

STATEMENT OF THE  
NATIONAL MULTI HOUSING COUNCIL/  
NATIONAL APARTMENT ASSOCIATION  
JOINT LEGISLATIVE PROGRAM,  
NATIONAL LEASED HOUSING ASSOCIATION,  
MANUFACTURED HOUSING INSTITUTE,  
AND THE  
INSTITUTE OF REAL ESTATE MANAGEMENT

BEFORE

THE COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
HEARING ON H.R. 975,  
THE BANKRUPTCY ABUSE PREVENTION AND  
CONSUMER PROTECTION ACT OF 2003

SUBMITTED MARCH 3, 2003

Chairman Sensenbrenner and members of the Committee, the undersigned organizations thank you for this opportunity to share the views of rental housing providers as you consider the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003 (H.R. 975).

The National Multi Housing Council represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association is the largest national federation of state and local apartment associations. NAA is comprised of 163 affiliates and represents more than 30,000 professionals who own and manage more than 4.6 million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

For the past thirty years, the National Leased Housing Association (NLHA) has represented the interests of developers, lenders, housing managers, housing agencies and others involved in providing federally assisted rental housing. Our members are primarily involved in the Section 8 housing programs – both project-based and tenant-based. NLHA's members provide housing assistance for nearly three million families.

The Manufactured Housing Institute (MHI) is the national trade organization representing all segments of the factory-built housing industry. MHI serves its membership by providing industry research, promotion, education and government relations programs, and by building and facilitating consensus within the industry.

The Institute of Real Estate Management (IREM), an affiliate of the NATIONAL ASSOCIATION of REALTORS, is an association of property and asset managers who have met the strict criteria in the areas of education, experience, and ethics. Today, IREM members manage 24%, or 6.2 million of the nation's conventionally financed apartment units, and 1.4 million units of federally assisted housing.

Bankruptcy reform has been a long time in coming. More than 1,800 real estate professionals, mostly small businesses, have written to the National Bankruptcy Review Commission and Congress since 1995, providing compelling evidence of the need for reform. Over the past several years, the rental housing industry has witnessed an increased number of residents who manipulate the Code in order to live in their apartments without paying rent. The source of this abuse is the Code's automatic stay provision. The undersigned organizations urge Congress to enact the balanced reforms found in the Bankruptcy Abuse Prevention and Consumer Protection Act (H.R. 975) and thereby reduce opportunities for abuse by those who file for bankruptcy in order to "live rent-free."

Reform is more critical now than ever. According to a recently released report by the Administrative Office of the U.S. Courts, new bankruptcy filings continue to break records. The latest data show that well over 1.57 million bankruptcies were filed in 2002, up 5.7 percent from the previous record set in 2001. Non-business filings made up 97.6 percent of those filed last year.

Enactment of beneficial bankruptcy reform is long overdue. The widespread bipartisan support for bankruptcy reform, as evidenced by the more than 50 Members of Congress who have already joined as cosponsors of H.R. 975, reflects strong public opinion that the Bankruptcy Code can and must be made to work better as it becomes a more common means for Americans to restructure their finances.

In particular, the undersigned organizations strongly urge Congress to get the job done and remove the loopholes in the U.S. Bankruptcy Code that allow resident debtors who no longer have a right to remain on the premises to stay after declaring bankruptcy. Rental housing residents who file bankruptcy primarily to evade their lease obligations impose significant economic losses on apartment owners (98% of which are small businesses) and prevent other renters desiring to move into the unit from doing so. Attorneys continue to advertise to rental housing residents that the Bankruptcy Code is a means to live "rent-free" for months at a time. In other cases, the automatic stay significantly delays the removal of rental housing residents who are using drugs or threatening property or other residents and guests.

These "free ride" examples – more are detailed below – are abuses of the Bankruptcy Code's "fresh start" principle. If the proper reforms are made, small business apartment owners would regain timely possession of their property and lower-income families would have quicker access to scarce affordable housing.

H.R. 975 includes an important, balanced step to improving the automatic stay for the benefit of rental housing providers and residents alike. Section 311 is the result of extended negotiations between Senators Jeff Sessions (R-AL) and Russell Feingold (D-WI) that have yielded an agreement that balances the concerns of residents in bankruptcy with property owners seeking to reclaim their property.

