

Can I keep my vacation (or second) home if I file for chapter 7 bankruptcy?

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It depends. There are many factors to address and a thorough evaluation by a quality bankruptcy attorney is necessary. However, one recent opinion issued by a Massachusetts bankruptcy judge is worth taking a look at.

In *In re Lawrence* the Debtors had two residences, one in Massachusetts and one in Maine. *In re Lawrence*, 2012 Bankr. LEXIS 1934 at *1, Case No. 11-42045, decided May 2, 2012). Days before their bankruptcy filing, the Debtors claimed that they changed their primary residence from Massachusetts to Maine, and they claimed an exemption in their equity in their Maine house. The bankruptcy trustee objected, and then the Debtors were permitted to change which exemption in the Maine property they wanted to apply. The trustee continued to object. Based on the decision the parties seemed to believe the matter would turn on which residence was the Debtors' primary residence. It further appears that the parties believed facts that would show which residence was the Debtors' primary residence would be at issue to decide the matter. The Debtors were prepared to argue that their former vacation home was now really their primary residence, and the trustee was prepared to argue that the Maine property remained just a vacation home.

However, citing many code provisions and bankruptcy decisions, Massachusetts bankruptcy Judge Hoffman found that which residence was "primary" was not the right legal question. Instead he found that the exemption in question would apply to any residence of the Debtors, whether it was their primary residence or not. He stated the Debtors "were entitled to exempt either [residence], but only one [residence]." *In re Lawrence*, 2012 Bankr. LEXIS 1934 at *7. Thus, the bankruptcy trustee's objection was overruled and the Debtors were allowed to apply the exemption.

Although this decision appears to be a happy ending for the Debtors, please do not make assumptions that *you* can keep *your* second home if you file bankruptcy based on this (one) case. For example, the exemption the Debtors ultimately used in *In re Lawrence* was not the only one available, which means you may want to use a different one for your situation. (In fact, the Debtors changed their exemption while the case was open.) Also, the exemption used was limited in amount (\$21,625 in equity). And, we do not know just what the Debtors gave up with respect to their Massachusetts property (for the benefit of their Maine property). Finally, we do not know exactly how great the practical reality was for the Debtors. It could be that filing bankruptcy (or some other prior decision) was the wrong move and they were scrambling to make the best of a bad decision.

In the event that you are having financial problems and want to know what your creditors can and cannot take from you, or you are contemplating a bankruptcy filing and want to learn more about the possible ramifications, I invite you to give us a call.

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