

Will I be able to keep all of my assets if I file for chapter 7 bankruptcy?

2 November 2011

The answer is maybe. But in most cases you will not know for sure that you will keep your assets until the case is closed. For a better understanding, please read on.

This question is common for people to have and for bankruptcy blogs to address. Usually the truth is told that it is impossible to give an informed opinion until a thorough financial analysis by a competent bankruptcy attorney is completed. But overall there is an overwhelming tone of confidence in these blogs that convey the message in all likelihood you will be like most debtors and keep everything. "Don't worry, you're all set" these blogs seem to say. It is *most likely* true that in the end you will keep everything, but what will technically/legally occur during the bankruptcy with regard to the debtor's assets usually escapes most potential debtors. What will really happen sounds scary to the typical person, which is the following.

When you file, everything you have becomes part of the bankruptcy estate, with very few exceptions that may not apply to you. In other words, you legally give up your full rights to the assets when you file for bankruptcy and will not retain your rights until the case is closed. This also means you cannot do what you want with your assets during the bankruptcy. The usual way to try and keep your assets is to claim that they are exempt. If they aren't, the trustee can take them and sell them to pay your creditors (and himself) and give you the amount of your exemption, if you claimed one and it was not disallowed.

Even if you do claim that the entire amount of value of an asset is exempt, the trustee may disagree with your valuation and could get the right to try and sell it. If the trustee is successful in attaining more than what you said was exempt upon sale, again, you will get the amount of any exemption you claimed, again, if it was not disallowed. This is the new law as of March 2010. Schwab v. Reilly, 130 S. Ct. 2652 (2010). There are cases that illustrate this. If you would like to read about a case involving few different debtors where the trustee obtained the right to sell their houses despite the fact the debtors each claimed a valid exemption in the amount of the equity of their homes, you can read *Gebhart v. Gaughan*. 621 F.3d 1206 (9th Cir. 2010).

There is a way *that might* ensure that you could keep one hundred percent of the fair market value of your asset (100% of FMV) while your case is still pending that will be addressed in a future blog. And there is a way one can try and make sure an asset is retained without having to wait until the case is closed. However, as stated, there are no guarantees. The bottom line is, with rare exception, you will not be absolutely sure you will keep your assets until the case is closed.

These facts would tend to scare the typical person contemplating filing for bankruptcy. Should you be scared? No. But you should understand that very little is guaranteed in life, and if you hear an attorney *guarantee* that you will keep all your assets in a future bankruptcy under chapter 7, find another attorney.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 796-1359 or (413) 746-8008

Website: [www.bourguignonlaw.com](http://www.bourguignonlaw.com)

Email: [gbourguignon@bourguignonlaw.com](mailto:gbourguignon@bourguignonlaw.com)

Keep assets in bankruptcy/will I keep my assets if I file bankruptcy/is it possible to keep all my assets if I file for bankruptcy/what are exemptions in bankruptcy/what are bankruptcy exemptions