



## LEGAL HOTLINE FOR TEXANS

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# BANKRUPTCY

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Depending on individual circumstances and local availability, such a referral may be to an organization providing free attorneys to low income persons, or may be to an attorney on the Legal Hotline for Texans' reduced-fee panel, or may be to a statewide or local lawyer referral service.

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## **Bankruptcy and the 2005 Reform**

Twenty-first century America's economy is based, in large part, on credit. For example, Consumer's Union reports that revolving debt (most of which is credit card debt) increased fifteen-fold from 1980 to 2004, from \$54 billion to \$791 billion. That being the case, it is not hard to understand that families are more likely to need help when unfortunate events happen. For some, bankruptcy is the best way to protect themselves and their families.

Bankruptcy is a legal proceeding in federal court designed to give a person in financial trouble a "fresh start." The federal law governing bankruptcy proceedings is found in Title 11 of the United States Code, and individual consumers have, historically, been able to choose to petition a bankruptcy court for debt relief under Chapter 7, known as straight bankruptcy or liquidation, or under Chapter 13, which allows a person to restructure debt to pay some of the balances owed for a period of time, and when the payment plan is completed remaining debts can be discharged.

The general concept of a bankruptcy petition filed under Chapter 7 is that a debtor gives up (liquidates) all non-exempt property, the bankruptcy trustee then sells that property, and distributes the money among the creditors. The debtor's remaining debts are discharged. In other words, the debtor is released from personal liability for the debts, and creditors cannot make any attempts to collect the debt. Many times consumers do not have any non-exempt property, and thus the trustee has no property to sell, and the dischargeable debt (credit card debts, for example) is "wiped out," and the debtor receives a "fresh start."

Sometimes a debtor has non-exempt property that he or she does not want to lose (land or a rent house that has been in the family for a long time, for example), and thus, though the person needs help, he or she may not want to file a Chapter 7 petition. The troubled debtor in this position might choose to file a petition under Chapter 13, because debtors seeking relief under Chapter 13 can keep all of their property. Under Chapter 13 the debtor makes monthly payments to the Trustee for 5 years.

Filing for bankruptcy, under Chapter 7 or 13, damages a person's credit history. In many cases, the damage is already done, but the bankruptcy will stay on a credit report for up to 10 years. There are alternatives to bankruptcy, as will be seen below, but ultimately, deciding the best path is up to each individual.

On April 20, 2005, the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* was signed into law. Most of the provisions of the Reform Act go into effect on October 17, 2005, but many became effective immediately. The Reform Act is the

largest Bankruptcy Code overhaul since 1978, and has provisions affecting corporations, farmers, and small businesses; but its largest impacts are directed at individuals contemplating filing for bankruptcy protection. It is not an overstatement to say that the Reform Act entirely rewrote the bankruptcy landscape. Virtually the entire process has changed from what it was. What was fairly simple has become much more complex – and hence, much more expensive.

A typical pre-Reform Act debtor might never even meet with the bankruptcy judge. But, it is safe to say that now there will be a whole host of hearings before the bankruptcy judge to determine, among other things – eligibility and possible waiver of credit counseling, effective “notice” to creditors, whether or not the “automatic stay” will be in effect (and if so, for how long). In addition, the Reform Act includes a host of undefined terms, which will force bankruptcy judges to make decisions, after hearings.

### Important Highlights

- Education:
  - Must receive a briefing from an approved credit counseling agency within 180 days prior to bankruptcy; unless:
    - There are not adequate counseling services available;
    - Exigent circumstances, requested counseling within 5 days prior to bankruptcy and couldn’t get it; or
    - Disabled, incapacitated, or on active duty in a combat zone.
  - Must complete a financial management class prior to receiving discharge, unless an exception applies.
- Required Filings:
  - List of creditors;
  - Schedule of assets and liabilities;
  - Statement of Income and Expenses;
  - Statement of Intentions;
  - Statement of Financial Affairs;
  - Certificate by attorney that debtor has received required notice;
  - Copies of all pay stubs for the 60 days prior to bankruptcy;
  - Statement of monthly net income itemized to show how it was calculated;
  - Statement of changes income reasonably anticipated within 12 months;
  - Most recent income tax return for trustee, and any creditor who asks for it.
- Dismissal:
  - Automatic dismissal for failure to make required filings within 45 days of petition date unless debtor or trustee files motion to extend within the 45 day period;
  - May be dismissed for “abuse”
    - Abuse is presumed is when income less allowed expenses equals:

