

Changes in New York State Exemption Law

On December 23, 2010, New York State enacted legislation increasing the New York State homestead exemption and other New York State exemptions. Pursuant to this newly enacted state law, the homestead exemption will now be based on the county in which the debtor resides, as follows (for the counties located in the Southern District of New York):

- \$150,000 for New York, Bronx, Westchester, Rockland and Putnam;
- \$125,000 for Dutchess and Orange; and
- \$75,000 for Sullivan.

There are increases to other state exemptions as well, including the automobile exemption (to \$4,000, or \$10,000 if the vehicle is equipped for use by a disabled person).

Pursuant to this newly enacted state law, New York State debtors will now be able to choose either the New York State exemptions **OR** the Bankruptcy Code exemptions listed in section 522(d) [11 U.S.C. § 522(d)].

The new law takes effect on the **thirtieth** day after the date of enactment (that is, 30 days from December 23, 2010).

For the full text of the legislation, see attached.

STATE OF NEW YORK

8735--A

Cal. No. 663

2009-2010 Regular Sessions

IN ASSEMBLY

June 4, 2009

Introduced by M. of A. WEINSTEIN, BRODSKY -- Multi-Sponsored by -- M. of A. BRENNAN, KAVANAGH, KELLNER, LANCMAN, O'DONNELL, PEOPLES-STOKES, PHEFFER, ROSENTHAL -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to increasing the property values which are exempt from the satisfaction of a money judgment; and to amend the debtor and creditor law, in relation to increasing the exemptions in bankruptcy

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision (a) of section 5205 of the civil practice law
2 and rules, the opening paragraph as amended by chapter 129 of the laws
3 of 1976 and paragraph 5 as amended by chapter 697 of the laws of 1976,
4 is amended to read as follows:
5 (a) Exemption for personal property. The following personal property
6 when owned by any person is exempt from application to the satisfaction
7 of a money judgment except where the judgment is for the purchase price
8 of the exempt property or was recovered by a domestic, laboring person
9 or mechanic for work performed by that person in such capacity:
10 1. all stoves and home heating equipment kept for use in the judgment
11 debtor's dwelling house and necessary fuel therefor for [sixty] one
12 hundred twenty days; one sewing machine with its appurtenances;
13 2. [the family bible] religious texts, family pictures and portraits,
14 and school books used by the judgment debtor or in the family; and other
15 books, not exceeding [fifty] five hundred dollars in value, kept and
16 used as part of the family or judgment debtor's library;
17 3. a seat or pew occupied by the judgment debtor or the family in a
18 place of public worship;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

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1 4. domestic animals with the necessary food for those animals for
2 [sixty] one hundred twenty days, provided that the total value of such
3 animals and food does not exceed [four hundred fifty] one thousand
4 dollars; all necessary food actually provided for the use of the judg-
5 ment debtor or his family for [sixty] one hundred twenty days;

6 5. all wearing apparel, household furniture, one mechanical, gas or
7 electric refrigerator, one radio receiver, one television set, one
8 computer and associated equipment, one cellphone, crockery, tableware
9 and cooking utensils necessary for the judgment debtor and the family;
10 all prescribed health aids;

11 6. a wedding ring; a watch, jewelry and art not exceeding [thirty-
12 five] one thousand dollars in value; [and]

13 7. tools of trade, necessary working tools and implements, including
14 those of a mechanic, farm machinery, team, professional instruments,
15 furniture and library, not exceeding [six hundred] three thousand
16 dollars in value, together with the necessary food for the team for
17 [sixty] one hundred twenty days, provided, however, that the articles
18 specified in this paragraph are necessary to the carrying on of the
19 judgment debtor's profession or calling[.];

20 8. one motor vehicle not exceeding four thousand dollars in value
21 above liens and encumbrances of the debtor; if such vehicle has been
22 equipped for use by a disabled debtor, then ten thousand dollars in
23 value above liens and encumbrances of the debtor; provided, however,
24 that this exemption for one motor vehicle shall not apply if the debt
25 enforced is for child support, spousal support, maintenance, alimony or
26 equitable distribution; and

27 9. if no homestead exemption is claimed, then one thousand dollars in
28 personal property, bank account or cash.

29 § 2. Section 5206 of the civil practice law and rules, as amended by
30 chapter 181 of the laws of 1977, subdivisions (a), (d) and (e) as
31 amended by chapter 623 of the laws of 2005, is amended to read as
32 follows:

33 § 5206. Real property exempt from application to the satisfaction of
34 money judgments. (a) Exemption of homestead. Property of one of the
35 following types, not exceeding one hundred fifty thousand dollars for
36 the counties of Kings, Queens, New York, Bronx, Richmond, Nassau,
37 Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thou-
38 sand dollars for the counties of Dutchess, Albany, Columbia, Orange,
39 Saratoga and Ulster; and seventy-five thousand dollars for the remaining
40 counties of the state in value above liens and encumbrances, owned and
41 occupied as a principal residence, is exempt from application to the
42 satisfaction of a money judgment, unless the judgment was recovered
43 wholly for the purchase price thereof:

- 44 1. a lot of land with a dwelling thereon,
- 45 2. shares of stock in a cooperative apartment corporation,
- 46 3. units of a condominium apartment, or
- 47 4. a mobile home.

