

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 169

(Senator Ramirez)

Judicial Proceedings

Judiciary

Bankruptcy - Homestead Exemption - Debtor's Residence

This bill authorizes a debtor to claim his/her aggregate interest in a cooperative housing corporation that owns property that the debtor occupies as a residence under the homestead exemption in a bankruptcy proceeding under Title 11 of the U.S. Code. The bill also clarifies that under the homestead exemption, “owner-occupied residential real property” includes a condominium unit.

The bill applies prospectively and may not be applied or interpreted to affect any case filed before the bill’s October 1, 2011 effective date.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: None.

Analysis

Current Law: A “money judgment” is a judgment that a specified amount of money is immediately payable to the judgment creditor. If recorded and indexed in the land records, a money judgment constitutes a lien on the debtor’s interest in real or personal property located in the county where the judgment was rendered from the date of entry. A judgment recorded and indexed in another county constitutes a lien from the date of recording. Upon the issuance of a writ of execution, a sheriff or constable may seize and sell the debtor’s legal or equitable interest in real or personal property. The sheriff or

constable must execute the writ, conduct the sale, and distribute the proceeds pursuant to the Maryland Rules.

A writ of execution on a money judgment does not become a lien on the personal property of the debtor until an actual levy is made. The lien then extends only to the property included in the levy. In general, the following items are exempt from execution on a money judgment:

- up to \$5,000 of apparel, books, tools, instruments, or appliances necessary for the practice of a trade or profession, except those items kept for sale, lease, or barter;
- money payable in the event of the sickness, accident, injury, or death of any person, including compensation for loss of future earnings – the exemption includes money payable for judgments, arbitrations, compromises, insurance benefits, compensation, and relief; it does not include disability income benefits if the judgment is for necessities contracted for after the occurrence of the disability;
- professionally prescribed health aids for the debtor or any dependent;
- up to \$1,000 of household furnishings, goods, apparel, appliance, books, pets, and other items kept primarily for personal, household, or family use;
- up to \$6,000 of cash or property of any kind, if the debtor elects to exempt such cash or property within 30 days from the date of attachment or the levy by the sheriff;
- money payable or paid according to an agreement or court order for alimony, to the same extent that wages are exempt, and child support;
- the debtor's beneficial interest in any property that was held by a husband and wife as tenants by the entirety and subsequently conveyed to a trustee and specified proceeds of that property; and
- with respect to claims by a separate creditor of a husband or wife, property that was held by a husband and wife as tenants by the entirety and subsequently conveyed to a trustee and specified proceeds of that property;

In any federal bankruptcy proceeding under Title 11 of the U.S. Code (the federal Bankruptcy Code), an individual debtor may further exempt up to \$5,000 of personal property and owner-occupied residential real property up to the amount allowed under federal bankruptcy law. This homestead exemption (1) may be claimed if the individual debtor and specified family members have not successfully claimed the exemption on the property within eight years prior to the filing of the bankruptcy proceeding in which the exemption is claimed; and (2) may not be claimed by both a husband and wife in the same bankruptcy proceeding. The amount of the homestead exemption allowed under the federal bankruptcy law is adjusted every three years. As of April 1, 2010, the allowance is \$21,625.

The State has opted out of the federal bankruptcy exemptions that are similar to those exemptions specified above; thus, in a bankruptcy proceeding, a debtor is not entitled to the federal exemptions provided by § 522(d) of the federal Bankruptcy Code. Under § 522(d), a debtor may exempt up to \$21,625 “in real property or personal property that the debtor or a dependent 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.”

Background: While a condominium is considered real property, a cooperative (often referred to as a “co-op”) is typically treated as personal property. An individual who purchases a condominium buys an individual apartment or townhouse, owns an interest in the common areas, and is personally responsible for property taxes on the buyer’s individual unit separate from any homeowner’s association (HOA). An individual who purchases a cooperative apartment buys shares in the cooperative housing corporation that owns the building, not the actual apartment. As a shareholder, the purchaser has the right to lease space (the apartment) in the building, and the corporation owns the common areas. The corporation pays the property taxes on the building and passes along these costs to the shareholders as a part of a monthly maintenance fee. Thus, if a homestead exemption is limited to “real property” and the debtor resides in a co-op, the debtor may not be able to claim his/her interest in the co-op unless such an interest is specifically mentioned in the statute. Several states specifically mention interests in cooperatives under their homestead exemption statutes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); *A Condo is Real Property and COOP is Not*, Solomon Skolnick, examiner.com; *Federal Register*; Department of Legislative Services

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