- at least \$100 per month and is enough to pay at least 25% of unsecured debts in 60 months; or
    - \$166.66 per month or more.
  - Even if “abuse” is not presumed, case can be dismissed if circumstances warrant it.
- Limitations:
  - A case filed within one year after dismissal of a prior case will have automatic stay terminated within 30 days unless court finds that the case was filed in good faith; if there is a third filing within one year, there is no stay, unless the court affirmatively imposes one;
  - Certain eviction proceedings are excepted from the stay:
    - Where a judgment was obtained prior to bankruptcy;
    - Where eviction is based on endangerment of the property, or illegal use of controlled substances on property – if endangerment or illegal use occurred within 30 days prior to bankruptcy, but landlord is required to file with bankruptcy court
  - Automatic stay may terminate for certain property when debtor fails to timely file statement of intention.
- Exemptions:
  - Exemptions are determined based on law of state where debtor resided for 730 days prior to bankruptcy. If debtor did not reside in one state long enough, court looks to where debtor resided for greatest portion of 180 days prior to 730 day period.
  - Homestead exemption can be limited to \$125,000 in some cases.
- Discharge:
  - Presumption of fraud for luxury goods of \$500 purchased with a credit card within 90 days of bankruptcy, and also for credit card cash advances of \$750 within 70 days of filing.
  - Divorce related debts are not dischargeable.
- Waiting to Re-file
  - After a Chapter 7 discharge:
    - Debtor must wait 8 years before re-filing under Chapter 7;
    - Debtor must wait 4 years before filing Chapter 13.
  - After a Chapter 13 discharge:
    - Debtor must wait 6 years before filing under Chapter 7;
    - Debtor must wait 2 years before re-filing under Chapter 13.
- Valuations
  - Value of secured property is determined based on replacement value of property at time petition is filed;
  - Value of household property is determined based on price a retail merchant would charge for property in same condition.

### Credit Counseling and Instructional Courses

The first big change is that, under the Reform Act, no individual may be a debtor (and therefore, no individual may be allowed bankruptcy relief) unless the person has, within 180 days of filing bankruptcy, received “an individual or group briefing” from a non-profit budget and credit counseling agency approved by the U.S. Trustee.

One of the standards a credit counselor must meet for approval is that the agency must provide services without regard to a debtor’s ability to pay any fee. The required “briefing” can take place by phone or over the Internet, must “outline” opportunities, and “assist” budget analysis.

The Reform Act allows exceptions to the requirement in districts where the Trustee finds adequate services are not available, and for debtors with “exigent” circumstances that require immediate bankruptcy filings. In the latter case, the debtor would have to certify that he or she had sought the required “briefing” at least five days prior to the bankruptcy filing without being able to complete it. In addition, in this case, the debtor would have to complete the counseling or “briefing” within 30 days after the filing.

The final exception to the requirement is for debtors that are incapacitated, disabled, or on active military duty in a combat zone.

After completing the requirement the debtor is required to file a certificate from the credit counselor describing the services provided, and file any debt repayment plan developed (if any).

Debtors should be aware however that many credit counselors receive commission type payments from creditors. Thus the counselors have a financial incentive to keep a debtor out of bankruptcy, even if the debtor would be better served by a “fresh start.”

In addition, the Reform Act requires that debtors complete “an instructional course concerning personal financial management” in order to assure discharge. Failure to complete such a course would result in possible denial of discharge. The U. S. Trustee is required to complete the curriculum requirements.

### Notice to Creditors

Notice of the filing of a bankruptcy petition must be given to creditors. Under the Reform Act, the notice must be to the address designated by the creditor, either in communications to the debtor or by the creditors preferred address as provided to the bankruptcy court. The notice must include account numbers.

### Additional Documentation

United States Bankruptcy Law has always required a debtor to provide a host of documentation, and complete a number of forms. Under the Reform Act the document requirements are increased, and the penalty for failing to file required documents is dismissal of the petition.

In addition to the list of creditors, schedules of assets and liabilities, income and expenses; debtors must now provide:

- A certificate of credit counseling;
- Evidence of payment from employers, if any, received 60 days before filing;
- A statement of monthly net income and any anticipated increase in income or expenses after filing;
- Tax returns or transcripts for the most recent tax year;
- Tax returns filed during the case, including tax returns for prior years that had not been filed when the case began; and
- Photo identification.

