

## DEBTOR/CREDITOR

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*Security Interest in Software Unperfected*

How does a lender perfect a security interest in computer software? A bankruptcy court in Arizona has decided that a financing statement filed under the Uniform Commercial Code is insufficient. The court concluded that because software is “copyrightable”, a lender must record its security interest in the U.S. Copyright Office whether or not the borrower has registered the software there. However, no security interest may be recorded in the Copyright Office unless the software has been registered. If the lender wishes to perfect its security interest, the lender should require the borrower to register the software as a condition of the loan.

*In re Avalon Software, Inc.*, 209 B.R. 517 (Bankr. D.Ariz. 1997).

*Employee Termination Improper*

The commencement of a bankruptcy case prevents creditors and others from taking certain types of action against a debtor. An Arkansas bankruptcy court recently concluded that this protection for the debtor required the debtor's employer to obtain permission from the bankruptcy court before terminating employment. The Arkansas debtor had a contract of employment and was not an employee who could be terminated at the will of his employer. The court reasoned that the contract was property of the bankruptcy estate whose value could not be impaired by the action of the employer without the prior permission of the bankruptcy court. Regardless of the reason for termination, prior approval of the bankruptcy court was required.

Employers should double check the status of an employee who has sought bankruptcy protection before terminating employment.

*Hutchins v. Fordyce Bank & Trust Co. (In re Hutchins)*, 211 B.R. 325 (Bankr. E.D. Ark. 1997).

*Guarantor's Liability for Rent Capped*

The federal bankruptcy statute places a cap on the amount of a claim which a landlord may recover for unpaid future rent. In most instances where the debtor vacates the premises and terminates the lease, the landlord's claim for future unpaid rent due under the lease is limited to one year's rent.

A federal appeals court in Richmond ruled last month that the statutory limitation on a landlord's damage claim applies equally when the debtor is not the tenant, but is a guarantor of the lease. The court further determined that the cap applied even though the landlord had obtained liens on other property of the guarantor, so as to secure the claim for an amount in excess of the cap.

*Cutler v. Lindsey (In re Lindsey)*, 1997 U.S. App. LEXIS 30502 (4th Cir. Nov 7, 1997).



*This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation.*

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