

406/169

#39.250

3/2/77

First Supplement to Memorandum 77-1

Subject: Study 39.250 - Enforcement of Judgments (Exemptions)

Attached to this supplementary memorandum is a copy of the exemption provisions from H.R. 6, the bill proposing the new Bankruptcy Act, which are relevant to the subject of exemptions from the enforcement of money judgments.

Respectfully submitted,

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EXHIBIT 1

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1 (2) if a trustee has been elected or appointed to
2 serve in the case, cooperate with the trustee as neces-
3 sary to enable the trustee to perform the trustee's duties
4 under this title; and

5 (3) surrender to the trustee, if a trustee has been
6 elected or appointed to serve in the case, all property
7 of the estate and any recorded information, including
8 books, documents, records, and papers, relating to prop-
9 erty of the estate.

10 § 522. Exemptions

11 (a) In this section—

12 (1) "dependent" includes spouse, whether or not
13 actually dependent; and

14 (2) "value" means fair market value as of the date
15 of the filing of the petition.

16 (b) Notwithstanding section 541 of this title, an indi-
17 vidual debtor may exempt from property of the estate
18 either—

19 (1) property that is specified under subsection (d)
20 of this section; or, in the alternative,

21 (2) (A) any property that is exempt under the
22 laws, Federal, State, or local, other than subsection (d)
23 of this section, that are applicable on the date of the
24 filing of the petition at the place in which the debtor's
25 domicile has been located for the 180 days immediately

1 preceding the date of the filing of the petition, or for a
2 longer portion of such 180-day period than in any other
3 place;

4 (B) property in which the debtor has an interest
5 as a tenant by the entirety; and

6 (C) the debtor's beneficial interest in a trust to the
7 extent that a restriction on the transfer of such interest
8 is enforceable under applicable nonbankruptcy law.

9 (c) Property exempted under this section is not liable
10 during or after the case for any debt of the debtor that arose
11 before the commencement of the case, except a debt ex-
12 cepted from discharge under section 523 (a) (1) or 523
13 (a) (4) of this title.

14 (d) The following property may be exempted:

15 (1) The debtor's aggregate interest, not to exceed
16 \$10,000 in value, in real property or personal property
17 that the debtor or a dependent of the debtor uses as a
18 residence, in a cooperative that owns property that the
19 debtor or a dependent of the debtor uses as residence, or
20 in a burial plot for the debtor or a dependent of the
21 debtor.

22 (2) The debtor's interest, not to exceed \$1,500 in
23 value, in one motor vehicle.

24 (3) The debtor's interest, not to exceed \$300 in
25 value in any particular item, in household furnishings,

1 household goods, wearing apparel, appliances, books,
2 animals, crops, or musical instruments, that are held
3 primarily for the personal, family, or household use of
4 the debtor or a dependent of the debtor.

5 (4) The debtor's aggregate interest, not to exceed
6 \$750 in value, in jewelry held primarily for the per-
7 sonal, family, or household use of the debtor or a
8 dependent of the debtor.

9 (5) The debtor's interest, not to exceed \$500 in
10 value in any particular item, in any family portrait or
11 family heirloom that is of particular sentimental value
12 to the debtor or a dependent of the debtor.

13 (6) The debtor's aggregate interest, not to exceed
14 in value \$500 plus any unused amount of the exemption
15 provided under paragraph (1) of this subsection, in any
16 property.

17 (7) The debtor's aggregate interest, not to exceed
18 \$1,000 in value, in any implements, professional books,
19 or tools, of the trade of the debtor or the trade of a de-
20 pendent of the debtor.

21 (8) Any unmatured life insurance contract owned
22 by the debtor, other than a credit life insurance contract.

23 (9) The debtor's aggregate interest, not to exceed
24 \$5,000 in value, in any accrued dividends or interest
25 under, or cash surrender value of, any unmatured life
26 insurance contracts owned by the debtor under which

1 the insured is the debtor or an individual of whom the
2 debtor is a dependent.

3 (10) Professionally prescribed health aids for the
4 debtor or a dependent of the debtor.