Failure to provide required documents within 45 days after the petition has been filed results in automatic dismissal of the case, unless the debtor receives a single 45 day extension.

In addition, the Reform Act specifically states that when debtors fill out the bankruptcy forms, property valuations must be based on retail values.

### Attorney Verification

Attorneys are now required to make “reasonable inquiry to verify the information contained” in petitions and schedules to ensure they are “well grounded in fact.” The signature of the attorney constitutes certification that the attorney has no knowledge, after inquiry, that the information in the schedules is incorrect. Finally, if a debtor is to sign a reaffirmation agreement, the attorney must certify that the debtor has the ability to pay the debt.

The Act authorizes the bankruptcy court to award civil damages if it finds a violation, but does not define what a “reasonable investigation” is. Thus, attorneys are now personally liable for the accuracy of their client’s schedules. This may force attorneys to hire investigators, or appraisers to verify information, which will add to the costs of bankruptcy.

In addition, attorneys advertising bankruptcy services must disclose that “we help people file for relief under the Bankruptcy Code.” Attorneys cannot advise a debtor to incur more debt in contemplation of bankruptcy, and must make numerous other disclosures.

The result of these provisions may discourage attorneys who otherwise might want to provide *pro bono* bankruptcy services.

### Exempt Property

In Texas, a person filing a Chapter 7 bankruptcy may choose to utilize either Texas or federal exemptions. These exemptions allow a person to retain certain property because, ultimately, United States law has always presumed that it does no one any good to take everything from a debtor.

Texas and federal property exemptions differ, and each debtor filing for bankruptcy must choose one or the other. The typical Chapter 7 debtor may find the federal exemptions to be the most favorable, but ultimately the decision requires a thorough comparison of the debtor’s property and each set of exemptions. [A complete listing of Texas and federal exemptions can be found at the end of this pamphlet.]

Under the Reform Act, the state where the debtor resided in the 730 days preceding the bankruptcy governs the debtor’s exemptions.

Thus, if a debtor has not resided in Texas for the 730 days prior to filing a Chapter 7 petition, then the debtor may not use Texas homestead exemptions. Rather, the law of the jurisdiction where the debtor resided for the greater part of the last 180 days before the 730 day period is the law governing the exemptions. If this new residency rule creates a situation where the debtor is ineligible for any state exemptions, then the debtor may (must) select the federal exemptions.

Furthermore, the Act provides that homestead exemptions are limited to the value of the homestead attributable to property the debtor disposed of in the 10 years prior to filing if the disposition was made with an actual intent to hinder, delay, or defraud a creditor.

The new law also places a cap on homestead exemptions (\$125,000) for property acquired during the 1215 days (3 1/3 years) prior to the commencement of the case, unless the property was transferred from the debtor’s previous residence in the same state. In addition, there is a cap if the debtor has been convicted of a felony that makes the filing an “abuse.”

The “ride through” or “pass through” previously available in some states is no longer permitted. If a debtor wants to keep secured property, such as a homestead, the debtor must reaffirm or redeem. Furthermore, the Reform Act now prescribes detailed language that must be included in any reaffirmation agreement.

The revisions to homestead exemptions are effective as of April 20, 2005.

Also, the Act changes federal exemption definitions. For example, “household goods” are severely restricted, and the term is limited to: clothing, furniture, and appliances. Electronic equipment is limited to 1 radio, 1 television, 1 VCR, and 1 personal computer.

### Abuse & the “Means Test”

The Reform Act’s centerpiece is a “means test,” which is a mechanism designed to force some (perhaps, many) consumers to pay some of their dischargeable debts through Chapter 13, rather than wiping out the debts entirely under Chapter 7.

The Reform Act eliminates the presumption that a debtor is entitled to relief under Chapter 7 unless the court finds the relief would amount to “substantial abuse.” This is a very significant change from bankruptcy law historically. Under the Reform Act, a Chapter 7 petition can be dismissed, or with the debtors consent, converted to a Chapter 13 request, upon finding of simple “abuse.”

That sounds reasonable on its face. If a person is abusing the law he or she should not be allowed to just discharge debt. But don’t be misled by the term “abuse.” The word has a very specific legal definition in the Reform Act, and no one having to consider bankruptcy should feel he or she is necessarily “abusing” the system simply because he or she is having to utilize a legal device (i.e. bankruptcy) that has been around, in one form or another, for thousands of years. In fact, the biblical book of Leviticus explains that debt cancellation was the norm, not the exception. Debt was seen as the responsibility of the creditor, not just the debtor, and debt was cancelled periodically to allow debtors a respite.

