

CONSUMER BANKRUPTCY

Gov. Paterson Unexpectedly Increases Bankruptcy Exemptions

Biggest bankruptcy news in years is a boon to debtors

By Craig D. Robins

For New York consumers considering bankruptcy, the biggest bankruptcy news in five years dropped like a bombshell on December 23 when then-Governor Paterson unexpectedly signed legislation greatly increasing the state law exemptions.

Exemptions are those statutes that permit consumer debtors in bankruptcy to keep and protect assets. The new law will become effective on January 22, 2011.

This will certainly cause an increase in the number of consumer bankruptcy cases we will see next year as more financially

burdened consumers will be able to eliminate their debts while keeping and protecting all of their assets.

Homestead exemption increases to \$150,000 per person for those on LI

The old homestead exemption statute, which went into effect in 2005, increased the amount of equity each debtor could protect in their home from \$10,000 to \$50,000. For Long Islanders, and those in the five boroughs, the new homestead



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exemption for 2011 triples that amount to an incredible \$150,000. Since a husband and wife can pool their homestead exemption that means that a married couple will be able to protect a whopping \$300,000 worth of equity in their home.

This will enable almost any typical Long Island middle class family to file a Chapter 7 bankruptcy and eliminate their credit card debts while fully protecting their home. Of course, consumers must still pass the means test; the new exemption law has no impact on that.

The new law also means that many individuals who previously filed for Chapter 13 relief because they had too much equity in their homes, and are currently part-way through their Chapter 13 plan, will likely be able to convert their cases to Chapter 7 and not have to make any further payments. In order to do so, they would also need to demonstrate that their new budget has no disposable income, despite previously filing a budget that had enough funds left over to enable

them to make their monthly Chapter 13 plan payment.

Incidentally, the amount of the new homestead exemption will be based on what county the debtor's home is in. For most downstate counties the homestead exemption will be \$150,000 per person; for upstate counties, it will be \$75,000 per person.

Previously, most states had more generous homestead exemptions than New York; now it will have one of the best.

Amounts for almost all other exemptions categories increased and new categories added

The new bill also increases the exemptions for a great deal of other assets like cars, and adds some new categories like home computers and vehicles for the handicapped.

The exemption for cars is being increased from \$2,400 to \$4,000. Vehicles equipped for the handicapped will be exempt for up to \$10,000.

A new exemption enables homeowners who claim the homestead exemption to

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also exempt up to \$1,000 in cash. Previously, homeowners could not exempt cash if they claimed the homestead exemption. This will enable homeowners to protect a larger amount of their tax refund which is considered cash for exemption purposes.

Another new category permits consumers to protect up to \$1,000 worth of jewelry and art. The tools of trade exemption, which permit debtors to protect the tools and implements of their profession, are being increased from \$600 to a more respectable \$3,000.

There are also increased protections for cell phones, health aids, food, heating equipment, religious books, etc. However, I have never seen a trustee previously raise an issue with any of these types of assets, nor do trustees seem to have any interest in a used home computer.

New law permits debtors to choose between new state exemptions and federal exemptions

Perhaps the biggest change to the law, other than the increase to the homestead exemption, is that debtors may now choose either the federal exemptions or the New York State law exemptions.

When the current version of the Bankruptcy Code was created several decades ago, it included certain federal exemptions as well as a provision that permitted each state to either adopt them or "opt out," in which case the state can choose their own exemption scheme. From day one, the New York legislature chose to opt out and use its own exemption statutes which have primarily been contained in the C.P.L.R. and Debtor and Creditor Law.

New wildcard federal exemption

The federal exemptions should provide some tremendous protections for consumers who do not need the generous New York state homestead exemption. This is because the federal exemptions contain a miscellaneous "wildcard" exemption that permits consumers to protect \$12,000 worth of miscellaneous assets including cash and tax refunds. Since the wildcard exemption provides a great deal of flexibility, consumers will

greatly benefit from now being able to use this provision.

In addition, the federal exemptions have a \$20,200 personal injury exemption, compared to New York's much-smaller \$7,500 P.I. exemption.

New York attorneys, trustees and bankruptcy judges, all of whom have no idea what the federal exemptions are about, as they have never had to use them, will have an interesting and very exciting time during the several years as they race to come up to date learning about them and applying them. We will also begin to see some New York bankruptcy court decisions for the first time ever interpreting the use of the federal exemptions in this state.

Proposed legislation was submitted in Albany in past

For years, legislation was proposed in Albany seeking to increase exemption amounts. This legislation never received any publicity because it was periodically struck down and no one ever expected it to pass.

In years past when discussing the legislation with my colleagues, they expressed surprise that there was pending legislation.

Despite reaching various stages in Albany each year for the past decade, such legislation has never found its way into law except once, when the homestead exemption was increased in September 2005.

The Governor's signing of bankruptcy legislation unexpected

In July we seemed to get closer than ever before to seeing a change in New York's woefully inadequate exemption laws. At that time, both houses of the New York State Legislature passed legislation to increase bankruptcy exemptions in New York State. However, the banking industry, which has an extremely large presence in New York, vigorously lobbied Governor Paterson to veto the bill.

Very few people thought there was any chance that Governor Paterson would sign the legislation into law. But the bankers carry a great deal of power. They argued that many consumers owed taxes to New York State, and with the bill's added protections for debtors, both in and outside of bankruptcy, New York State's tax collec-

tions would suffer.

New York City officials also opposed the legislation, arguing that it would impair the city's ability to tow and auction cars for outstanding parking violations.

For a period of time, the bankruptcy legislation, which was signed by both houses, just sat on the governor's desk, and we all assumed it would die there.

Yet, Gov. Paterson, who was leaving office in one week, signed the bill during his last week in office — with no advance notice and no fanfare of any kind, catching bankruptcy practitioners by surprise. The only hint came a day before when his staff circulated a memo asking for input on the pending bill.

Perhaps the governor, who apparently does not see public service in his future, was upset at the damage wrought by the financial sector which drove the economy into a recession, and used this opportunity to give something back to his constituents.

The governor announced his signing of the bill by sending out a press release the day he signed it. He stated that the bill "would provide a much-needed update to the exemptions law in New York as many provisions of state's exemptions law are antiquated or have not been amended

since the 1980's. The purpose of such exemptions is to permit debtors in bankruptcy to retain a modest amount of personal property and equity in their homes so that they can continue to maintain their lives, and to protect them from becoming homeless, unemployed, or otherwise dependent on the State."

Not only will more consumers be able to file for Chapter 7 bankruptcy, but many of those who seek Chapter 13 protection instead will end up paying substantially less through their monthly Chapter 13 plan.

Also, many existing Chapter 13 debtors may be able to convert there cases to one under Chapter 7 and eliminate all further monthly payments.

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