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Quarterly Newsletter

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New Law Changes Bankruptcy Rules



A new federal law will change the landscape for bankruptcies, generally making it more difficult for consumers to eliminate their debts and shield assets from creditors. The bill was signed into law on April 20, 2005, but most of its provisions don't go into effect until 180 days later, meaning that people can still file under the old law if they act quickly.

Until the new law, bankruptcy laws had stayed more or less the same for the last 27 years, but bankruptcy rates skyrocketed in that period. In the last ten years alone, bankruptcies have almost doubled. Studies

have shown that most of these bankruptcy proceedings are triggered by loss of employment, high medical bills, or some other life-changing event.

The new law will make it more difficult for people to qualify for Chapter 7 bankruptcy (and thus eliminate all of their debts), and more difficult for people to exempt their homes from the bankruptcy proceedings.

If you have been thinking about filing for bankruptcy, talk to our office as soon as possible. You may want to fast track your application for bankruptcy so that your bankruptcy is dealt with under the old bankruptcy regime.

Chapter 7

Most individuals currently file for bankruptcy under Chapter 7. Under this form of bankruptcy, debtors have to sell their non-exempt assets. The money from the sale of assets is used to pay off as much debt as possible. However, debtors may keep all exempt assets, which are defined differently in each state. Exempt assets may include much of the debtor's personal property, a car,

some jewelry, and tools of the debtor's trade. In practice, almost all people filing for bankruptcy wind up having no assets that are sold.

Debts are prioritized in a bankruptcy. Secured debts—such as auto loans, some loans to buy furniture, and mortgages on property—are debts that creditors are entitled to collect by repossessing and selling assets of the debtor if payments are missed. In a bankruptcy, creditors can repossess and sell secured assets after the bankruptcy proceedings are over. Debts to unsecured creditors (bills for department store credit cards, medical bills, and the like) are paid with the proceeds of sale of unsecured assets. Since many Chapter 7 filers don't have enough assets to cover what they owe, credit card companies and other creditors sometimes get nothing.

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Attention Florida Property Owners.

A topic of discussion at a recent seminar which has been confirmed with several Title Insurance Companies located in Florida indicates that there have been changes in Florida real estate practices regarding the funding of a revocable living trust with Florida real estate. Title insurance companies have indicated that the deeds which attempt to transfer Florida property to a revocable living trust may need to be recorded prior to the death of the Grantor/initial Trustee. Failure to record the deed prior to the death of the Grantor/Initial Trustee may necessitate the use of a probate estate to obtain title insurance on a future transfer in the event the deed is not recorded prior to the death transferor. If you own Florida property please contact our office should you have any questions.

CHAPP LAW FIRM'S PRACTICE AREAS OF LAW

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- \$ **INTELLECTUAL PROPERTY (INCLUDING COPYRIGHT, PATENT & TRADEMARK)**

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In fact, over 95 percent of Chapter 7 filings are “no-asset filings”—that is, filings in which there are no non-exempt assets with value left for unsecured creditors after the exempt assets have been claimed and the secured assets returned to the creditors.

Some kinds of debt—for example child support, taxes, student loans, and debts arising from fraud—cannot be wiped out under a Chapter 7 bankruptcy. But with those exceptions, all debts people cannot pay after sale of their assets are discharged. This means that the debts are forgiven, and never need to be paid. Under the current system, creditors have no right to the bankrupt’s future earnings. A Chapter 7 bankruptcy wipes the slate clean, and enables people to have a fresh financial start.

Chapter 13

Some people file for bankruptcy under Chapter 13. This form of bankruptcy enables people to keep most of their assets. In return, they have to pay off an agreed portion of their debts over a period of three to five years. Chapter 13 is available to almost anyone with a steady income. Chapter 13 bankruptcy is not a quick way to wipe off debts, but it does give people a way to preserve non-exempt and secured assets—such as the family home.

The New Law

Under the existing bankruptcy law, debtors can choose whether to seek relief under Chapter 7 or Chapter 13. Most consumers choose to file under Chapter 7 so that they can wipe away all their debt and start afresh. However, the court has the discretion to deny relief under Chapter 7 if it finds the debtor is trying to abuse the system and avoid paying off debts that the debtor could afford to pay.

Under the new law, debtors will not have the same freedom of choice. If a debtor earns less than the median income in her state, she will be automatically eligible for

Chapter 7 bankruptcy. However, if a debtor earns more than the median income in the state, then courts will apply a means test to determine whether she is eligible to file under Chapter 7.

