

RESOLUTION 10-06-06

DIGEST

Money Judgments: Exemptions for Federal Bankruptcy

Amends Code of Civil Procedure section 703.140 to exempt non-taxable retirement funds from the enforcement of a money judgment.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 703.140 to exempt non-taxable retirement funds from the enforcement of a money judgment. This resolution should be approved in principle because it makes state law consistent with federal law protecting debtors' retirement assets from execution.

With the implementation of the new bankruptcy laws, federal law protects IRA's and other non-taxable retirement accounts from the enforcement of money judgments against the debtor. (See 26 U.S.C. §§ 401, 403, 408, 408A, 414, 457, and 510(a).) Code of Civil Procedure section 703.140, however, limits the exemption of such funds to those "reasonably necessary for support." (Code Civ. Proc., § 703.140, subd. (b)(9)(E).) Litigation over what is "reasonably necessary for support" has resulted in inconsistent and often arbitrary holdings, and is expensive and impractical for debtors who are, in many instances, of limited means.

This resolution would remove any doubt that debtors' retirement funds are exempt from execution. It would also help debtors to avoid unnecessary litigation over retirement accounts that should already be protected from execution.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure §703.140 to read as follows:

- 1 §703.140
- 2 (a) In a case under Title 11 of the United States Case, all of the exemptions provided
- 3 by this chapter, including the homestead exception, other than the provisions of subdivision
- 4 (b) are applicable regardless of whether there is a money judgement against the debtor or
- 5 whether a money judgement is being enforced by execution sale or any other procedure, but
- 6 the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions
- 7 provided by this chapter as follows:
- 8 (1) If a husband and wife are joined in the petition they jointly may elect to utilize

9 the applicable exemption provisions of this chapter other than the provisions of subdivision
10 (b) or to utilize the applicable exemptions set forth in subdivisions (b) but not both.

11 (2) If the petition is filed individually, and are not joined for a husband or wife, the
12 exemptions provided by this chapter other than the provisions of subdivision (b) are
13 applicable, except that if both husband and the wife effectively waive in writing the right to
14 claim, during the period the case commenced by filing the petition is pending, the
15 exemptions provided by the applicable exemption provisions of this chapter, other than
16 subdivision (b), in any case commenced by a filing petition for either of them under Title 11
17 of the United States Code, then they may elect to instead utilize the applicable exemptions
18 set forth in subdivision (b).

19 (3) If the petition is filed for an unmarried person, that person may elect to utilize the
20 applicable exemption provisions of this chapter other than subdivision (b), or to utilize the
21 applicable exemptions set forth in subdivision (b), but not both.

22 (b) The following exemptions may be elected as provided in subdivision (a):

23 (1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred
24 twenty-five dollars (\$17,425) in value, in real property or personal property that the debtor
25 or a dependant of the debtor uses as a residence, in a cooperative that owns property that the
26 debtor or a dependant of the debtor uses as a residence, or in a burial plot for the debtor or a
27 dependant of the debtor.

28 (2) The debtor's interest, not to exceed two thousand seven hundred seventy-five
29 dollars (\$2,775) in value, in one or more vehicle.

30 (3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in
31 any particular item, in household furnishings, household goods, wearing apparel, appliances,
32 books, animals, crops, or musical instruments, that are held primarily for the personal,
33 family, or household use fo the debtor or a dependant of the debtor.

34 (4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty
35 dollars (\$1,150) in value, in jewelry held primarily for the personal, family, or household
36 use of the debtor or a dependent of the debtor.

37 (5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-five
38 dollars (\$925) plus any unused amount of the exemption provided under paragraph (1), in
39 any property.

40 (6) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty
41 dollars (\$1, 750) in value, in any implements, professional books, or tools of the trade of the
42 debtor or the trade of a dependant of the debtor.

43 (7) Any unmaturred life insurance contract owned by the debtor, other than a credit
44 life insurance contract.

45 (8) The debtor's aggregate interest, not to exceed in value nine thousand three
46 hundred dollars (\$9,300), in any accrued dividend or interest under, or loan value of, any
47 unmaturred life insurance contract owned by the debtor under which the insured is the debtor
48 or an individual of whom the debtor is a dependant.

49 (9) Professionally prescribed health aids for the debtor or a dependant of the debtor.

50 (10) The debtor's right to receive any of the following:

51 (A) A social security benefit, unemployment compensation, or a local public
52 assistance benefit.

53 (B) A veterans' benefit.

54 (C) A disability, illness, or unemployment benefit.

55 (D) Alimony, support, or separate maintenance, to the extent reasonably necessary
56 for the support of the debtor and any dependent of the debtor.+

57 (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan
58 or contract on account of illness, disability, death, age, or length of service, to the extent
59 reasonably necessary for the support of the debtor and any dependant of the debtor, unless
60 all of the following apply:

61 (i) That plan or contract was established by or under the auspices of an insider that
62 employed the debtor at the time the debtor's rights under the plan or contract arose.

63 (ii) The payment is on account of age or length service.

64 (iii) That plan or contract does not qualify under Section 401(a), 403(b), 408, or
65 408A of the Internal Revenue Code of 1986.

66 (11) The debtor's right to receive, or property that is traceable to, any of the
67 following:

68 (A) An award under a crime victim's reparation law.

69 (B) A payment on account of the wrongful death of an individual of whom the debtor
70 was a dependant, to the extent reasonably necessary for the support of the debtor an any
71 dependant of the debtor.

72 (C) A payment under the life insurance contract that insured the life of an individual
73 of whom the debtor was a dependant on the date of that individual's death, to the extent
74 reasonably necessary for the support of the debtor and any dependent of the debtor.

75 (D) A payment, not to exceed seventeen thousand four hundred twenty-five dollars
76 (\$17,425) on account of personal bodily injury, not including pain and suffering or
77 compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is
78 a dependant.

79 (E) A payment in compensation of loss of future earnings of the debtor or an
80 individual of whom the debtor is or was a dependant, to the extent reasonably necessary for
81 the support of the debtor and any dependant of the debtor.

82 (12) Retirement funds to the extent that those funds are in a fund or account that is
83 exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 5401(a) of the
84 Internal Revenue Code of 1986. For assets in individual retirement account described in
85 section 408 and 408A of the Internal Revenue Code of 1986, other than a simplified
86 employee pension under section 408(k) of such Code or a simple retirement account under
87 section 408(p) of such Code, the aggregate value of such assets exempted under this section,
88 without regard to amounts attributable to rollover contributions under section 402(c),
89 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8)of the Internal Revenue Code of 1986, and
90 earnings thereon, shall not exceed \$1,000,000 in a case filed by a debtor who is an
91 individual, except that such amount may be increased if the interests of justice so require.

(Proposed new language underlined, language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Current law limits a debtor's exemption claim in payments received from a retirement plan to the amount reasonably necessary for the support of the debtor or any dependent of the debtor.

This Resolution: This resolution removes the reasonably necessary for support limitation on a debtor's exemption claim in funds held in a retirement fund or account. In addition, this resolution increases the types of retirement funds and accounts that can be claimed exempt. The addition of the proposed language is also consistent with changes made by Congress to the exemption claims available in bankruptcy as set forth in Bankruptcy Code section 522.

The Problem: The limitation imposed by the reasonably necessary for support standard created substantial litigation leading to somewhat arbitrary and unpredictable results. In addition, the litigation often involved debtor who cannot afford adequate representation. The existing law also arbitrarily limits the types of retirement funds and accounts that qualify to be exempt. Congress has seen fit to correct the error and there is no reason why California should not as well.

IMPACT STATEMENT

This proposal does not affect any other law, statute or rule.

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