“Abuse,” under the Reform Act, is a low standard, and in some cases “abuse” is presumed to exist. If a court finds granting relief would be an “abuse,” there can be no relief under Chapter 7. Whether abuse would be presumed depends on the outcome of the “means test,” which projects the debtor’s current monthly income, less certain expenses, over a five year period.

A bankruptcy court can find “abuse” in one of two ways. First, through a presumption of abuse, arising under the means test, and second, through general grounds determined by looking at the total circumstances surrounding the petition.

There are two tests involved here. The first test is to determine whether or not the debtors income exceeds the Texas median income for a family of the same size as the debtors. “Median” means that there are an equal number of incomes higher and lower. The law now states that there is no presumption of “abuse” for those whose incomes fall in the lower half of the states incomes.

The second test involves a “means” test that is designed to determine if a debtor has the ability to pay some general unsecured debts, and has three elements; current monthly

income, allowed deductions, and certain trigger points that result in a presumption of abuse.

The Reform Act defines “current monthly income” as a monthly average of all income received by the debtor (and the debtor’s spouse in a joint case) during the six months preceding the bankruptcy filing – including regular contributions to household expenses made by other people, but excluding Social Security benefits and certain victim payments. Therefore, if a debtor’s sole source of income is Social Security retirement benefits, there is no “current monthly income” as defined in the Reform Act, and “abuse” cannot be presumed – thus, Chapter 7 discharge will normally be available to such a person.

After computing income, the debtor makes deductions for living expenses. National standards, defined by the Internal Revenue Service, establish allowances for food, clothing, personal care, and entertainment. The amounts vary depending on income, and family size; and, a debtor can increase the IRS amounts up to 5%, if those amounts can be shown to be reasonable and necessary.

The IRS also has established expense amounts for transportation, and housing, and these amounts vary by locale. Monthly expenses of a debtor can also include payments on secured and priority debts, but note that this does not seem to include payments on student loans.

The means test also provides for deductions for reasonably necessary health insurance, disability insurance, and health savings account expenses. A debtor may also deduct certain amounts for school tuition, high home energy costs, expenses for family protection, and contributions to care of nondependent family members. Finally, a debtor may deduct actual expenses for administering a Chapter 13 payment plan, and for continued contributions to tax-exempt charities, up to 15% of gross income.

The Reform Act means test next looks to two “triggers.” If the debtor has \$166.67 in monthly income remaining after allowed deductions (\$10,000 over five years), abuse is presumed, and if the debtor has at least \$100 of such income (\$6,000 over five years), abuse is presumed if the income is sufficient to pay at least 25% of the debtors general unsecured debt over five years.

Stated differently:

- (1) if there is less than \$100 in monthly income remaining after allowed deductions, the abuse presumption does *not* arise;
- (2) if there is \$100 in monthly income remaining after allowed deductions, the abuse presumption arises, unless debt exceeds \$24,000;
- (3) if there is \$150 in monthly income remaining after allowed deductions, the abuse presumption arises, unless debt exceeds \$36,000;
- (4) if there is \$166.66 in monthly income remaining after allowed deductions, the abuse presumption arises, unless debt exceeds \$39,998.40; and

(5) if there is more than \$166.66 in monthly income remaining after allowed deduction, the abuse presumption always arises.

To defeat, or rebut, the presumption, a debtor would have to swear to, and document, “special circumstances” that would decrease income or increase expenses so as to bring the debtor’s income after expenses below the trigger points.

Recall however, that even if the abuse presumption does not arise, a court may find abuse if the debtor filed the petition in bad faith or the totality of the debtor’s circumstances indicates abuse.

Again, many Texas Senior citizens will find they qualify for Chapter 7 relief, despite the new means test hurdles since many Texas Seniors sole source of income is Social Security benefits, which is not included in the means test income calculation.

### The (Limited) Automatic Stay

Historically, immediately upon filing for bankruptcy protection a “stay” went into effect. Creditors were prohibited from taking *any* action to collect debts – no harassing phone calls, no lawsuits, no foreclosures, no repossessions – nothing, without express permission from the bankruptcy court. The automatic stay remains a part of bankruptcy, but the Reform Act has created new limitations. In fact, in some cases, the stay does not go into effect at all.