In applying the means test, the court starts with the debtor’s current monthly income. It deducts living expenses, which are determined by IRS guidelines. If the debtor still has enough money available per month to pay off a substantial amount of the debt over time (which can be as little as \$100 per month), then the court will presume that the debtor is abusing Chapter 7 and will not allow her to file under Chapter 7. Instead, the debtor will have to seek bankruptcy under Chapter 13—and pay back some of the debt over several years.

The debtor can dispute the court’s presumption that she is abusing Chapter 7, but this will require the debtor to bring evidence before the court to show why the disposable income is not as high as calculated, or that there are special circumstances. Such proceedings could cost substantial time and money.

Tougher Homestead Exemptions

Under the current bankruptcy law, a debtor may exempt some or all of the value of her home. Home exemption laws are different in every state. In Florida, your home may be entirely exempt, which means you do not have to sell it if you go bankrupt—you can keep it if you’ve paid off the mortgage or as long as you keep up the mortgage payments. In Nevada you can exempt up to \$200,000 of the value of your home. In Georgia, you can only exempt \$5,000. For example, imagine you own a home worth \$250,000, and you have

\$45,000 of equity. If you lived in Nevada, creditors would only be able to access \$5,000 of the value of your home (\$250,000-\$200,000-\$45,000). In practice, you would be likely to be able to keep your home, because it wouldn’t be worth the creditor’s while to force you to sell it. In Georgia, creditors would be able to access \$200,000 of your home’s value (\$250,000-\$5,000-\$45,000), and would almost certainly require you to sell the home. For information on Michigan’s homestead bankruptcy exemptions see page 3.

Under a provision of the new law that is already in effect, if you bought your home less than 40 months before filing for bankruptcy, then you may only exempt up to a maximum of \$125,000 in your home, regardless of the law in your state.

Time Between Bankruptcies

Under the current law, a person can file for bankruptcy again within six years after the last filing. Under the new law, a person must wait eight years between filings.

Credit Counseling

Anyone seeking to file for bankruptcy under the new law must undergo credit counseling through a non-profit credit counseling agency in the six months before filing. This counseling session can take place over the phone or online.

What Can You Do?

Many consumer advocates are advising people who are considering bankruptcy to act now, before the new law comes into effect. If you think you might be heading down the path towards bankruptcy, talk to our firm about your options, as soon as possible.

Michigan Bankruptcy Exemptions

Homestead:

A homestead in the amount of not less than \$3,500 and personal property of every resident of this state in the amount of not less than \$750, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded from exemption by law.

Some of the personal property which may be exempt from levy and sale under any execution may include: all family pictures, all arms and accouterments required by law to be kept by any person, all wearing apparel of every person or family and fuel for comfortable subsistence of each householder and his or her family for six months; all household goods, furniture, utensils, books and appliances, not exceeding in value of \$3,000; a seat, pew or slip occupied by the judgment debtor or his family in any house or place of public worship, \$500; all cemeteries, tombs, and rights of burial while in use as repositories of the dead of the judgment debtor or his family; tools of trade not exceeding in value of \$2,000; Shares of association unless homestead, \$1,000; one computer and accessories, \$500; one motor vehicle, \$2,775; household pets \$500; crops, farm animals and feed \$2,000; any benefits paid for the disability of the judgment debtor; an individual retirement account or individual retirement annuity as defined in section 408 of the Internal Revenue Code; and the right of the judgment debtor's interest in a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the Internal Revenue Code, or an annuity contract under section 403 of the Internal Revenue Code. (MSA 27a.6021.)

New Bankruptcy Law taking effect on April 20, 2005:

The exemption for a homestead is limited to \$125,000 if the property was acquired within the previous 1215 day (3.3 years). The cap is not applicable to any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) ;

The value of the state homestead exemption is reduced by any addition to the value brought about on account of a disposition of nonexempt property made by the debtor (made with the intent to hinder, delay, or defraud creditors) during the 10 years prior to the bankruptcy filing.

An absolute \$125,000 homestead cap applies if either:

the court determines that the debtor has been convicted of a felony demonstrating that the filing of the case was a abuse of the provision of the Bankruptcy Code; or

the debtor owes a debt arising from a violation of federal or state securities laws, fiduciary fraud, racketeering, or crimes or intentional torts that caused serious bodily injury or death in the preceding 5 years. NOTE: This limitation is inapplicable if the homestead property is "reasonably necessary for the support of the debtor and any dependent of the debtor."

New Bankruptcy Law taking effect on October 17, 2005:

The state you use for your exemptions is:

The state you lived in for the 730 days (2 years) before filing; or

If you did not live in a single state in the previous 2 years you use the state where you lived the majority of the 180 period preceding the 2 year period; or

If the preceding renders you ineligible for any exemptions then the debtor is allowed to choose the federal exemptions.

