**FLORIDA IS A DEBTOR’S HAVEN**

**BY: WILLIAM G. MORRIS, ESQ.**

There are federal and state imposed limitations on debt collection. The federal limitations apply in all states. State imposed limitations only apply in a particular state. Florida has more limitations on debt collection than most states.

The public policy of Florida has been to avoid making residents wards of the State. To do that, residents are provided with a wide variety of protections from debt collection. Florida is so favorable to debtors that many have become Florida residents as part of an effort to avoid paying their bills.

Perhaps the best-known protection from creditors is Florida’s Constitutional homestead protection. Article X, Section 4 of Florida’s Constitution exempts homestead property from forced sale under a judgment except for taxes and assessments, obligations for purchase, repair or improvement or other work thereon. There is no cap on value of the exemption but it is limited to ½ acre of property within a city and 160 acres if not within city limits. Homestead can be waived, but courts go a long way to find waivers ineffective.

If homestead is sold, even the proceeds are protected as long as it can be established they will be used to acquire a replacement homestead. The homestead protection continues to one’s heirs after death, even if the heirs will not make the property their homestead. Protection is lost if homestead is left to someone who is not an heir.

A debtor cannot get money through wrongful act and hide it from recovery buying a homestead. When the proceeds of theft, fraud or other wrongful conduct is put into a homestead, the protection is unavailing. But, there generally has to be proof of direct transfer of the ill-gotten gains into homestead to lose the protection.

The Constitution also provides protection for $1,000.00 of personal property to those with homestead property. By statute, Florida also has a $4,000.00 personal property exemption for those who do not have protected real property homestead. Additional personal property exemptions for everyone include the debtor’s interest up to $1,000.00 in value in a single motor vehicle, health aids and IRS refunds.

The above exemptions are broad, but Florida does far more. Life insurance policies and annuity contracts, including both surrender value and proceeds, are exempt. A debtor cannot hide money by quickly buying an annuity after a judgment is entered, but otherwise the exemption is a wall against collection by creditors. Disability income is also exempt, whether from the government or from a disability contract, unless the disability contract was acquired for the benefit of the creditor. These exemptions continue after death and protect the death beneficiary of such contracts from creditors of the decedent.

Pensions are exempt. And, virtually all types of retirement accounts are exempt. These exemptions, too, also protect the death beneficiaries of the accounts from creditors of the owner after the owner’s death.

Bank accounts are usually subject to creditor claims through a process known as garnishment. In garnishment, a judgment holder gets a writ from the court directing the bank to pay whatever funds the bank is holding for the judgment debtor to the judgment holder. If the account owner can show the funds are from exempt sources like pension, annuity or disability, the funds remain exempt for at least 3 months.

Florida prepaid college funds and medical savings accounts are exempt. These stay exempt after death.

Wages get special treatment in Florida. Federal law limits creditor ability to garnish wages to the lesser of 25% of a person’s net weekly disposable earnings or 30 times the minimum wage. There is no distinction concerning family status, head of household or otherwise.

If one is head of a family, Florida law exempts $750 per week in disposable earnings per week from wage garnishment. Earnings above that can be garnished if the debtor consents, but the consent must be in writing and the writing must clearly explain what the consent means. The wage protection lasts for 6 months after wages are deposited in a bank account.

Married debtors have even more protection. Property owned as a husband and wife in an estate by the entireties is exempt from the creditors of one spouse. The manner in which the names appear on an account or title is important, as a married couple can own assets other than as an estate by the entireties.

An estate by the entireties is joint ownership by a married couple under which they each own an undivided interest in 100% of an asset and the survivor will own all of the asset. Married couples can also own as tenants in common, which means each owns their portion and then other does not own 100% at death of the first spouse. One reason a married couple may own as tenants in common is they want their share to go to children from a previous marriage. In any event, that share of a tenant in common is subject to being taken by a creditor.

The danger in relying on marriage to protect assets from creditors of one spouse is mortality. If the first spouse to die is the one with no creditor problem, assets will be owned solely by the debtor with creditors and may be taken.

Non-married people can own property as joint tenants with rights of survivorship. That ownership means if one dies, the survivor owns it all. Unlike estate by the entireties, joint tenancy with rights of survivorship does not protect the asset from creditors of one owner.

Protection from creditors in most other states is nowhere near that in Florida. Out of state debt collectors are often disappointed to find how far Florida goes to insulate assets of debtors who are Florida residents. Florida is a debtor’s haven.

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