

## **Chapter IV - The bankruptcy Estate and Exemptions**

- A. The Bankruptcy Estate**
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### **A. The Bankruptcy Estate**

When Congress created Chapter 7 there seemed to be a perception that people who need to file bankruptcy have property that they can easily turn into cash. Hence, it was expected that Courts would “liquidate” property that belongs to the debtor in order to satisfy at least part of the outstanding debt. So in theory, when you file bankruptcy your property goes into the “Bankruptcy Estate” for liquidation. However, Congress did recognize that debtors need some basic property to continue living and to recover financially. So we have exemptions. Exempt items are property that do not become part of the bankruptcy estate.

As a practical matter, few debtors have property that is both non-exempt and worth enough money to make it worthwhile for the trustee to take the property and sell it. For example, let’s say the trustee wants to take debtors \$100 boat. First, the trustee has to draft and file motions with the Court and get approval, and then he has to pay to have it transported, stored and auctioned. By the time he is done, he as spent more than \$100, so it makes no sense. Similarly, if you have a \$5,000 boat with a \$4900 loan it is not likely to interest the trustee very much since he would have to pay off the lien first, leaving little money for the bankruptcy estate.

### **B. Iowa Bankruptcy Exemptions**

Conceptually, when you file Chapter 7 bankruptcy all of your property goes into the “bankruptcy estate” and is liquidated. That is why Chapter 7 is called “liquidation”. But you are allowed to keep certain property that is “exempt”. Property like your home, car, furniture and appliances, employer sponsored retirement accounts are all exempt. In practice, the majority of all debtors do not have any liquid property remaining that is not exempt. If they did, they would have sold it before the filed bankruptcy. Such “pre-bankruptcy planning” is perfectly legal.

Also, if you owe as much or more than a non-exempt secured asset is worth the trustee could take the asset, but they would have to pay off the lien before they could gain any benefit. So, if you have a motorcycle worth \$20,000 and you owe as much or more than it is worth, the trustee is unlikely to try to take your motorcycle since after paying off the note there would be no money left to the bankruptcy estate.

So, with these things in mind, below is the list of Iowa Bankruptcy Exemptions from Iowa Code Section 627.6. My observations are in parenthesis and underlined>.

## Iowa Code Section 627.6 General exemptions:

A debtor who is a resident of this state may hold exempt from execution the following property:

1. All **wearing apparel** of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, not to exceed in value one thousand dollars in the aggregate. In addition, the debtor's interest in any wedding or engagement ring owned and received by the debtor or the debtor's dependents on or before the date of marriage.

(\$2,000 total for couples)

2. One **shotgun, and either one rifle or one musket.**

3. Private **libraries**, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.

4. An interment space or an interest in a public or **private burying ground**, not exceeding one acre for any defendant.

5. The debtor's interest in **household furnishings**, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.

(\$4,000 total for couples)

6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a **life insurance policy** owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent. However, the amount of the exemption shall not exceed ten thousand dollars in the aggregate of any interest or value in insurance acquired within two years of the date execution is issued or exemptions are claimed, or for additions within the same time period to a prior existing policy which additions are in excess of the amount necessary to fund the amount of face value coverage of the policies for the two-year period. For purposes of this paragraph, acquisitions shall not include such interest in new policies used to replace prior policies to the extent of any accrued dividend or interest, loan or cash surrender value of, or any other interest in the prior policies at the time of their cancellation.

In the absence of a written agreement or assignment to the contrary, upon the death of the insured any benefit payable to the spouse, child, or dependent of the individual under a life insurance policy shall inure to the separate use of the beneficiary independently of the insured's creditors.

A benefit or indemnity paid under an accident, health, or disability insurance policy is exempt to the insured or in case of the insured's death to the spouse, child, or dependent of the insured, from the insured's debts.

In case of an insured's death the avails of all matured policies of life, accident, health, or disability insurance payable to the surviving spouse, child, or dependent are exempt from liability for all debts of the beneficiary contracted prior to death of the insured, but the amount thus exempted shall not exceed fifteen thousand dollars in the aggregate.

(Do not pour money into life insurance just before filing)

7. Professionally prescribed **health aids** for the debtor or a dependent of the debtor.

8. The debtor's rights in:

*a.* A **social security benefit**, unemployment compensation, or any public assistance benefit.

*b.* A **veteran's benefit**.

*c.* A **disability** or illness benefit.

*d.* **Alimony, support, or separate maintenance**, to the extent reasonably necessary for the support of the debtor and dependents of the debtor.

*e.* A payment or a portion of a payment under a **pension**, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

(Employer sponsored retirement plans are exempt, but most private investments are not, so you need to discuss how to handle these with your attorney before filing bankruptcy)

*f.* Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) All transfers, in any amount, from a trust forming part of a stock, bonus, pension, or profit-sharing plan of an employer defined in section 401(a) of the Internal Revenue Code and of which the trust assets are exempt from taxation under section 501(a) of the Internal Revenue Code and covered by the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. 1001 et seq., to either of the following:

(a) A succeeding trust authorized under federal law on or after April 25, 2001.

(b) An individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, from which the total value, including accumulated earnings and market increases in value, may be contributed to a succeeding trust authorized under federal law on or after April 25, 2001. For purposes of this subparagraph, transfers, in any amount, from an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code to an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, or an individual retirement account established under section 408(a) of the Internal Revenue Code, or an individual retirement annuity established under section 408(b) of the Internal Revenue Code, or a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code are exempt.