48 But no exempt homestead shall be exempt from taxation or from sale for
49 non-payment of taxes or assessments.

50 (b) Homestead exemption after owner's death. The homestead exemption
51 continues after the death of the person in whose favor the property was
52 exempted for the benefit of the surviving spouse and surviving children
53 until the majority of the youngest surviving child and until the death
54 of the surviving spouse.

55 (c) Suspension of occupation as affecting homestead. The homestead
56 exemption ceases if the property ceases to be occupied as a residence by

1 a person for whose benefit it may so continue, except where the suspen-
2 sion of occupation is for a period not exceeding one year, and occurs in
3 consequence of injury to, or destruction of, the dwelling house upon the
4 premises.

5 (d) Exemption of homestead exceeding one hundred fifty thousand
6 dollars in value for the counties of Kings, Queens, New York, Bronx,
7 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
8 twenty-five thousand dollars for the counties of Dutchess, Albany,
9 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
10 for the remaining counties of the state. The exemption of a homestead
11 is not void because the value of the property exceeds one hundred fifty
12 thousand dollars for the counties of Kings, Queens, New York, Bronx,
13 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
14 twenty-five thousand dollars for the counties of Dutchess, Albany,
15 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
16 for the remaining counties of the state but the lien of a judgment
17 attaches to the surplus.

18 (e) Sale of homestead exceeding one hundred fifty thousand dollars for
19 the counties of Kings, Queens, New York, Bronx, Richmond, Nassau,
20 Suffolk, Rockland, Westchester and Putnam; one hundred twenty-five thou-
21 sand dollars for the counties of Dutchess, Albany, Columbia, Orange,
22 Saratoga and Ulster; and seventy-five thousand dollars for the remaining
23 counties of the state in value. A judgment creditor may commence a
24 special proceeding in the county in which the homestead is located
25 against the judgment debtor for the sale, by a sheriff or receiver, of a
26 homestead exceeding one hundred fifty thousand dollars for the counties
27 of Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland,
28 Westchester and Putnam; one hundred twenty-five thousand dollars for the
29 counties of Dutchess, Albany, Columbia, Orange, Saratoga and Ulster; and
30 seventy-five thousand dollars for the remaining counties of the state in
31 value. The court may direct that the notice of petition be served upon
32 any other person. The court, if it directs such a sale, shall so marshal
33 the proceeds of the sale that the right and interest of each person in
34 the proceeds shall correspond as nearly as may be to his right and
35 interest in the property sold. Money, not exceeding one hundred fifty
36 thousand dollars for the counties of Kings, Queens, New York, Bronx,
37 Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam; one hundred
38 twenty-five thousand dollars for the counties of Dutchess, Albany,
39 Columbia, Orange, Saratoga and Ulster; and seventy-five thousand dollars
40 for the remaining counties of the state, paid to a judgment debtor, as
41 representing his interest in the proceeds, is exempt for one year after
42 the payment, unless, before the expiration of the year, he acquires an
43 exempt homestead, in which case, the exemption ceases with respect to so
44 much of the money as was not expended for the purchase of that property;
45 and the exemption of the property so acquired extends to every debt
46 against which the property sold was exempt. Where the exemption of prop-
47 erty sold as prescribed in this subdivision has been continued after the
48 judgment debtor's death, or where he dies after the sale and before
49 payment to him of his portion of the proceeds of the sale, the court may
50 direct that portion of the proceeds which represents his interest be
51 invested for the benefit of the person or persons entitled to the bene-
52 fit of the exemption, or be otherwise disposed of as justice requires.

53 (f) Exemption of burying ground. Land, set apart as a family or
54 private burying ground, is exempt from application to the satisfaction
55 of a money judgment, upon the following conditions only:

56 1. a portion of it must have been actually used for that purpose;

1 2. it must not exceed in extent one-fourth of an acre; and
2 3. it must not contain any building or structure, except one or more
3 vaults or other places of deposit for the dead, or mortuary monuments.

4 § 3. Subdivision 1 of section 282 of the debtor and creditor law, as
5 added by chapter 540 of the laws of 1982, is amended to read as follows:

6 1. Bankruptcy exemption of a motor vehicle. One motor vehicle not
7 exceeding [twenty-four hundred] four thousand dollars in value above
8 liens and encumbrances of the debtor; provided, however, if such vehicle
9 has been equipped for use by a disabled debtor, then ten thousand
10 dollars in value above liens and encumbrances of the debtor.