5 (11) the debtor's right to receive—

6 (A) a social security benefit, unemployment
7 compensation, or a local public assistance benefit;

8 (B) a veterans' benefit;

9 (C) a disability, illness, or unemployment
10 benefit;

11 (D) alimony, support, or separate mainte-
12 nance;

13 (E) a payment under a stock bonus, pension,
14 profitsharing, annuity, or similar plan or contract on
15 account of illness, disability, death, age, or length
16 of service, unless—

17 (i) such plan or contract was established
18 by or under the auspices of an insider that em-
19 ployed the debtor at the time the debtor's rights
20 under such plan or contract arose;

21 (ii) such payment is on account of age or
22 length of service; and

23 (iii) such plan or contract does not qualify
24 under section 401 (a), 403 (a), 403 (b), 408,
25 or 409 of the Internal Revenue Code of 1954.

1 (12) The debtor's right to receive, or property
2 that is traceable to—

3 (A) an award under a crime victims' repara-
4 tion law;

5 (B) a payment on account of the wrongful
6 death of an individual of whom the debtor was a
7 dependent;

8 (C) a payment under a life insurance contract
9 that insured the life of an individual of whom the
10 debtor was a dependent on the date of such indi-
11 vidual's death;

12 (D) a payment on account of personal bodily
13 injury, not including pain and suffering or compensa-
14 tion for actual pecuniary loss, of the debtor or an
15 individual of whom the debtor is a dependent; or

16 (E) a payment in compensation of loss of future
17 earnings of the debtor or an individual of whom the
18 debtor is or was a dependent.

19 (e) A waiver of exemptions executed in favor of a
20 creditor that holds an unsecured claim against the debtor
21 is unenforceable in a case under this chapter with respect to
22 such claim against property that the debtor may exempt
23 under subsection (b) of this section.

24 (f) The debtor may avoid the fixing of a lien on an
25 interest of the debtor in property to the extent that such

1 lien impairs an exemption to which the debtor, notwith-
2 standing any waiver of exemptions, would have been entitled
3 under subsection (b) of this section, if such lien is—

4 (1) a judicial lien; or

5 (2) a nonpurchase-money security interest in any—

6 (A) household furnishings, household goods,
7 wearing apparel, appliances, books, animals, crops,
8 musical instruments, or jewelry that are held pri-
9 marily for the personal, family, or household use
10 of the debtor or a dependent of the debtor;

11 (B) family portrait or family heirloom that is
12 of particular sentimental value to the debtor or a
13 dependent of the debtor;

14 (C) implements, professional books, or tools, of
15 the trade of the debtor or the trade of a dependent
16 of the debtor; or

17 (D) professionally prescribed health aids for
18 the debtor or a dependent of the debtor.

19 (g) (1) The debtor may exempt under subsection (b)
20 of this section property that the trustee recovers under sec-
21 tion 540 (b), 542, 543, 560, or 551 of this title, to the extent
22 that the debtor could have exempted such property under
23 subsection (b) of this section if such property had not been
24 transferred, if—

1 (A) such transfer was not a voluntary transfer of
2 such property by the debtor; and

3 (B) the debtor did not conceal such property.

4 (2) The debtor may exempt under subsection (b) of
5 this section property that the trustee recovers as a result
6 of avoiding the fixing of a security interest in an interest of
7 the debtor in property, to the extent of the greater of—

8 (A) the lesser of—

9 (i) any interest in such transferred property
10 that the debtor could have exempted under subsec-
11 tion (b) of this section if such transfer had not been
12 made; and

13 (ii) any amount by which the value of such
14 transferred property exceeds the claim secured by
15 such security interest; and

16 (B) any amount that the debtor could have ex-
17 empted under subsection (f) (2) of this section if the
18 debtor had avoided such transfer.

19 (h) The debtor may avoid a transfer of property of
20 the debtor to the extent that the debtor could have exempted
21 such property under subsection (g) of this section if such
22 transfer had not been made, if—

23 (1) such transfer is avoidable by the trustee under
24 section 544, 545, 547, 548, 549, or 724 (a) of this title;
25 and