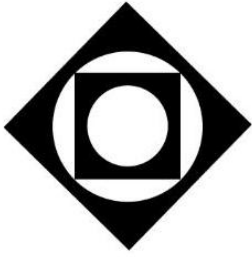


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## **Asset Protection: An Overview of Ohio's Exemption Statute**

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“Planning is bringing the future into the present so that you can do something about it now.”<sup>1</sup> All would do well to heed this advice, and plan today for the dilemmas of tomorrow. This is the crux of asset protection.

Important to any individual or business is planning for the chance of financial difficulty. Part of this planning includes asset protection. When placing assets out of the reach of creditors, the primary strategy centers on most effectively using the asset exemptions allowed under federal and state codes. These exemptions shield assets from a creditor's grasps should you find yourself in the undesirable position of losing your assets to creditors.

Creditors should also have a thorough knowledge of Ohio's exemptions. If you are a creditor, having a knowledgeable attorney can help determine whether seeking payment on a debt is economical and the best course of action to take.

To begin, what is an exemption? Exemptions act as a shield against a creditor's attempt to collect on a debt. It is important to understand, however, that the exemption protects only the debtor's interest in the property. For instance, if you own real estate valued at \$100,000 with a mortgage of \$130,000, you have no exemptible interest because you owe more than the property is worth. On the other hand, if you own real estate valued at \$100,000 with a mortgage of only \$80,000 you have \$20,000 equity in the property; the \$20,000 in equity represents the debtor's interest in the property. Creditors may pursue this equity in your property unless one of Ohio's exemptions applies.

Ohio has opted out of the federal exemption scheme contained in the Bankruptcy Code which means that an individual in Ohio is only allowed to claim exemptions available under Ohio law and other non-bankruptcy federal exemptions. These exemptions are found in Ohio Revised Code § 2329.66. Debtors can claim most exemptions in both state court and in federal bankruptcy court. While there are many exemptions available to a debtor, this article will focus on those exemptions that are generally relevant.

**1. Homestead Exemption.** The homestead exemption is one of the most important exemptions available to a debtor, as maintaining one's residence is often a high priority. In Ohio, debtors are entitled to an exemption of \$20,200 in their personal

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<sup>1</sup> Quoted from a well-known author on time-management Alan Lakein.

residence. For example, in the scenario described above, the debtor would be able to shield creditors from the \$20,000 equity. This often allows a debtor to keep their house or avoid further liens.

**2. Motor Vehicle.** Next in importance is maintaining one's personal vehicle. In Ohio, the exemption amount for one motor vehicle is \$3,225. Because automobiles tend to depreciate quickly, debtors are often "upside down" on their vehicle, i.e. they have no equity or interest. What equity is available is generally covered by the exemption.

**3. Cash, deposits, money due.** Ohio allows debtors to exempt only \$400 in cash that is on hand, in an account, or owed to the debtor. This is clearly insufficient to cover any significant amount of available monies. However, in bankruptcy, this exemption can be combined with the "wildcard" exemption discussed below.

**4. Personal Property.** It is often a mistaken belief that claiming bankruptcy or overzealous creditors results in a "fire sale" of all personal property. The fear of losing all of one's personal property is cemented as people watch personal property of the likes of Bernie Madoff being sold on the auction block. This, however, is generally not the case. A debtor may exempt general personal property totaling \$10,775, jewelry totaling \$1,350, and tools of one's profession, trade or business totaling \$2,025. Once the exemptions and costs of sale are considered, most individuals have very little property that is enticing to either a bankruptcy trustee or creditors.

**5. Personal Injury/Wrongful Death.** Creditors may generally recover money received from a judgment or settlement in a lawsuit. When you file for bankruptcy, existing and even potential lawsuits become property of the bankruptcy estate. The trustee generally has two options: (1) to pursue the lawsuit and allow the creditors to benefit from any recovery or (2) to abandon the lawsuit and allow the debtor to benefit from any recovery. Ohio allows debtors to exempt \$20,200 of money from a personal injury award received during the preceding twelve months. In a wrongful death case, if the debtor was a dependent of the deceased, they may exempt up to the amount reasonably necessary for the support of the person and any of the person's dependents. Not having a thorough knowledge in this area of bankruptcy law can have drastic consequences on the outcome of current and future cases. It is important to have an attorney knowledgeable in both litigation and bankruptcy.

**6. Wildcard.** Ohio's exemptions statute also contains something known as a wild card exemption. This exemption only applies in bankruptcy proceedings and can be used for non-exempt property or for partially exempted property. A debtor may apply \$1,075 to any nonexempt or partially exempt property. This can be helpful in making up the difference where other exemptions do not fully cover your interest in property.

**7. Off-limits.<sup>2</sup>** Note that many things are completely off limits to creditors. For instance, creditors cannot take worker's compensation benefits, unemployment benefits,

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<sup>2</sup> See O.R.C. § 2329.66(A)(6)-(11)

disability benefits, spousal or child support, burial lots, or IRAs. Creditors also cannot reach things that are exempted by federal law including pension plans, profit sharing plans, and other retirement plans. A careful review of each plan or account is necessary to determine if it is susceptible to execution by creditors.

Clearly, careful exemption planning is important if you plan on filing bankruptcy, but is equally important for those wishing to protect their assets from unforeseen future events. If you are seeking payment on a debt, wishing to protect your rights against a creditor, or contemplating bankruptcy, it is important that you contact an attorney at PS&E familiar with Ohio's exemptions.

*Disclaimer: This general information is not intended as legal opinion or advice, nor a complete discussion of the topic, and refers to Ohio law - your state's provisions may differ. As each situation is different, you should seek independent legal advice from an attorney for specific information.*

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