

Exemptions for Debtors in a Nutshell

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The bankruptcy laws extensively changed following the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which became fully effective on October 17, 2005. As a result, confusion and uncertainty arose in the legal community with respect to bankruptcy as a whole. In the spirit of the holiday season, and to alleviate some uncertainty, this article sets forth a general synopsis of bankruptcy exemptions that a debtor in Florida is entitled to claim. This article is not intended to be an exclusive list of all possible exemptions.

First of all, a debtor’s homestead property in Florida is generally exempt in a bankruptcy case. However, according to the Bankruptcy Code, if the homestead property was purchased less than 1215 days prior to the bankruptcy filing, then there is a limit on the amount of equity in the homestead that the debtor is entitled to claim as exempt. *See*, 11 U.S.C. § 522(p). If a debtor’s home is located outside of a municipality, then the homestead property is exempt to the extent of 160 acres of contiguous land. If a debtor’s home is located within a municipality, then the homestead property exemption is limited to one-half acre of contiguous land. *See*, Fla. Const. Art. 10 § 4(a)(1).

Generally speaking, any other real property owned by a debtor, including rental property, is not exempt in a bankruptcy case. However, pursuant to applicable case law, property held by husband and wife as tenants by the entirety is exempt from the bankruptcy estate, because the property is immune from levy of creditors upon the entry of a judgment against only one of the spouses. Therefore, if one spouse files bankruptcy and the other spouse does not, the debtor spouse is entitled to claim as exempt property held as tenants by the entirety, because the property is not deemed an asset of the bankruptcy estate. *See*, In re Wincorp, Inc., 185 B.R. 914 (Bankr. S.D. Fla. 1995).

A debtor in bankruptcy is entitled to claim a personal property exemption not exceeding \$1,000.00. As a result, a debtor is allowed to retain \$1,000.00 worth of personal property. Personal property includes such items as money in bank accounts, furniture, clothing, jewelry, artwork, boats, and other items commonly found in the home. Any personal property claimed by the debtor over this amount is not exempt and will become part of the bankruptcy estate to be sold and the proceeds distributed by the bankruptcy trustee among the debtor’s creditors. *See*, Fla. Const. Art. 10 § 4(a)(2). However, if the debtor does not exempt a homestead property, or otherwise own a homestead property, then the debtor is entitled to claim a personal property exemption not exceeding \$4,000.00. *See*, Fla. Stat. § 222.25.

A debtor is also entitled to a motor vehicle exemption in the amount of \$1,000.00. Therefore, a debtor is allowed to retain \$1,000.00 worth of equity in a single motor vehicle, or a motor vehicle worth \$1,000.00. *See*, Fla. Stat. § 222.25. Any equity in a motor vehicle claimed by the debtor over this amount is not exempt. As a result, the debtor will have the option of buying back the non-exempt property or, in the alternative, the trustee will sell the motor vehicle, return the \$1,000.00 to the debtor and distribute the proceeds among the debtor’s creditors.

Generally speaking, pensions received by the debtor are exempt. Under Florida law, a debtor may exempt, in addition to any other exemptions allowed under state law, any property listed in the Bankruptcy Code under 11 U.S.C. § 522(d)(10). *See*, Fla. Stat. 222.201. According to 11 U.S.C. § 522(d)(10)(E), a debtor may exempt pension payments received “to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.” *See*, In re Sutton, 272 B.R. 802 (Bankr. M.D. Fla. 2002).

Social security benefits received monthly by the debtor are also exempt in a bankruptcy case. According to 11 U.S.C. § 522(d)(10)(A) of the Bankruptcy Code, a debtor may exempt social security benefits; however, the pertinent case law interprets this statute to mean that only future social security benefits received by the debtor are exempt, not necessarily those benefits previously accumulated by the debtor. *See*, In re Treadwell, 699 F.2d 1050 (11th Cir. 1983); *see also*, In re Crandall, 200 B.R. 243 (Bankr. M.D. Fla. 1995).

Finally, IRA’s and 401K’s, if in compliance with the applicable Internal Revenue provisions, are also generally exempt in a bankruptcy case. *See*, Fla. Stat. § 222.21.

In conclusion, this article reflects typical bankruptcy exemptions utilized by Florida debtors in bankruptcy cases, and is not intended to be an exclusive list.

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