

insights

TYPES NOT MAPPED YET August 27, 2019 | TTR not mapped yet | David A. Warfield

Four key takeaways from the August 2019 bankruptcy code amendments

The President signed legislation on August 23, 2019, modifying the Bankruptcy Code in several respects. Here are the four biggest takeaways.

Help for the preference recipient

Almost all businesses have either received a letter from a bankruptcy trustee or have been sued by the trustee for the repayment of sums they received from their customer within 90 days of the customer's bankruptcy filing. The recipient has several affirmative defenses to return of these so-called "preference" payments that may reduce, or even eliminate, the amount that must be repaid.

In the past, trustees sent demand letters or even sued recipients without evaluating the affirmative defenses available to the recipients, a practice that was perfectly legal, albeit very frustrating. The new legislation amends the preference statute to require the trustee to perform "reasonable due diligence" and to take account of the recipient's "reasonably knowable affirmative defenses" before filing suit. The Courts will have to flesh out how much due diligence is required, but the new provision is a step in the right direction to level the preference playing field.

Another beneficial change for preference recipients is that the venue for all preference lawsuits under \$25,000 will be the district where the recipient is located, not where the bankruptcy case is filed. These new provisions will go into effect on February 19, 2020.

Help for family farmers

With widespread concern that falling commodity prices and higher tariffs will increase financial distress in the agricultural sector, Congress acted to make Chapter 12 available for more family farmers. Chapter 12 is a streamlined reorganization process that was formerly available to family farmers with less than about \$4.4 million in debt. The new legislation more than doubles the existing debt limit to \$10 million. This change goes into effect immediately.

Help for disabled veterans

The new legislation excludes veteran's disability benefits payments from the calculation of "disposable income." This corrects an obvious inequity in the law where Social Security disability benefits were excluded from "disposable income" but veteran's disability benefits were not. This change will enable more disabled veterans to qualify to file Chapter 7 bankruptcy and receive a discharge of most of their debts. This change goes into effect immediately.

Help for small businesses

Bankruptcy professionals have long recognized that Chapter 11 is too cumbersome and expensive for many small businesses. The new legislation creates an entirely new reorganization process for businesses with less than \$2,725,625 in total debt. The new process will permit qualifying businesses to reorganize more quickly and with fewer administrative fees and costs. This provision will go into effect on February 19, 2020.



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