Pension Plans exempt from seizure:

Employee contributions to ERISA qualified retirement plans, deferred compensation plans, tax-deferred annuities, and health insurance plans.

Education Funds exempt from seizure:

Funds placed in an educational retirement account or qualified State tuition programs at least 365 days prior to a bankruptcy filing, within the limits established by the Internal Revenue Code, and for the benefit of a child or grandchild of the debtor, are excluded from the debtor's estate, with a \$5,000 limit on funds contributed between one and two years before the filing.

Health Care Decision-Making Tools

Medical directive laws vary by state please contact our office for questions regarding Michigan laws which have been updated as recently as January of this year The Terry Schiavo case brought home a scenario that we all dread: you suffer an accident that leaves you permanently unable to care for your physical needs. A tube provides all your nutrition. Wires and monitors envelop your body like a cocoon. What would you want done in this situation? Who would you rely on to carry out your wishes?

If you don't plan for something like this and it comes to pass, then your spouse and relatives may be placed under enormous pressure, and disagreements on what steps they want to take can drag out for years. Our firm can help you take steps to plan ahead, just in case.

Health Care Advance Directives

A **health care advance directive** is the primary legal tool for making any health care decision when you cannot speak for yourself. "Health care advance directive" is the general term for any written statement you make while competent concerning your future health care wishes. Formal advance directives include the **living will** and the **health care power of attorney**. All fifty states and the District of Columbia have laws recognizing advance directive use.

A **living will** (or "medical directive" or "declaration" or "directive to physicians") is a type of advance directive that is simply a written instruction spelling out any wishes you have about your treatment or care in the event you are unable to speak for yourself and are terminally ill or permanently unconscious. A living will says in effect, "Whoever is deciding, please follow these instructions!" On its own, a living will is very limited—it usually applies only to end-of-life decisions, and standard instructions tend to be general. Unless you happen to have a good crystal ball, it is impossible to anticipate every future medical scenario.

A **health care power of attorney** (or health care "proxy," or "medical power of attorney") is a document that appoints someone of your choosing to be your authorized "agent" (or "attorney-in-fact" or "proxy"). You can give your agent as much or as little authority as you wish to make health care decisions. The decisions are not limited to just end-of-life decisions. Appointing an agent provides someone with authority to weigh all the medical facts and circumstances and interpret your wishes accordingly. A health care power of attorney is broader and more flexible than a living will.

A comprehensive **Health Care Advance Directive** combines the living will and the health care power of attorney into one document. In addition, you may include any other directions, including organ donation or where and how you prefer to be cared for. Because it is more

comprehensive and more flexible than the other tools, it is often the preferred legal tool. Talk to our firm about whether it may be appropriate for you.

Naming an Agent

One of the most important steps in making a health care advance directive is choosing an agent—the person who will make decisions on your behalf. A broadly drafted advance directive usually gives an agent authority to:

Consent to or refuse any medical treatment or diagnostic procedure relating to your physical or mental health, including artificial nutrition and hydration

Hire or discharge medical providers and authorize admission to medical and long-term care facilities

Consent to measures for comfort care and pain relief

Have access to all medical records

Take whatever measures are necessary to carry out your wishes, including granting releases or waivers to medical facilities and seeking judicial remedies if problems arise.

Your agent will obviously have great power if you become incapacitated, and there is normally no formal oversight of your agent's decisions. Therefore, follow these guidelines: Speak to the person beforehand and explain your intentions. Confirm his or her willingness to act and understand your wishes. That means talking honestly and openly about death and dying.

Ask our firm who can and cannot be a health care agent in your state. Each state has different rules. Most prohibit your doctor and other health care providers from being your agent, unless they are related to you.

Consider naming successor agents.

Avoid naming co-agents. It adds potential for disagreement and logistical complications. If you really want co-agents, have a plan for what happens when there is a split decision among them.

If you trust no one to be your agent, you can limit the authority of your agent, by giving the agent authority over some but not all treatment decisions, or by requiring concurrence between your agent and physician.

You can also identify persons who you do not want to have a role in making decisions about you and no authority to challenge a decision of your agent.

Talk About It

Talking about what you would want to happen if you were incapacitated can help guide your thinking, and help guide others if they ever need to make an important decision on your behalf. You may want to discuss your wishes and options with our firm, physician, family and whomever you will rely on to speak for you when you cannot. Completing an advance directive form should be an end product of a planning process, which you may need to repeat at various turning points in your life

Travel and Vacation Tips

Whether it's the beach or the mountains, the U.S. or abroad, chances are you're going on a vacation sometime this summer. Before you leave, take a moment to read these travel tips and learn how you can avoid some common vacation woes.

