

J.K. Lasser's The New Bankruptcy Law and You

Barbara O'Neill, Ph.D., CFP®

Authors: **Nathalie Martin** and **Stewart Paley**

Publisher: John Wiley and Sons, Inc.

ISBN #0471753696

The statistics are startling! U.S. bankruptcy filings doubled between 1994 and 2004, rising to more than 1.6 million cases or one bankruptcy for about every 73 households. Many AFCPE members are actively involved in the delivery of mandatory credit counseling and financial education sessions for bankruptcy filers. For financial counselors and educators seeking a comprehensive reference about the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), J.K. Lasser's *The New Bankruptcy Law and You* is a helpful, although sometimes frustrating to read, reference tool. Written by Nathalie Martin, a law school professor, with Martin Paley, a bankruptcy attorney, the book is subtitled "Your Complete Guide to the New Law." It not only describes key provisions of the BAPCPA law, but also provides interpretive advice and opinions about their application, as an attorney would. For example, "The new law is much more generous in allowing consumers to protect their pension plans, which is good for people who have had the foresight to save." These comments are set off in shaded boxes labeled "Important" and "Note" and are, therefore, easy for readers to locate.

The three frustrating elements of this book are (a) its inclusion of extraneous material not germane to the topic of explaining the BAPCPA law, (b) broad sweeping generalizations about providers of credit counseling and financial education, and (c) a description of both pre- and post-BAPCPA law procedures, despite the book's 2006 publication date. I bought the book in November 2005 and found entire sections (i.e., where the authors are describing what to do before October 17, 2005) to be dated and irrelevant. The book must have been written immediately after the passage of the BAPCPA law in April 2005 but there is no indication from the front and back covers that it discusses both pre- and post-BAPCPA law procedures.

The book takes a circuitous route to describing the BAPCPA law or, for that matter, bankruptcy in general. It

begins with a brief introduction where the authors explain their desire to help readers become "bankruptcy-proof" by adopting prudent financial behaviors such as repaying debt quickly, saving money, and reducing household expenses. The first four chapters then reinforce this with a history lesson about the use of credit (Chapter 1) and a discussion of shopping and "feel good" alternatives (Chapter 2), saving and expense reduction strategies (Chapter 3), and credit card use and costs (Chapter 4). These chapters were factually correct but seemed out of place, given the title of the book. Perhaps if they had been placed after the description of bankruptcy procedures, in a separate section on the process of "starting over," the text would have flowed better. The authors also wrote a final chapter (17) on post-bankruptcy investing to build wealth that would have fit well with the four "personal finance" chapters.

Chapter 5 introduces readers to the "language of bankruptcy" by explaining terms such as secured versus unsecured debts and the different bankruptcy chapters under federal bankruptcy law: Chapter 7 (liquidation), Chapter 13 (repayment plan), Chapter 12 (repayment plan for family farmers and fishermen), and Chapter 11 (bankruptcy plan for business entities). The concept of bankruptcy discharge is also explained for the consumer bankruptcy chapters.

Chapter 6 is titled *Do I Need a Bankruptcy at All? Assessing Your Situation*. It includes a budget worksheet for readers to assess the extent of their negative monthly cash flow, steps for keeping a spending diary, and alternatives to bankruptcy. The authors also describe the importance of keeping housing and car payments current and situations (e.g., being "judgment proof" or having friends or relatives as loan cosigners) where people are not good candidates for bankruptcy. Chapter 7 is about pre-BAPCPA law and begins with the sentence "If you are reading this book after October 17, 2005, you can skip this chapter." It goes on to explain how the BAPCPA law will

Barbara O'Neill, Professor II and Extension Specialist in Financial Resource Management, Rutgers University, Cook College, Rutgers Cooperative Extension, Cook College Office Building, 55 Dudley Rd., New Brunswick, NJ 08901, oneill@aesop.rutgers.edu, (732) 932-9155, Ext. 250

make bankruptcy more expensive and complicated to file and urges readers to take action immediately. The book could not have been available more than several months, however, for readers to act on this information, and now this chapter is dated.

