

# The Countian

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## New bankruptcy law produces unforeseen results, experts say

By Donna Walter  
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Quick quiz: Which of the following might a debtor consider doing before filing for bankruptcy under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005?

- A. buy an expensive car
- B. get credit counseling
- C. hold off on making charitable contributions
- D. all of the above.

The correct answer is D.

Bankruptcy attorneys and courts are still struggling with interpreting the almost-year-old law, but one thing is clear: The changes have led to a number of unintended consequences.

That's because, in contrast to the drafting of the Bankruptcy Code of 1979, the new amendments were not written by lawyers or other bankruptcy experts, according to debtor attorney Wendell Sherk of Sherk and Swope LLC.

"If they had taken each of the constituent interests in the bankruptcy process, a lawyer or two from each side, every side in the system, and told them 'thou shalt make this law tougher on people who are abusing the system,' go to work, it would have taken a month to write something that would do exactly that without throwing out 25 years' worth of jurisprudence," he said.

"But that's not what the lobbyists did," Sherk said. "They specifically excluded almost everybody with real competence in the area. So the net result is you had people who really did not understand the process rewriting the law."

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### Find out more

The new bankruptcy law will be the subject of three track programs at The Missouri Bar Annual Meeting this week in St. Louis. "How Changes in the Bankruptcy Code Affect Consumers and Creditors" takes place at 2 p.m. today. "Bankruptcy Matters Involving Estates and Trusts" is at 4 p.m. And "What You Don't Know May Hurt You: One Year Later, Bankruptcy Changes and Their Impact on Family Law" starts at 9:30 a.m. Friday.

### Means test

The most contentious issues since the law took effect Oct. 17, 2005, revolve around the application of the means test to disposable income in Chapter 13 cases, according to Sherk. The test is used to determine how much consumer debtors who have income higher than the median income in their state would have to pay back to their creditors, he said.

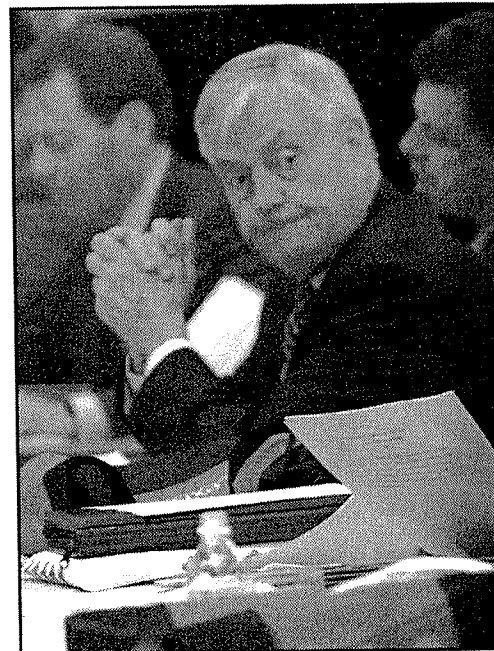
Tom DeWoskin, principal at Danna McKittrick, talked about the disparity in the application of the means test. A debtor with a business debt of \$200,000 and a house with a \$150,000 mortgage would not be subject to the means test, but the same debtor with a \$250,000 mortgage would be subject to the test because the debtor has more consumer debt than business debt, he explained.

"So whether or not I have to pass the means test is determined by the size of my house. I'm sorry; I just don't see the logic in that," he said.

"This country's supposed to foster entrepreneurs, and here what we're saying is if you're an entrepreneur and you fail, we're not going to protect you," he said.

According to Sherk, the means test has also led to what's known as the "Escalade exception." Above-median debtors with high mortgage payments and large car pay-

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The Missouri Bar Board of Governors meet on downtown St. Louis. St. Louis County Circuit Court Judge Chazen Friedman are two of the board members.

## Bar will back prenups, ch

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Premarital agreements, child support and child custody are among the issues The Missouri Bar board of governors has opted to push in the Missouri General Assembly in the upcoming session.

Ann Bauer and Lori Levine, both members of the state bar's Family Law Section, presented three pieces of legislation to the bar leadership for approval.

The bills were all drafted by the National Conference of Commissioners on Uniform State Laws.

Levine asked the board to approve the Uniform Premarital Agreement Act with an eye toward a consistent law both within the state of Missouri and with neighboring states. Missouri currently has no law governing premarital agreements, and, according to Levine, that has resulted in conflicts