(2) All transfers, in any amount, from an eligible retirement plan to an individual retirement account, an individual retirement annuity, a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code shall be exempt from execution and from the claims of creditors.

As used in this subparagraph, "*eligible retirement plan*" means the funds or assets in any retirement plan established under state or federal law that meet all of the following requirements:

(a) Can be transferred to an individual retirement account or individual retirement annuity established under sections 408(a) and 408(b) of the Internal Revenue Code or Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code.

(b) Are either exempt from execution under state or federal law or are excluded from a bankruptcy estate under 11 U.S.C. § 541(c)(2) et seq.

(3) Retirement plans established pursuant to qualified domestic relations orders, as defined in 26 U.S.C. § 414. However, nothing in this section shall be construed as making any retirement plan exempt from the claims of the beneficiary of a qualified domestic relations order or from claims for child support or alimony.

(4) For simplified employee pension plans, self-employed pension plans (also known as Keogh plans or H.R. 10 plans), individual retirement accounts established under section 408(a) of the Internal Revenue Code, individual retirement annuities established under section 408(b) of the Internal Revenue Code, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution deducted on the debtor's tax return or the maximum amount which could be contributed to an individual retirement account established under section 408(a) of the Internal Revenue Code and deducted in the tax year of the contribution, whichever is less. The exemption for accumulated earnings and

market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(5) For Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or the maximum amount which federal law allows to be contributed to such plans. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all of the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(6) For all contributions to plans described in subparagraphs (4) and (5), the maximum contribution in each of the two tax years preceding the claim of exemption or filing of a bankruptcy shall be limited to the maximum deductible contribution to an individual retirement account established under section 408(a) of the Internal Revenue Code, regardless of which plan for retirement investment has been chosen by the debtor.

(7) Exempt assets transferred from any individual retirement account, individual retirement annuity, Roth individual retirement account, or Roth individual retirement annuity to any other individual retirement account, individual retirement annuity, Roth individual retirement annuity, or Roth individual retirement account established under section 408A of the Internal Revenue Code shall continue to be exempt regardless of the number of times transferred between individual retirement accounts, individual retirement annuities, Roth individual retirement annuities, or Roth individual retirement accounts.

For purposes of this paragraph "*f*", "*market increases in value*" shall include, but shall not be limited to, dividends, stock splits, interest, and appreciation. "*Contributions*" means contributions by the debtor and by the debtor's employer.

9. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

*a.* **Musical instruments**, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

*b.* One **motor vehicle**. (two for couples filing jointly)

(Most debtors keep all their cars since high loan balances usually leave little equity)

c. In the event of a bankruptcy proceeding, the debtor's interest in **accrued wages** and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

(the tax refund exemption is \$2,000 total for married couples filing jointly where both work)

10. If the debtor is engaged in any profession or occupation other than **farming**, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

11. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

12. If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings paid to the debtor directly or indirectly by the debtor are not exempt.

13. The debtor's interest, not to exceed one hundred dollars in the aggregate, in any cash on hand, **bank deposits**, credit union share drafts, or other deposits, wherever situated, or other personal property not otherwise specifically provided for in this chapter.

(Be sure not to have more than \$100 individual or \$200 joint in bank accounts on the day of filing)

14. The debtor's interest, not to exceed five hundred dollars in the aggregate, in any combination of the following property:

- a. Any residential **rental deposit** held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.
- b. Any residential **utility deposit** held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.
- c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.

Notwithstanding the provisions of this subsection, a debtor shall not be permitted to claim these exemptions against a landlord or utility company, with regard to sums held under the terms of a rental agreement, or for utility services furnished to the debtor.

#### Common Non-Exempt Items:

Non exempt items are property that can be taken from you and sold for the benefit of creditors. Ideally your attorney will help you do some legal pre-bankruptcy planning to avoid having significant non-exempt items on the day of filing. If you make an error such as gifting the item to someone else before filing it can spell big trouble later since the Court has the power to take the item back and sell it. However, liens often make non-exempt items unattractive to the trustee, so even if you have one of the items below you may be able to keep it if there is little equity. Non-exempt items of little value are also of no interest to the trustees because the cost of collecting the asset, storing it, auctioning it and filing all the legal documents may exceed the value of the item. With this in mind, common non-exempt property includes:

#### **C. Common Non-Exempt Assets**

\*Bank balances exceeding \$100/person on the day of filing

\*Tax refunds exceeding \$1,000 per person for debtors filing late in the year  
*before* receiving the tax refund.

Your attorney should be able to help you protect your entire refund.

\*Non employer sponsored retirement plans like annuities, mutual funds & stocks

\*Real estate that is NOT your homestead (your homestead is normally exempt)

\*Lawsuits and claims against others including personal injury

In some cases arrangements can be made for you to keep a portion of these proceeds.

\*Business equipment exceeding \$10,000 in equity

Example: If you have a small business with equipment valued at \$30,000 and you owe \$10,000, then you have \$20,000 in equity. \$10,000 would be exempt and \$10,000 would be non-exempt.

\*Campers

\*Motorcycles

\*Boat/Trailer/Motor

\*Jet Ski, expensive lawn mower etc.

If you do have a non-exempt asset you should discuss it with your attorney and find out what options are available to avoid loss of any assets when you file bankruptcy. Legal pre-bankruptcy planning is totally fine.