Chapter 8 discusses the process of preparing to file for bankruptcy including full disclosure of assets and debts, filing fees, legal fees, and the timing of filing in relation to receipt of a paycheck or tax refund. It concludes by discussing the BAPCPA law requirement for pre-filing credit counseling and contains a rather broad indictment of the credit counseling industry that many AFCPE members would find objectionable. The authors state “it is hard to imagine an industry that has suffered more scandal lately than the current consumer credit counseling industry” and “Right now, there are few reputable firms from which to get any of this counseling.” Chapter 9 further describes processes that apply to all bankruptcies including the automatic stay, determining property in a debtor’s estate, court procedures, federal and state property exemptions, and the valuation of assets. Chapter 10 covers the treatment of secured creditors in bankruptcy and the types of liens that can be placed on certain property.

Chapter 11, *Basic Bankruptcy Procedures*, describes the schedules (forms) required for bankruptcy filing and the questions that debtors are required to answer. It also describes how a Section 341 meeting (a.k.a., “meeting of creditors”) takes place procedurally and the types of questions that bankruptcy trustees are likely to ask. The authors also comment, once again, on credit counseling and advise readers to “avoid nonprofit consumer credit counselors for the most part, because most are scams.” Their comments on financial education providers reflect a similar negative bias. Commenting that financial education courses will not be necessary until there are sufficient providers, the authors state, “It is likely that the courses will not be required for a number of years. Having said that, most of what such a course would teach has already been provided to you in this book.” Obviously they were not aware of Cooperative Extension, consumer credit counseling service agencies, and other national networks of qualified financial education providers, of which the Office of U.S. Trustees has approved hundreds.

Chapter 12 of *J.K. Lasser’s The New Bankruptcy Law and You* discusses the Chapter 7 bankruptcy discharge process, including general discharge concepts and debts that cannot be discharged, including fraudulent debts. Chapter 13 of the book discusses ways to keep property in a Chapter 7

case, including redemption (paying the value of property in cash to the secured party) and reaffirmation (agreeing to honor the original loan agreement, despite the bankruptcy). Chapter 14 of the book describes the means test for Chapter 7 bankruptcies. The means test is based on a filer’s current monthly income, family size, and the median income for their state of residence. Those who earn less than the median income for a family of their size in their state are able to file under Chapter 7. Those that earn more and can afford to pay back at least \$100 a month, after subtracting allowable expenses as determined by the IRS, will generally have to file under Chapter 13 and submit to a 5-year repayment plan.

Chapter 15 of *J.K. Lasser’s The New Bankruptcy Law and You* describes Chapter 13 payment plan cases. Prior to the implementation of the BAPCPA law, debtors could choose between a 3-year or 5-year repayment plan. Now all Chapter 13 filers, including those who fail the Chapter 7 means test, will be required to repay their debts over 5 years. The authors comment “In our experience, debtors complete three-year plans more often than five-year plans because, the longer the commitment to pay past-due debts, the less likely it is that the debtor will be able to follow through.” This does not bode well for the success of Chapter 13 cases going forward. The chapter also covers Chapter 13 eligibility and the treatment of secured creditors under Chapter 13. Chapter 14 of the book briefly discusses businesses and bankruptcy law since many consumer bankruptcies are filed by struggling entrepreneurs whose businesses have failed.

The last third of the book contains two very useful features: state-by-state tables of bankruptcy law exemptions as of July 15, 2005 and a comprehensive glossary of bankruptcy law terms. Readers will note that bankruptcy exemptions vary greatly across the nation. For example, some states include a “wild card” category that allows debtors to protect any type of property, including cash, collectibles, and investment accounts, while other states do not allow this option. The book also lists the 15 states that allow debtors to choose between state and federal exemptions. On balance, *J.K. Lasser’s The New Bankruptcy Law and You* is a valuable tool to understand the bankruptcy filing process, especially for AFCPE members who are now counseling and/or teaching bankruptcy filers. It will help financial practitioners to understand what bankruptcy filers are experiencing and, thereby, help them become more effective advisors and educators.