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May 2006

## More Bankruptcy Changes - the reprieve was short lived

Bankruptcy Law is in a constant state of change in seeking to balance the freedom of individuals to organise their financial affairs in various ways and the interests of those who suffer by not being paid what they are legitimately owed.

Long anticipated changes to the Bankruptcy Act 1996 were passed by the Senate on 30 March 2006 in the form of the ***Bankruptcy Legislation Amendment (Anti-Avoidance) Bill 2005***.

This was the second attempt of the Government at substantial antiavoidance amendment to the Bankruptcy Act. The earlier version crumbled under the weight of public opinion. It was acknowledged that individuals must have the continued ability to protect their hard won assets from the clutches of often opportunistic claimants.

We reported on the earlier attempt in July 2004 - [Asset Protection Reprieve - July 2004](#)

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The current amendments, according to the Attorney General's summary, appear to me to be far more balanced. Here are just two examples:

<b>First failed attempt</b>	<b>Actual amendment</b>	<b>Lesson</b>
Presumption of "tainted purpose" in a transfer of assets away from the bankrupt	A rebuttable presumption of insolvency where the bankrupt has failed to keep proper records	Keep proper records
Essentially unlimited claw-back time limits for under-value transactions (including gifts)	Increased (but not unlimited) claw-back time limits from 2 to 4 years for under-value transactions (including gifts)	Restructure now when things are fine and long before any trouble arises (in the hopes of financial trouble never arising)

Additionally, the amending legalisation appears to put everyone on notice that "fire sale" or "financial strife sale" transactions are potentially at risk of being set aside by a trustee in bankruptcy. In these circumstances it may well be *reasonable* to assume that the transfer is an attempt to avoid creditors. Buyer beware!

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**Specific Advice**

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