

ALR Federal 2d *Alert*

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From the editor

In today's difficult economic times, it is not surprising that our court system is faced with many issues stemming from the efforts of individuals to improve their financial lives. Unfortunately, the struggle with overwhelming debt has become a reality for far too many people. Often the solution is sought within the bankruptcy courts. The current and subsequent volumes of A.L.R. Fed. 2d feature annotations focusing on the efforts by individuals to discharge student loan debt by showing that even though they have made good faith efforts—as demonstrated by their compliance with Congressional policy [59 A.L.R. Fed. 2d 565] and by maximizing their income while minimizing their expenses [60 A.L.R. Fed. 2d]—repayment of the loans would impose undue hardship. This volume also contains an annotation discussing whether a transaction is within the “ordinary course of business” so as to permit a bankruptcy trustee to use property of the estate without notice or a hearing [59 A.L.R. Fed. 2d 95]. Despite the difficulties we are facing, the prospect of life in America is still preferable for many around the world to that in their homelands. These volumes include annotations addressing particular acts [59 A.L.R. Fed. 2d 151] and particular omissions or failures [60 A.L.R. Fed. 2d] that constitute ineffective assistance of counsel allowing an alien relief from an adverse removal proceeding in their effort to remain in this country. Finally, the next volume features an annotation concerning the protection of one's property through the Copyright Remedy Clarification Act, which deprives States of sovereign immunity for violating of any of the exclusive rights of a copyright owner [60 A.L.R. Fed. 2d].

Douglas A. Bass, J.D. and Michael T. Poccia, Editor

Highlights

BANKRUPTCY

Ordinary Course of Business

Section 363 of the Bankruptcy Code, 11 U.S.C.A. § 363, establishes constraints on the use, sale, or lease of the property of a debtor during the



administration of the bankrupt's estate. Subparagraph (c)(1) of Section 363 provides, “If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee

may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” This annotation collects and discusses cases in which the courts considered whether a particular transaction was made “in the ordinary course of business” within the meaning of Section 363(c)(1) of the Bankruptcy Code, 11 U.S.C.A. § 363(c)(1). [59 A.L.R. Fed. 2d 95](#)

BANKRUPTCY

Discharge of Student Loans—Compliance With Congressional Policy

Debtors generally receive a discharge of prepetition debts in bankruptcy to allow for a fresh start, but educational loans are presumptively nondischargeable, and an individual debtor seeking to discharge a student loan obligation must establish that repayment of all or a portion of the debt would impose undue hardship, according to the Bankruptcy Code of 1978, 11 U.S.C.A. § 523(a)(8)(B). To demonstrate undue hardship, most courts require a debtor to have made good faith efforts to repay the loan, which often involves an inquiry into compliance with

Congressional policy regarding the Bankruptcy Code. This annotation collects and discusses all cases in which courts have addressed discharge of a student loan on the ground of undue hardship for purposes of the Bankruptcy Code of 1978, 11 U.S.C.A. § 523(a)(8)(B), based on the debtor’s good faith as demonstrated by compliance with Congressional policy. [59 A.L.R. Fed. 2d 565](#)

IMMIGRATION AND NATURALIZATION

Ineffective Assistance of Counsel—Particular Acts

Aliens who are placed in removal proceedings are given the privilege of being represented, at no expense to the government, by a counsel of their choice who is authorized to practice in such proceedings. The courts have held that certain particular acts committed by counsel resulting in prejudice to aliens render such counsel ineffective as to violate the alien’s due process rights, and have provided relief to such aliens. This annotation collects and analyzes selected federal court decisions that have considered whether or not certain particular acts of counsel constitute ineffective assistance and the relief therefrom. [59 A.L.R. Fed. 2d 151](#)

Coming Soon



Code of 1978, 11 U.S.C.A. § 523(a)(8)(B), based on the debtor’s good faith in maximizing income and minimizing expenses. [60 A.L.R. Fed. 2d](#)

IMMIGRATION AND NATURALIZATION

Ineffective Assistance of Counsel—Particular Omissions

Aliens in removal proceedings have the privilege of being represented, at no expense to the government, by a counsel of their choice who is authorized to practice in such proceedings. The courts have held that certain particular omissions or failures committed by counsel resulting in prejudice to aliens render such counsel ineffective so as to violate the alien’s due process rights, and have provided relief to such aliens. This annotation collects and analyzes selected federal court decisions that have considered whether or not certain particular omissions or failures of counsel constitute ineffective assistance and the relief therefrom. [60 A.L.R. Fed. 2d](#)

COPYRIGHT

Copyright Remedy Clarification Act

The Copyright Remedy Clarification Act (17 U.S.C.A. § 511) purports to abrogate the sovereign immunity of the states relative to violations of copyright law. The

BANKRUPTCY

Discharge of Student Loans—Income and Expenses

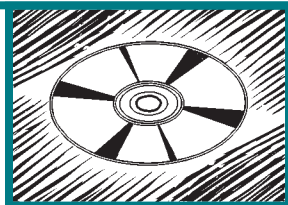
Debtors generally receive a discharge of prepetition debts in bankruptcy to allow for a fresh start, but educational loans are presumptively nondischargeable, and an individual debtor seeking to discharge a student loan obligation must establish that repayment of all or a portion of the debt would impose undue hardship, according to the Bankruptcy Code of 1978, 11 U.S.C.A. § 523(a)(8)(B). To demonstrate undue hardship, most courts require a debtor to have made good faith efforts to repay the loan, which may involve an inquiry into whether the debtor maximized income and minimized expenses. This annotation collects and discusses all cases in which courts have addressed discharge of a student loan on the ground of undue hardship for purposes of the Bankruptcy

statute provides that any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any

governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner. The statute additionally provides that in such a suit, all remedies otherwise available against any public or private entity shall be available. This annotation collects and analyzes the cases construing the Copyright Remedy Clarification Act. **60 A.L.R. Fed. 2d**

Index

The following is a complete list, arranged alphabetically by topic, of annotations contained in Volume 59 of A.L.R. Fed. 2d or scheduled for publication in Volume 60 of A.L.R. Fed. 2d. Some of the annotations listed may be rescheduled.



ALLOCATION

Sufficiency of Court's Compliance with Defendant's Right of Allocation under Rule 32(i)(4)(A)(ii) of the Federal Rules of Criminal Procedure and Predecessor Rules, **60 A.L.R. Fed. 2d**

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Discharge of Student Loan on Ground of Undue Hardship under Bankruptcy Code of 1978 (11 U.S.C.A. § 523(a)(8)(B))—Good Faith Based on Maximizing Income and Minimizing Expenses, **60 A.L.R. Fed. 2d**

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Construction and Application of Fort Laramie Treaty of 1868, Apr. 29, 1868, 15 Stat. 635, **59 A.L.R. Fed. 2d 243**

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