The undersigned organizations are appreciative of the significant work that these members in particular invested to reach agreement on the language of this section. While the agreement is not everything that the undersigned organizations have sought, we believe it is a fair and balanced compromise that will yield important benefits to the availability of affordable and market-rate rental housing in this country.

Before Congress and the National Bankruptcy Review Commission, NMHC/NAA have catalogued numerous examples of frivolous bankruptcy filings by residents since the 1990s. Three examples out of hundreds previously presented are recounted here.

An Army Colonel leased his home to a couple with three small children while he was stationed overseas. Before leasing the property, the firm that managed the Colonel's property ran a credit check and found that the couple had a joint income well in excess of the monthly rent. There was nothing in the credit report to indicate what the Colonel and his family would face over the next two years.

Over the course of the lease term, the residents occasionally made late payments, but their rent was always paid. Eventually, however, the residents failed to pay their rent despite several notices. After the management firm sent them a three-day notice to vacate for non-payment of rent, the firm decided to give the residents yet another chance and work out a repayment schedule.

What the management firm representatives found when they approached the house was shocking: It was in shambles. The oven door had been ripped off its hinges; there were large and numerous holes in the sheet rock, some with silk flowers stuck in them; you could not tell what color the carpet was due to the trash and food strewn on it; the toilet in the upstairs bathroom had been ripped out of the floor; the air conditioning compressor was in pieces; several windows were broken; and the downstairs bathroom door had been kicked in and was hanging by one hinge. The management firm gave the residents a final three-day notice to vacate for non-payment of rent. The residents never responded to that notice, and after the required three-day notice period, the managers filed for eviction.

Even after the eviction filing, the residents failed to pay their rent. Finally, a judge granted the eviction and ruled that the residents would have to pay all overdue rent. The residents then claimed that they were financially unable to post the required bond to appeal. At a hearing on that claim, the judge confirmed that the residents had both the income and the assets to post the appeal bond and granted the management firm a writ of possession. The next day, however, the managers were notified that the residents had filed for bankruptcy, effectively stopping the eviction process because of the Code's automatic stay provision.

Following multiple failed attempts to negotiate a settlement, the management firm filed for relief from the automatic stay. The residents then demanded a hearing on that motion. During the three-month period before the hearing, the residents lived in the house rent-free. Seven months after the ordeal began, and four months after the bankruptcy court assumed jurisdiction, the judge agreed to a settlement that directed the residents to move out and repair all damages. When the residents had not moved out in accordance with the settlement, the court issued another writ of possession for the next day. Finally, the resident's possessions were removed from the house and their bankruptcy petition was dismissed. The overall cost to the Colonel (the owner of the property) was approximately \$21,000. By the time the residents were finally evicted, the Colonel had to borrow on his life insurance, sell assets, and run up the balance on his credit cards. When the house was sold shortly thereafter, the Colonel received nothing.

Sheri Perez, an owner of 8 rental units in Costa Mesa, CA, had renters in two of the units declare bankruptcy in the same month. "I know for a fact that these two tenants used the automatic stay and filing bankruptcy just to get out of paying any rent," she wrote to the National Bankruptcy Review Commission. Each of the renters owed two months' rent when they moved out – 25 percent of Ms. Perez's entire rental income for those months.

Dan Snell, a property owner in Temple City, CA who manages 50 rental properties, recounted the loss

sustained on a 10-unit property he manages in his letter to the Bankruptcy Review Commission. A resident who was being evicted for selling drugs on the property declared bankruptcy. Before the bankruptcy court ordered relief from the automatic stay to permit Mr. Snell to remove this drug-seller, Mr. Snell had to wait two months for the court to permit the eviction to proceed. "During that period," wrote Mr. Snell, "the tenant continued his illegal activities and three of the other tenants moved out because of that activity. This episode cost the owner several thousand dollars in legal fees and lost rent."

These are just three examples of how abusive residents manipulate the Bankruptcy Code to live rent-free. The bankruptcy system was established to give individuals a second chance, not to be manipulated as a tool by residents to avoid eviction and live rent-free at the expense of rental housing providers and depriving others from moving into that rental unit.

The undersigned organizations ask that the members of this Committee and the U.S. House of Representatives pass H.R. 975. We urge you to close the automatic stay loophole to ensure the viability of small business rental housing providers and the affordable and market-rate housing they provide.

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