

CONSUMER BANKRUPTCY

The New Wildcard Bankruptcy Exemption

How to use the new open-ended federal exemption

By Craig D. Robins

Last month I wrote about the surprising news that outgoing Governor Paterson unexpectedly signed legislation greatly increasing the New York State law exemptions. These are the statutes debtors can use to protect assets while seeking bankruptcy relief. The new law became effective on January 22, 2011.

Not only does the new law increase existing exemption amounts for various assets, but it also permits debtors to use the federal exemptions – something that New York debtors (and their attorneys) never had to consider in the past.

It is therefore exciting that we will now be able to protect our consumer bankruptcy clients with a set of exemption statutes

that open the door to all sorts of new possibilities. The most intriguing federal exemption is the wildcard exemption. It's as if we're playing poker and we've been dealt a new "wild" card that will enable us to win.

The wildcard exemption should permit most Long Island debtors to keep all of their assets in a typical Chapter 7 case. Previously, assets such as cars, bank accounts, personal injury causes of action, and tax refunds were at times difficult to fully protect for some clients.

Choosing the exemption scheme

A debtor can choose either the federal exemptions or the state exemptions, whichever is more favorable, but a debtor cannot use a combination of the two. If a

married couple files a joint case, both spouses must use the same exemption scheme.

Next, here's a very general outline of some of the most common federal exemptions that each debtor can claim:

Homestead Exemption	\$21,625
Motor Vehicle	\$3,450
Tools of Trade	\$2,175
Jewelry	\$1,450
Cash	\$1,150
Personal Injury	\$21,625
Household Goods	\$11,525

If you've read any older material referring to these federal exemptions, you'll notice that all of the above amounts are different. They changed in April 2010, and

they will change again in a few years. We New Yorkers are not used to that, as the federal exemptions have barely changed in two decades.



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The Wildcard Exemption

The federal exemptions are set forth in Bankruptcy Code Section 522(d) which states, in relevant part:

The following property may be exempted [...]

(1) The debtor's aggregate interest, not to exceed \$21,625 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a res-

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idence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. [...]

(5) The debtor's aggregate interest in any property, not to exceed in value \$1,150 plus up to \$10,825 of any unused amount of the exemption provided under paragraph (1) of this subsection.

Sub-section 522(5) is the wildcard exemption. This sub-section works together with section 522(1) to enable a debtor who does not use the federal homestead exemption to exempt \$10,825 in "any property."

Thus, one great thing about the wildcard exemption is its flexibility which enables a debtor to split the wildcard exemption amount over multiple items and stack it on top of other exemptions as needed to protect any exposed equity.

This, coupled with the other asset-specific exemptions found elsewhere in section 522, usually allows a debtor to exempt all of his or her property in a Chapter 7 bankruptcy.

Learning About the New Law

So how does one learn more about the new federal exemptions? Here's my plan of action. Since I am not used to them, I will need to commit them to memory and determine how to employ them in a strategic manner.

Therefore, I plan to read and re-read section 522 a dozen times until they sink in. This section is lengthy and will require some dedicated concentration.

I will review various bankruptcy treatises

like my favorite, *Consumer Bankruptcy Law and Practice*, published by National Consumer Law Center. I will also begin reading recent cases from other parts of the country that interpret various aspects of the federal exemptions – cases that I conveniently ignored for years because they did not mean anything to me; but now they are ever so important.

I also like *Consumer Bankruptcy News*, published by LRP Publications – a nice bi-weekly review of new bankruptcy cases combined with news and some articles about bankruptcy practice.

I will be looking forward to the next CLE about the subject. Suffolk Academy of Law Dean Richard L. Stern recently mentioned that he is in the process of assembling a seminar about the new federal exemptions that will likely be held in March.

Finally, I will be eagerly anticipating the first few decisions from our very own bankruptcy judges in the Eastern District of New York, as debtors' counsel and trustees really try to see how these new laws work.

Note: Craig D. Robins, a regular columnist, is a Long Island bankruptcy lawyer who has represented thousands of consumer and business clients during the past twenty years. He has offices in Coram, Mastic, West Babylon, Patchogue, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: www.BankruptcyCanHelp.com and his Bankruptcy Blog: www.LongIslandBankruptcyBlog.com.