For example, “serial filings” may create an early termination of the stay. If a debtor has filed a bankruptcy case within one year of a dismissed case, the automatic stay in the second terminates after 30 days, unless the debtor demonstrates that the second was filed in good faith with respect to the creditor sought to be stayed. If a second repeat filing happens in the one-year period, the automatic stay does not go into effect at all, unless the debtor affirmatively demonstrates for the court that the third filing is in good faith.

Another noteworthy exception to the automatic stay is related to landlords seeking to evict tenants. The Reform Act allows any eviction proceeding in which the landlord obtained judgment before the filing of the bankruptcy to continue. In addition, an eviction proceeding is excepted from the stay if the rented property is endangered or the eviction is related to illegal use of controlled substances on the property. In this case the eviction proceeding must commence before the bankruptcy, or if the endangerment or illegal use occurred within 30 days of the bankruptcy filing. In some cases the debtor may be able to keep the stay in effect to allow an opportunity to cure the lease defect.

### Nondischargeable debts

It has always been the case that some debts are not dischargeable in bankruptcy. Tax debts, for example, were typically not discharged in bankruptcy. Under the Reform Act, the list of nondischargeable debts is expanded. For example, the definition of

nondischargeable tax debts is expanded. In addition, the following debts are not dischargeable:

- Debts for money, credit, etc. obtained through fraud or false statements in writing;
- Debts for “luxury goods” and services owed to a single creditor totaling more than \$500 made within 60 days of filing;
- Cash advances in excess of \$750 made within 70 days of filing are presumed to be nondischargeable;
- Debts that require timely request for a dischargeability determination if a creditor lacks notice or does not have actual knowledge of the case in time to make such a request;
- Debts related to death or injury caused while the debtor was intoxicated;
- Domestic support obligations;
- Nondischargeable student loans (which is expanded to include student loans made by non-governmental entities);
- Debts incurred to pay state and local taxes;
- Debts incurred to pay fines and penalties;
- Nonsupport obligations incurred from divorce or separation;
- Homeowner association, condominium, and cooperative fees;
- Fees on prisoners; and
- Pension, profit sharing debts.

### Chapter 13 Payment Plans

Chapter 13 payment plans are now required to be five years, and the plan must either pay unsecured claims in full (with interest) or provide that all of the debtor’s disposable income will be contributed to the plan.

A Chapter 13 debtor may be required to file annual financial statements showing income and expenditures, and in some cases, additional federal income tax returns.

### Chapter 20

Before the Reform Act some debtors would file a petitioner under Chapter 7 to discharge their unsecured debts, and then file Chapter 13 to help with secured debts, such as a mortgage. This process was sometimes referred to as “Chapter 20.” The Reform Act attempts to address this; i.e. eliminate it.

Under the Act, the time between subsequent Chapter 7 discharges is increased from 6 to 8 years. Debtors must also wait two years after receiving a Chapter 13 discharge to refile, or three years if the debtor received a discharge under Chapter 7.

In addition, the “automatic stay” terminates 30 days after the petition is filed if a previous Chapter 7, or 13 petition was filed and dismissed within the previous year (unless the debtor can show “good faith”).

Finally, a debtor can no longer “cramdown” or “strip down” purchase money security debts. For example, if a person purchases a car within 910 days (2 ½ years) of the date the petition was filed, he or she cannot “strip” the loan down to the value of the car at the time the petition is filed.

### Filing *Pro Se*

Bankruptcy law has always been fairly complicated, but in some cases debtors feel they can navigate the proceedings without an attorney. After all, managing the process without an attorney does reduce bankruptcy costs. Maybe.

The bankruptcy process under the Reform Act is a complex undertaking. There is no law saying you have to be represented by an attorney, but if it is at all possible, you should have one. While it is true that you can avoid paying attorney’s fees by filing *pro se*, it is also true that the bankruptcy process includes many steps, and decisions – each of which carry big financial implications. One misstep can create huge costs. Thus, at the end of the day, it can become a case of pay now, or pay later (understanding that the “pay later” will require a much larger payment!)

