allows the trustee to avoid any transfer of property by the debtor made "between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider."

Under section 547(c)(2) an exception was made to the scope of avoidable transfers for payments made in the ordinary course of business. So long as payment was received within 45 days of the incurrance of the obligation, the transfer was not considered a preference.¹²⁴ This 45 day limitation proved too restrictive as payment for ordinary business debts might normally be made more than 45 days after the debt was incurred. For this reason, the amendment to section 547 strikes subsection (c)(2)(B).¹²⁵ Thus, if a transfer is made in the ordinary course of business, it cannot be avoided as a preference.

An exception to avoidable transfers is made for consumers in a new subsection (7) added to section 547(c). This addition prohibits a trustee from avoiding a transfer of less than \$600 by an individual consumer debtor.¹²⁶

A new subsection (g) is added to section 547 to specifically allocate the burdens of proof between the parties to preference litigation. The burden of proof on the avoidability of a transfer under section 547(b) is on the trustee.¹²⁷ The burden of proof on the nonavoidability of a transfer under section 547(c) is on the creditor or party against whom the avoidance is sought.¹²⁸

B. *Other Amendments*

The amendment to section 543(d) allows a custodian to continue in possession of the debtor's property. Subsection (2) excuses the custodian from turning over property of the debtor so long as the custodian was appointed or took possession more than 120 days before the filing of the bankruptcy petition.¹²⁹ This provision promotes consistency by allowing a receiver who has been controlling the debtor's property for some period of time to continue in operation. The only exception to

124. 11 U.S.C. § 547(c)(2)(B) (1982).

125. Bankruptcy Amendments Act, *supra* note 4, at 378.

126. *Id.* at 355.

127. *Id.* at 378. Section 547(g) reads:

For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

128. *Id.*

129. *Id.* at 377. The amendment to § 543(d) provides that after notice and hearing, the bankruptcy court:

(2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.

allowing the custodian to continue in possession is when delivery of the debtor's property to the trustee is necessary to prevent fraud or injustice.¹³⁰

VII. CONCLUSION

Title III of the Bankruptcy Amendments Act of 1984 thoroughly revises the substantive provisions of the Bankruptcy Act. Consumers are now restricted in their use of practices which abused the spirit of the Bankruptcy Act, yet protected in other areas so that the creditor cannot take advantage of the bankruptcy system. The amendments protect grain producers who store grain in bankrupt facilities and require expedition of claims of grain producers. Amendments to leasehold management provisions ensure that shopping centers will remain stable when one tenant in the center petitions for bankruptcy.

Two new sections were added: one to preserve the property interests of timeshare consumers during bankruptcy proceedings and one to establish procedures to be used when rejecting collective bargaining agreements. The rules for preferences were amended to enlarge the scope of permissible transfers made prior to bankruptcy.

The bankruptcy amendments were enacted by Congress to remedy problems existing in the Bankruptcy Act. Through additions and deletions to the existing bankruptcy code, Congress attempted to cure inconsistent interpretation and application of code provisions. The amendments in title III of the Bankruptcy Amendments Act of 1984 reach this goal by answering questions about ambiguous provisions in the Act, clarifying the procedural requirements of the Act, and setting standards to be followed when litigating a case in bankruptcy.

130. *Id.*