



## Term Limits

Proposed bankruptcy legislation could mean major reform

by Pamela V. Rothenberg

**B**ankruptcy reform legislation may soon become a reality. The House and the Senate each passed bankruptcy reform bills (H.R. 333 and S. 420) and are currently in the process of reconciling the differences between their respective bills at a conference session.

The legislation would be the most significant change in the nation's bankruptcy laws in nearly 25 years. Most of the terms of both H.R. 333 and S. 420 propose material changes to many consumer provisions of the Bankruptcy Code. However, key commercial provisions are also included, from which residential and commercial landlords stand to benefit considerably when their tenants seek bankruptcy protection.

Existing bankruptcy law contains a loophole permitting residential tenants to delay eviction by declaring bankruptcy during or at the end of state court landlord-tenant actions. Since it can take months from the date of filing a bankruptcy petition until a court permits a property owner to initiate proceedings to recover the property, some residents file for bankruptcy as a way of retaining the premises rent free and staying beyond the term of their lease. Even residents who cause property damage, commit health department violations or otherwise threaten fellow residents, may not be removed from the property in an

expeditious manner because of the Code's automatic stay provisions. Responsible residents face higher rental costs when landlords pass along litigation and collection costs arising from abusive bankruptcy filings. Under the new legislation, this will change.

The bills afford landlords protection from both serial bankruptcy filers and tenants who are endangering the property.

### Residential Rules

Both the House and Senate bills will narrow this loophole. Although complex, the bills include expedited procedures to evict residential tenants who fail to pay rent due either within ten days before bankruptcy or at any time after the bankruptcy case is filed. The bills afford landlords protection from both serial bankruptcy filers and tenants who are endangering the property. Residential landlords will clearly benefit from these reforms since they empower landlords to more quickly rent apartments after residents have declared bankruptcy.

### On the Commercial Side

Under existing law, bankrupt commercial tenants have 60 days to assume or to reject their leases. However, today's courts routinely extend this time.

Both the House and Senate bills establish finite deadlines by which a Chapter 11 debtor or trustee must assume or reject a nonresidential lease of real property. The existing 60-day period to assume or to reject leases of nonresidential real property is replaced with a 120-day period. The

bill would permit one extension for 90 days. Thereafter, the court could only extend the period upon the written consent of the lessor. Under these new timeframes, debtors would be forced to quickly ascertain which leases they wish to assume and to reject. Landlords would have more certainty in the lease assumption and rejection process, allowing them to more effectively market the property.

The real estate industry has pressed for enactment of meaningful bankruptcy reform for at least five years. The pending legislation will now address matters of immediate concern to landlords and their businesses. ■

Pamela V. Rothenberg (prothenberg@wcsr.com) is an attorney and member of the real estate transactions and real estate technology groups at Womble Carlyle Sandridge & Rice, PLLC.