### Texas Exemptions.

The Texas Property Code provides the following exemptions:

#### **§ 41.001. Interests in Land Exempt from Seizure**

- (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.
- (b) Encumbrances may be properly fixed on homestead property for:
  - (1) purchase money;
  - (2) taxes on the property;
  - (3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);
  - (4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
  - (5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;
  - (6) an extension of credit that meets the requirements of section 50(a)(6), Article XVI, Texas Constitution (home equity loans); or
  - (7) a reverse mortgage that meets the requirements of sections 50(k)-(p), Article XVI, Texas Constitution.
- (c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

**§ 41.002. Definition of Homestead**

- (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.
- (b) If used for the purposes of a rural home, the homestead shall consist of:
  - (1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
  - (2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.
- (c) A homestead is considered to be urban if, at the time the designation is made, the property is:
  - (1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and
  - (2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:
    - (A) electric;
    - (B) natural gas;
    - (C) sewer;
    - (D) storm sewer; and
    - (E) water
- (d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

**§ 42.001. Personal Property Exemption**

- (a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:
  - (1) the property is provided for a family and has an aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or
  - (2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.
- (b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):
  - (1) current wages for personal services, except for the enforcement of court-ordered child support payments;
  - (2) professionally prescribed health aids of a debtor or a dependent of a debtor; and
  - (3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor.

(c) This section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are Included in the aggregate.

### **§ 42.002. Personal Property**

(a) The following personal property is exempt under Section 42.001(a):

- (1) home furnishings, including family heirlooms;
- (2) provisions for consumption;
- (3) farming or ranching vehicles and implements;
- (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- (5) wearing apparel;
- (6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
- (7) two firearms;
- (8) athletic and sporting equipment, including bicycles;
- (9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;
- (10) the following animals and forage on hand for their consumption:
  - (A) two horses, mules, or donkeys and a saddle, blanket and bridle for each;
  - (B) 12 head of cattle;
  - (C) 60 head of other types of livestock; and
  - (D) 120 fowl; and
- (11) household pets.

(b) Personal property, unless precluded from being encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code (secured transactions), or Subchapter F, Chapter 501, Transportation Code (certificates of title), or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

### **§ 42.0021. Additional Exemption for Retirement Plan**

(a) In addition to the exemptions prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the applicable provisions of the Internal Revenue Code of 1986. A person's right to the assets held in or to receive payments,

whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974. If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(b) Contributions to an individual retirement account, other than contributions to a Roth IRA described in Section 408, Internal Revenue Code of 1986, or annuity that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law. Amounts qualifying as nontaxable rollover contributions under Section 402(a)(5), 403(a)(4), 403(b)(8), 408A, or 408(d)(3) of the Internal Revenue Code of 1986 before January 1, 1993, are treated as exempt amounts under Subsection (a). In addition, amounts qualifying as nontaxable rollover contributions under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10), 408A, or 408(d)(3) of the Internal Revenue Code of 1986 on or after January 1, 1993, are treated as exempt amounts under Subsection (a).

(c) Amounts distributed from a plan or contract entitled to the exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a stock bonus, pension, profit-sharing, retirement plan, or government plan is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the plan to secure a loan to the participant or beneficiary from the plan, and the right to the assets held in or to receive payments from the plan is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(e) If Subsection (a) is declared invalid or preempted by federal law, in whole or in part or in certain circumstances, as applied to a person who has not brought a proceeding under Title 11, United States Code, the subsection remains in effect, to the maximum extent permitted by law, as to any person who has filed that type of proceeding.

(f) A reference in this section to a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of the substance of that provision.

### **Federal exemptions**

**11 U.S.C. § 522(d)** provides the following exemptions:

[Note that married debtors, filing jointly, double the amounts shown below]

(1) The debtor's aggregate interest, not to exceed \$18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$2,950 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$475 in value in any particular item or \$9,850 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal,

family, or household use of the debtor or a dependent of the debtor. [But note the limitations to the definition of “household goods” explained above.]

(4) The debtor's aggregate interest, not to exceed \$1,225 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$975 plus up to \$9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,850 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependant of the debtor.

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

(8) The debtor's aggregate interest, not to exceed in value \$9,850 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive --

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

(B) a veteran's benefit;

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

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless --

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time of the debtor's rights under such plan or contract arose;

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

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to --

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$18,450, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Note: the value of the property is the retail value of the property now, and not what you paid for it.

But be aware of this: If your property is subject to a valid lien -- such as a home mortgage or a security interest for the purchase of a car -- the property will remain subject to that lien even after bankruptcy.

If you have had a judgment entered against you and the judgment has been recorded and has become a lien, the bankruptcy court can remove the judgment lien, to the extent it affects exempt property.

If you borrowed money and put up household furnishings, household goods, wearing apparel, jewelry, appliances, tools of your trade, or prescribed health aids, that you already owned, as collateral, a bankruptcy court can remove that lien, if it affects property that you can exempt.