Scammed?

Be on the alert for the latest travel scams, which often take the form of mailed or emailed solicitations telling you that you've won a special "Vacation Offer!" Most such offers require you to make a payment before you can claim your "prize" and at every stage of your supposedly cheap vacation. You may have to attend a hard-sell presentation on time-share vacations. The cruise you've "won" may actually take place on a ferry; the free airline tickets may require you to stay at a specified hotel and pay hundreds of dollars per night; the major hotel may be a run-down motel miles from anywhere. In short, if something sounds too good to be true, there's probably some kind of scam in play.

The Federal Trade Commission recommends that you buy your vacation package from a business you know in order to avoid being scammed. Verify all your travel arrangements with your travel agent in writing, before you pay. And pay by credit card—that way, if you don't get what you paid for, then you can try to dispute the charges with your credit card company.

Plane Delayed?

Even with the best plans, you may face travel problems before you leave the ground, in the form of flight delays and overbooking. The best way to avoid delays at the airport is preventative action: a departure early in the day is less likely to be delayed than a later flight; and you are less likely to be delayed on non-stop flights. If your plane is delayed, then each airline has different policies on what it will do for passengers—there are no federal requirements in this area. Airlines are not required to compensate passengers when flights are delayed or cancelled. But it might be worth asking airline staff whether they will pay for meals or at least a phone call while you wait. Their response may depend on whether the delay is their fault (for example, a mechanical problem with the plane), or outside their control (for example, poor weather conditions). You can link to more information about the policies of fourteen major airlines on delays and other issues for consumers at:

<http://airconsumer.ost.dot.gov/customerservice.htm>

Bumped?

If, on the other hand, you buy a plane ticket, check in on time, appear at the gate on time, and are told that the plane is overbooked and you are being "bumped" from the flight, then you are entitled to compensation. Federal Department of Transportation regulations require that if you get bumped, the airline must give you a seat on the next available flight and perhaps compensation, based on how long the delay will be from your original planned arrival time. If the alternative flight is scheduled to arrive within one hour of your original flight, then you are not entitled to compensation. If the next available flight arrives within two hours (for a domestic trip) or four hours (for an international trip), then you are entitled to compensation equal to the cost of a one-way fare or \$200, whichever is less. And if the next available flight arrives later than that, then you are entitled to compensation equal to twice the cost of a one-way fare to your destination or \$400, whichever is less.

DOT rules do not apply to charters, planes with 60 seats or less, inbound flights to the United States or to flights between foreign cities. But airlines in foreign countries have rules of their own.

Hotel Overbooked?

What if you find your hotel overbooked when you reach your destination? Overbooking by hotels violates your contract to rent a room—if you have paid in advance. Otherwise, the reservation is just a "courtesy." These days, most hotels will ask you to provide a credit card number to guarantee your reservation. This is still no guarantee that you will have a room, but it will help protect the reservation, even if you are late checking in, and also means that the hotel is required to find alternative accommodation if it is overbooked.

If your hotel is overbooked, ask if there are other rooms available—such as more expensive suites—but only agree to pay the original rate you were guaranteed when you made your reservation. If there are no rooms in the hotel, ask staff to find you a room at a different hotel. The original hotel should pay for the first night and for transport to take you to the new hotel. Moreover, if the other hotel is more expensive, the original hotel should pay the difference in the rates for all the nights of your reservation.

If you're particularly concerned about your hotel booking, it may be worth paying for a hotel reservation by credit card when you make it. If you cancel within a couple of days before the reservation date, you will probably get a complete refund, depending on the credit card company's arrangement with the hotel.

Legal Update - Computer Cracking

We increasingly use computers like filing cabinets—as secure places to store financial records, tax returns, and sensitive information. But unlike filing cabinets, computer files are not protected by a physical key, but by a private password.

Password-protected files can cause a problem when a person passes away. Often, the person has not told anyone his or her private passwords, and computer files are inaccessible to relatives. They must work with a lawyer to figure out how to get into the password protected files, or hire someone to do it for them.

For some people, it is not worth the time and energy to access password-protected computer files. Often they simply erase the hard drive and get rid of the computer without ever knowing what was on it.

If loved ones do want to try and access protected computer files, they may face legal issues. Small mom-and-pop computer services may break into a machine without asking for any proof of death. But larger companies may ask to see a death certificate before sharing e-mail messages or data stored on their servers with survivors.

The moral of the story? Sure, keep your password to yourself. But make sure you share it with just one person you trust.



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