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**STATEMENT OF THE  
NATIONAL ASSOCIATION OF REALTORS  
AND THE INSTITUTE OF REAL ESTATE MANAGEMENT®  
TO THE  
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW  
ON  
H.R. 833, THE "BANKRUPTCY REFORM ACT OF 1999"  
  
MARCH 16-18, 1999**

The NATIONAL ASSOCIATION OF REALTORS®, and its affiliate, the Institute of Real Estate Management® support H.R. 833, the "Bankruptcy Reform Act of 1999". The NATIONAL ASSOCIATION OF REALTORS® is comprised of over 730,000 real estate professionals involved in all aspects of the real estate industry, including the owners and managers of multifamily rental and commercial property. The Institute of Real Estate Management® is comprised of over 9,000 property management professionals who manage over 24% of the nation's privately owned residential apartment properties, 44% of the nation's office buildings, and 10% of the nation's retail space.

In 1998, the House and Senate came very close to passing a comprehensive bankruptcy reform bill. We applaud the efforts of Representative Gekas in reintroducing this legislation, and are hopeful that meaningful reform can be achieved in the coming months. There are three main issues of bankruptcy reform which specifically concern our members.

The first of these is single asset bankruptcy. Single asset real estate refers to a single property or project, which generates substantially all of the gross income of a debtor, and on which the debtor conducts no substantial business other than the business of operating the real property. The related provision of the Code subjects single asset properties with a value of less than \$4 million to an automatic stay from creditors for 90 days. However, the stay for properties of over \$4 million can last for 6 months to well over a year. As there seems to be no justification for differentiation between properties based upon their value, and certainly property values differ in different geographic jurisdictions, we believe that the 90 day automatic stay should apply to all single asset properties, with no cap on the value of the asset. H.R. 833 would eliminate the cap, treating all single asset bankruptcies the same, regardless of their value.

A second issue deals with automatic stay provisions in rental housing. Section 362 of the Code provides for an automatic stay, which is intended to provide debtors with due process protections. However, the Code does not specify to which assets the automatic stay applies. Due to this silence, some tenants are attempting to avoid eviction by filing for bankruptcy and listing the apartment as an asset protected by the automatic stay. This occurs despite the fact that a tenant-debtor does not have a legal or equitable interest in an apartment for purposes of liquidation or reorganization under the Code (i.e. the apartment is the property of the rental housing provider – NOT the tenant). Unscrupulous tenants use this loophole in the Code to abuse the bankruptcy system and live rent-free. Furthermore, there has been a growth of unethical companies who, for a fee, will teach tenants to abuse the Code in this manner to get free rent. By closing this loophole, and not allowing bankruptcy to be a stay from eviction, H.R. 833 will curb an abusive use of the Code. It will not change any of the protections currently enjoyed by tenants under state landlord-tenant law and will not affect other creditors because it only allows rental housing providers to regain possession of the apartments and not back rent. Housing providers, like other small businesses, will be required to comply with the Code with respect to recovering unpaid debts.

The last issue deals with shopping center bankruptcy. Under current law, shopping center tenants who declare bankruptcy have 60 days to decide to assume or reject their lease. However, courts routinely extend this time for months, and even years. Due to the delicacies of the landlord/tenant relationship in shopping centers, the impact of this delay can be severe. At a minimum, a shopping center owner faces uncertainty as to whether the tenant will on short notice, reject the lease and terminate rental payments; the impact of that uncertainty on lease-up or sales of the centers and/or redevelopment efforts; and if the store has gone "dark"; interruption of percentage rents, diminished retail synergy and cross sales in the center and potential co-tenant exercises of rent abatement or escape provisions of leases tied to co-tenancy. The discretion of the courts to provide multiple, lengthy extensions of deadlines to assume or reject leases should be constrained by statute. We support increasing the initial time for a tenant to make this decision, however extensions must be made only upon a motion of the lessor.

The **NATIONAL ASSOCIATION OF REALTORS®** and the Institute of Real Estate Management® support responsible bankruptcy reform. We believe these common sense reforms will curb abusive use of the Bankruptcy Code. We support H.R. 833, and thank Representative Gekas for his efforts towards bankruptcy reform.