

Can I keep my assets if I file for bankruptcy?

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The answer is: most likely, but it depends.

This, and other questions a person that is contemplating bankruptcy may have, are very important because of what is at stake -- your assets (at a minimum). To understand the answer to this question, one must understand what is in (legal) operation during a (chapter 7) bankruptcy.

When someone files for (chapter 7) bankruptcy, what is known as a “bankruptcy estate” is created. 11 U.S.C. § 541(a)(1). Basically, it includes everything a debtor has, with some rare exceptions: Best to think of it as including everything. Since (chapter 7) bankruptcy is a liquidation, assets are subject to forfeiture. The reason that most debtors are able to keep their assets is because of exemptions. Rousey v. Jacoway, 544 U.S. 320 (2005).

Exemptions are laws that protect certain assets, or a certain value of some assets, from collection by creditors. In bankruptcy, exemptions protect these assets (or a certain value of an asset) from liquidation by the chapter 7 trustee. States are allowed to choose to allow a debtor living in their state to have the choice of what set of exemptions, known as an “exemption scheme” in the profession. They can allow a debtor to choose between: 1) bankruptcy exemptions; or 2) state and federal non-bankruptcy exemptions. States may also limit their residents to only #2. Massachusetts and Connecticut are states that allow their residents to choose between #1 and #2.

Having the choice of exemption scheme is a great benefit, but making the choice is one of the most significant decisions one must make when filing. It is a decision an experienced bankruptcy lawyer should make. It can be very tricky (as the other blog posted today illustrates), and when the debtor cares a great deal about their assets, it should be done carefully. Sometimes the titles of the exemptions can be misleading because there is a legal definition associated with it that a person who does research more than simply looking at the title of the exemption will not be aware of. Applying exemptions using common everyday interpretations can be mistaken. Use great care when exempting an asset of significant value or one that has sentimental value. If you want professional help with this choice, and other choices one must make before filing a bankruptcy, feel free to give us a call.

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