11 § 4. Section 283 of the debtor and creditor law, as added by chapter
12 540 of the laws of 1982, is amended to read as follows:

13 § 283. Aggregate individual bankruptcy exemption for certain annuities
14 and personal property. 1. General application. The aggregate amount the
15 debtor may exempt from the property of the estate for personal property
16 exempt from application to the satisfaction of a money judgment under
17 subdivision (a) of section fifty-two hundred five of the civil practice
18 law and rules and for benefits, rights, privileges, and options of annu-
19 ity contracts described in the following sentence shall not exceed
20 [five] ten thousand dollars. Annuity contracts subject to the foregoing
21 limitation are those that are: (a) initially purchased by the debtor
22 within six months of the debtor's filing a petition in bankruptcy, (b)
23 not described in any paragraph of section eight hundred five (d) of the
24 Internal Revenue Code of nineteen hundred fifty-four, and (c) not
25 purchased by application of proceeds under settlement options of annuity
26 contracts purchased more than six months before the debtor's filing a
27 petition in bankruptcy or under settlement options of life insurance
28 policies.

29 2. Contingent alternative bankruptcy exemption. Notwithstanding
30 section two hundred eighty-two of this article, a debtor, who (a) does
31 not elect, claim, or otherwise avail himself of an exemption described
32 in section fifty-two hundred six of the civil practice law and rules;
33 (b) utilizes to the fullest extent permitted by law as applied to said
34 debtor's property, the exemptions referred to in subdivision one of this
35 section which are subject to the [five] ten thousand dollar aggregate
36 limit; and (c) does not reach such aggregate limit, may exempt cash in
37 the amount by which [five] ten thousand dollars exceeds the aggregate of
38 his or her exemptions referred to in subdivision one of this section or
39 in the amount of [two] five thousand [five hundred] dollars, whichever
40 amount is less. For purposes of this subdivision, cash means currency of
41 the United States at face value, savings bonds of the United States at
42 face value, the right to receive a refund of federal, state and local
43 income taxes, and deposit accounts in any state or federally chartered
44 depository institution.

45 § 5. The debtor and creditor law is amended by adding a new section
46 285 to read as follows:

47 § 285. Alternative federal exemptions. Notwithstanding any inconsis-
48 ent provision of law, an individual debtor may opt to exempt from prop-
49 erty of the estate such property as is permitted to be exempted pursuant
50 to section five hundred twenty-two of title eleven of the United States
51 Code in lieu of such property as is permitted to be exempted pursuant to
52 the applicable provisions of this article.

53 § 6. The civil practice law and rules is amended by adding a new
54 section 5253 to read as follows:

55 § 5253. Cost of living adjustment for personal and real property
56 exempt from application to the satisfaction of money judgments and

1 exemptions in bankruptcy. (a) Beginning on April first, two thousand
2 twelve, and at each three-year interval ending on April first thereaft-
3 er, the dollar amount of the exemption provided in sections fifty-two
4 hundred five and fifty-two hundred six of this article and sections two
5 hundred eighty-two and two hundred eighty-three of the debtor and credi-
6 tor law shall be adjusted as provided in subdivision (b) of this
7 section.

8 (b) The superintendent of banks shall determine the amount of the
9 adjustment based on the change in the consumer price index for all urban
10 consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT-PA,
11 published by the U.S. department of labor, bureau of labor statistics,
12 for the most recent three-year period ending on December thirty-first
13 preceding the adjustment, with each adjusted amount rounded to the near-
14 est twenty-five dollars.

15 (c) Beginning on April first, two thousand twelve, and at each three-
16 year interval ending on April first thereafter, the superintendent of
17 banks shall publish the current dollar amount of the applicable
18 exemption provided in this article, together with the date of the next
19 scheduled adjustment. The publication shall be substantially in the form
20 set forth below:

21 "Current dollar amount of exemption from application to the satisfac-
22 tion of money judgments under New York civil practice law and rules
23 sections 5205 and 5206 and exemptions in bankruptcy under debtor and
24 creditor law sections 282 and 283:

25 The following is the current dollar amount of exemptions from the
26 satisfaction of money judgments under civil practice law and rules
27 sections 5205 and 5206 and under debtor and creditor law sections 282
28 and 283:

29 (amount)

30 This amount is effective on April 1, (year) and shall not apply to
31 cases commenced before April 1, (year). The next adjustment is scheduled
32 for April 1, (year). Such adjustments shall not apply with respect to
33 restraining notices served or executions effected before the date of the
34 adjustment. Nothing in this section limits the judgment debtor's
35 exemption rights in this section or under any other law."

36 § 7. This act shall take effect on the thirtieth day after it shall
37 have become a law and shall apply to the satisfaction of judgments on or
38 after such date.