

Can I Keep My Car in Bankruptcy?

"Can I Keep My Car in Bankruptcy?", or a similar question, is one I hear frequently as a bankruptcy lawyer. The question reflects the fear that all your things will be taken away from you if you file bankruptcy. What's true is that the bankruptcy laws provide for a wide range of "exemptions" that can't be taken from you for the benefit of your creditors. Needless to say, the subject of exemptions is a very important one in bankruptcy. It's also a complex subject.

Let's start by saying that the specific exemptions you'll be allowed are governed by state law, so where you live is important. We'll be discussing California exemptions here, and if you live outside of California you need to discuss this subject with a qualified bankruptcy attorney in your area.

Also, if you haven't lived in California for all of the last two years, determining the set of exemptions you need use is too complex to discuss here. You definitely need to consult with a bankruptcy attorney about it as a part of discussing your entire financial situation.

This discussion assumes that we're talking about a Chapter 7 bankruptcy, the one in which you get rid of your unsecured debts (like credit cards) quickly. You are also in danger of losing things to the bankruptcy trustee in a Chapter 7. In a Chapter 13 (payment plan) bankruptcy, you get to keep your things in exchange for making monthly payments to the trustee. A Chapter 13 bankruptcy is often a good alternative for someone who would need to give up too much in a Chapter 7.

Here are some details of the exemptions you get to claim in bankruptcy in California as of April 1, 2013:

If you don't have equity in a home that you want to keep, you can protect (exempt) up to the following:

- \$26,925 – Any combination of things (referred to as the "wildcard" exemption)
- \$5,100 – One or more vehicles (the resale value above the amount owed)
- \$12,860 – Life insurance (the current cash value to you of that policy)
- \$1,525 – Jewelry (at the resale value – craigslist, ebay, etc. – not the replacement value)
- \$7,625 – Items used for your occupation

All of your household items and clothing that individually are not worth more than \$550

All (usually) of your retirement accounts

Note that the \$26,925 wildcard exemption may be used to "pick up" excess amounts from any number of exemption categories, such as a car that's worth more than \$5,100 above the amount owed on it.

If you do have equity in a home ("homestead") that you want to keep, you can protect (exempt) different amounts of that equity based on your age and other factors.

- \$75,000 – Single person, age 64 or younger
- \$100,000 – Married person with the spouse living in the house, age 64 or younger
- \$175,000 – Debtor or spouse (living in the house) is one of the following:
 - 65 or older
 - Physically or mentally disabled so as to be unable to engage in substantial gainful employment
 - 55 years of age or older with a gross annual income of not more than \$25,000 or, if the debtor is married, a gross annual income of both debtor and spouse of not more than \$35,000 and the sale is an involuntary sale.

If you need to use this set of homestead exemptions to exempt the equity in a home, you do not get the "wildcard" exemption, but some of the other specific exemptions are larger.

Lastly, and this is important, you must claim, and claim properly, your specific exemptions in the schedules that are filed in your case. Otherwise you could lose things that you could have kept.

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