

asset protection & *EXEMPTIONS* *IN FLORIDA*

By Craig I. Kelley, Esq.

Regardless of whether you are current or behind on your monthly obligations, it is important for you to understand the concept of exemptions under Florida Law. This is particularly true where your future financial status is uncertain or of concern to you. Exemptions are the first line of defense to involuntary collection on judgments, including execution, levy and garnishment.

Exempt property is an asset that is specifically protected from claims of creditors to whom you owe money; in other words, it is free from attachment and/or liquidation. If an asset is not exempt, then a creditor is free to take steps provided for under the law to seize the property. This can include garnishment of a bank account or wages or a sheriff's levy on property, such as vehicles, boats, furnishings, or real estate.

Related to a discussion of exemptions is the topic of Bankruptcy because Florida exemption laws are used in all Florida Bankruptcy cases, with certain modifications. Chapter 7 bankruptcy is known as

a "liquidation" bankruptcy. In such a proceeding, a Trustee liquidates your non-exempt property. The sale proceeds are then distributed amongst your creditors. However, you are allowed to keep your exempt property.

Florida has liberal exemptions, which may prove advantageous to you if you are a Florida resident and need to protect assets or are considering filing for Chapter 7 bankruptcy.

Your homestead (the house in which you live) is fully exempt from liquidation under the Florida Constitution provided that the property does not exceed 160 acres outside a municipality or one-half acre in a municipality. The homestead exemption for asset protection and Bankruptcy purposes differs from the common real estate tax exemption. In a Bankruptcy, to qualify for the homestead exemption, you must have acquired and owned the homestead for more than 40 months. If you transferred funds from a prior homestead residence and the total time you owned both residences exceeds 40 months, then you also qualify for the homestead exemption. If you have owned your homestead residence for less than 40 months prior to filing Bankruptcy, then the homestead exemption will protect up to \$136,875 of equity in the residence per person.

Also under the Florida Constitution, you receive a \$1,000 exemption for your personal property. If you are married filing jointly, you are allowed to exempt \$2,000 in joint personal property. If you are not using or benefitting from the homestead exemption, you are allowed an additional \$4,000 personal property exemption per person, known as the "wildcard" exemption. To qualify for the wildcard exemption, you must not own a home or you



must intend to surrender your home to the mortgage lender. If you are married filing jointly, you can claim a total of \$8,000 for the wildcard exemption.

Pursuant to a separate Florida Statute, you receive a \$1,000 exemption per person for the equity in a vehicle. In addition, annuities, the cash value of life insurance policies, pensions, 401k plans, tax deferred retirement plans, Social Security income, disability income, unemployment compensation, college investment plans (including 529 Plans and prepaid college funds) and health savings accounts are exempt to an unlimited value. IRAs are exempt up to \$1 million in a Bankruptcy, but unlimited outside Bankruptcy.

If you need advice on asset protection and available exemption laws, or have a need to consider filing bankruptcy, an experienced bankruptcy professional can help you better understand your rights, protections and explain all your available options. ^(slb)

Craig I. Kelley, Esquire of Kelley & Fulton, P.A., represents individual and businesses debtors and creditors in Chapter 7, 13 and 11 proceedings, and advises clients on asset protection and exemptions under Florida Law. He is A.V. rated by Martindale-Hubbell directory, which is the highest honor voted by his peers in the legal profession. Plus, he is an Adjunct Professor of Bankruptcy Law at Palm Beach Community College and lectures nationally on the subject. His office is located in West Palm Beach and he can be reached at 561-491-1200.



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