Homestead Exemption

If you decide to file for bankruptcy, it is likely that you will want to keep your home. Each state provides that debtors in the state are entitled to a "homestead exemption." A homestead exemption allows a debtor to protect equity in a homestead up to certain limits. Thus, if the equity in your homestead property is less than the exemption provided under state law, your house can be protected from creditors and you can file for Chapter 7 bankruptcy without having to sell your house to pay creditors.

There are a few things you should know about homestead exemptions. First, homestead exemptions differ from state to state. Second, the new bankruptcy law will place limits on how much equity you can protect, even if you are in a state that provides a generous homestead exemption.

State Laws

The state you live in will determine the amount of your homestead exemption. Your homestead exemption will be based on the laws of the state that you have lived in for the past two years before filing for bankruptcy. However, if you have recently moved, your home state will be considered the state you have lived in for the majority of the prior 180 days preceding the two years.

Limitations Under the New Law

Under the new bankruptcy legislation, you will not be able to exempt more than $125,000 on equity in a residence purchased within 1,215 days (or three years and four months) before filing for bankruptcy. This calculation does not include the equity of another home you may have bought previously in this 1,215-day period.

Additionally, if you are guilty of securities fraud or certain criminal conduct, your exemption will cap at $125,000. If the court finds you guilty of fraud, this could also hinder the amount of your homestead exemption. Fraud may include disposing of property in order to defraud a creditor or fraudulently converting nonexempt assets ten years before filing for bankruptcy.