

Keep in Mind that There are Exceptions for Veterans in the Bankruptcy Code

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In keeping with the theme of this month's *Paraclete*, honoring veterans, we wanted to share some insight into the Bankruptcy Code regarding exceptions for veterans. This article will address three exceptions for veterans contained in the Bankruptcy Code, and is not intended to be an exclusive list of exceptions, but merely illustrative of the kinds of exceptions that exist for veterans. The three exceptions discussed in this article relate to the following: property exemptions, credit counseling and means testing.

First of all, an exception for veterans does exist with respect to property exemptions. According to section 522(b)(2) of the Bankruptcy Code, a debtor's right to receive a veterans' benefit is exempt in a bankruptcy case, meaning that if the debtor receives a veterans' benefit that benefit will not become part of the debtor's bankruptcy estate if that veteran chooses to file bankruptcy. *See*, 11 U.S.C. 522(d)(10)(B). However, pursuant to section 222.20 of the Florida Statutes, Florida has elected to "opt out" of these federal exemptions. Nevertheless, the allowed personal property exemptions in Florida are set forth in section 222.201 of the Florida Statutes and veteran benefits are included in that list. *See*, Fla. Stat. § 222.201. Therefore, if a veteran files bankruptcy and Florida exemption law is applicable then any veteran benefits that are received by that debtor will remain the debtor's property and not become property of the bankruptcy estate.

Second, credit counseling for debtors is a strict requirement under the new bankruptcy laws. Section 109(h)(1) of the Bankruptcy Code states that an individual may not file bankruptcy unless that individual has received credit counseling within 180 days preceding the bankruptcy filing date. *See*, 11 U.S.C. § 109(h)(1). In addition, the Bankruptcy Code severally limits the allowed exceptions to the required credit counseling. After notice and a hearing, the bankruptcy court may determine that the credit counseling requirement does not apply to a debtor that is unable to complete the credit counseling due to "incapacity, disability, or active military duty in a military combat zone." *See*, 11 U.S.C. § 109(h)(4). The Bankruptcy Code defines "incapacity" to mean that "the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities;" and the Bankruptcy Code defines "disability" to mean that "the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet... [credit counseling]." 11 U.S.C. § 109(h)(4). It is important to note that the Bankruptcy Code does not list "veterans" as an exception to the required credit counseling, but the Bankruptcy Code does include active military duty participants in a combat zone.

Finally, an exception does exist for some veterans with respect to "means testing," which is a requirement in a Chapter 7 bankruptcy case. As part of the debtor's bankruptcy petition, the debtor is required to complete a form entitled "Statement of Current Monthly Income and Means-Test Calculation." According to section 707(b)(1) of the Bankruptcy Code, a Chapter 7 debtor's bankruptcy case may be dismissed or converted to a Chapter 11 or 13 case upon a finding of abuse, after notice and a hearing. *See*, 11 U.S.C. § 707(b)(1). The bankruptcy court conducts an evaluation of the debtor's current monthly income, or "means testing," to determine whether a presumption of abuse exists, utilizing the form mentioned above. *See*, 11 U.S.C. §

707(b)(2)(A). However, section 707(b)(2)(D) of the Bankruptcy Code states that the bankruptcy court “may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran...,” and the debt occurred while the debtor was on active duty or performing a homeland defense activity. *See*, 11 U.S.C. § 707(b)(2)(D). Therefore, if the debtor declares under penalty of perjury that he or she is a disabled veteran, as defined in title 38 of the United States Code, then a presumption of abuse does not arise in the debtor’s bankruptcy case and the Chapter 7 case may not be dismissed or converted.

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