

# LAW CURRENTS An informational newsletter from Richard A. Klass, Esq.

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## “Wild Card”

*(Or How Mad Max Got to Keep His Camaro!)*

It was a really nice car — a 1999 Chevy Camaro with only 51,000 miles. Maybe it wasn't the most expensive car (like a Chevy Corvette) but Mad Max loved driving it on weekends. Mr. Max also had another vehicle (a truck) that he needed for work during the week. Unfortunately, Max's business wasn't doing well and he was forced to file for personal bankruptcy due to his mounting debts. As part of filing for Chapter 7 bankruptcy, Max had to submit to the Bankruptcy Court his Petition.

### **Chapter 7 Bankruptcy Petition**

When a person files for bankruptcy (the “debtor”), he has to file a Petition, in which the debtor lists comprehensive financial information, including his (a) assets; (b) liabilities; (c) income; and (d) expenses. In the Petition, the debtor will detail all of his assets, such as real estate, bank accounts, life insurance policies, pensions and all other personal assets. Among the typical assets that are listed in the Petition is a debtor's car.

### **Exempt Assets**

There is a concept in the law that, even though a person is a debtor and owes debts to creditors, there are certain types of property and income that will be left with the debtor (“exempt”) — and, thus, beyond the reach of creditors. These types of “exempt” property and income are enumerated under various sections of law. In New York, for instance, those sections of law include various provisions under the Debtor and Creditor Law, Civil Practice Law and Rules (CPLR), Insurance Law and other sections. The usual types of exempt property owned by people filing bankruptcy include clothing, household furnishings, security deposits with a landlord, life insurance and annuity policies, and retirement/pension



plans (such as 401(k) plans; Individual Retirement Accounts (IRAs); Roth IRAs; 403(b) plans; and similar qualified plans). The usual types of exempt income of a debtor include social security benefits, disability, unemployment, worker's compensation, and 90% of

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wages earned 60 days prior to filing. In fact, over 90% of the bankruptcy cases filed throughout the country are commonly referred to as “no asset” cases in which, after taking the debtor’s exempt property off the table, there are no assets to distribute to creditors.\*

Specifically as to a debtor’s car, under New York’s Debtor and Creditor Law Section 282(1), a debtor may take 1 exemption as follows: “Bankruptcy exemption of a motor vehicle. One motor vehicle not exceeding four thousand dollars in value above liens and encumbrances of the debtor; provided, however, if such vehicle has been equipped for use by a disabled debtor, then ten thousand dollars in value above liens and encumbrances of the debtor.”

### **Two Cars; Only One Exemption**

In Max’s situation, he owned 2 cars (Truck worth \$3,600 and Camaro worth \$8,800). Under New York State law, Max had only 1 exemption for a car, and he needed to keep his truck for work purposes. But, Max really wanted to keep his Camaro. He could only keep the truck, using the \$4,000 car exemption; the Camaro would have to be turned over to the bankruptcy trustee and sold to pay off creditors’ claims.

Fortunately for the debtor, he came to **Richard A. Klass**, *Your Court Street Lawyer*, for help. The first step was trying to figure out how Max could retain both cars even though he was going to file for bankruptcy.

### **The Federal “Wild Card” Exemption**

A few years ago, the law was changed to allow New York debtors to opt to take either the New York or federal exemptions. Up until then, debtors who filed for bankruptcy in New York State could only use the New York State exemptions (as opposed to the exemptions afforded to debtors under the federal Bankruptcy Code). Some of the New York exemptions are actually quite

generous in some respects, including the “homestead” exemption for real estate up to \$150,000.

Under the federal exemptions, there is, however, a really good exemption for debtors in the same situation as Max — the “Wild Card” one! Under Bankruptcy Code Section 522(d)(5), a debtor is allowed to take an exemption on *any* property up to \$12,725 (“The debtor’s aggregate interest in any property, not to exceed in value \$1,225 plus up to \$11,500 of any unused amount of the exemption provided under paragraph (1) of this subsection [the homestead exemption].”)\*\*

In preparing the Petition, the federal exemptions were selected for Max. The truck was exempted as the one car permitted (\$3,675 exemption) to be taken under federal law. The Chevy Camaro was exempted for its full amount (\$8,800) because Max was allowed to use the “Wild Card” exemption. Mad Max got to keep both cars!

— *Richard A. Klass, Esq.*

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\* Source: National Association of Bankruptcy Trustees ([www.nabt.com/faq.cfm](http://www.nabt.com/faq.cfm))

\*\* (1) The debtor’s aggregate interest, not to exceed \$22,975 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.

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