

DO I GET TO KEEP MY CAR IF I FILE FOR BANKRUPTCY?

And the answer is: well, it depends. “It depends” of course is one of those answers that attorneys often use and which clients –I can only imagine- absolutely despise.

And the reason I have to start off by using the answer “it depends” is really because it depends on which category you fall into. Is your car fully paid for? Do you own your car outright? We will call this category “number 1” which I will cover in this blog posting. If on the other hand, your car is financed and you are still making payment on the car, then you fall into category “number 2” and I will address that in my next blog article.

So for those who own their car and are no longer making payments on the vehicle, the million dollar question becomes: How much is your car worth? What is its current value? You can go to a site like www.edmunds.com to find out. Once you have figured out how much the car is currently worth, you now have to know your state’s bankruptcy exemption laws. In the Commonwealth of Virginia (by the way if someone can remind me why Virginia is considered a Commonwealth instead of a state I would appreciate it) for instance the permitted amount that you are allowed to exempt for your motor vehicle is \$2,000.00. That’s right, the state –I mean Commonwealth- of Virginia is not very generous when it comes to its bankruptcy exemptions. Another way to put it, is that Virginia is extremely stingy and cheap when it comes to its bankruptcy exemptions!

But, before you despair, you must remember that Virginia also has what is called a Homestead Deed, or as I prefer to call it, a Homestead Exemption. What is a Homestead Exemption or Homestead Deed as it is actually called? Well, in short, it is a really stupid name that they use for yet another exemption that you can use for anything of value that you own. It is what is sometimes referred to as a “wildcard exemption.” The Homestead Deed is a once in a lifetime exemption that you can use with a maximum value of \$5,000 (plus \$500 for each dependent that you have). The exemption is increased to \$10,000.00 if you are 65 or older or are disabled.

So, if say you are under 65 years of age, single and with no dependent, and you have never filed for bankruptcy before (in which case you have probably never filed a Homestead Deed before) and you have a car that is worth, \$6,000 for instance, then you would be able to use the \$2,000 car

exemption and exempt the remaining \$4,000.00 by using the Homestead exemption. You would then have \$1,000 left over from your Homestead exemption.

In the foregoing example though you would have to keep one last thing in mind....are there any other assets that I need to exempt? Let's say you have no equity in your house –unfortunately, the norm these days-, own the one car we just discussed, but also have \$2,000 left in your checking account. Well, that money in your checking account is considered an asset.

Continuing with my example from the preceding paragraph, since you only have \$1,000 remaining from your Homestead exemption, the solution would be to wait to file. In other words, I would instruct you in such a situation to wait a few weeks while you spend that excess \$1,000 on necessities for your household. Once your account dips to no more than \$1,000, then we can file your bankruptcy case. Bankruptcy is all about turning non-exempt assets into exempt assets. Or as I like to say, bankruptcy is much like a game of chess; you have to know the rules and you have to strategize.