

Exemption Issues for Banks in Maine

As we reported this summer, Maine's exemption laws have now changed. The legislature updated amounts of exemptions that have existed for some time, but changes to a few are important to banks and other creditors. The new exemptions became effective in October 2021 and may be utilized by individuals in bankruptcy and state law cases.

Residence

The residence exemption, sometimes referred to as the homestead exemption, changed in several respects. The residence exemption in Maine continues to provide enhanced exemption amounts for Maine residents over 60 or disabled, and those with minor dependents living with them. Those amounts have all gone up, but not uniformly.

For Mainers under 60, who are not disabled, with no children, the exemption amount increases from \$47,500 to \$80,000. For those with minor dependents residing with them, that amount increases to \$160,000. For those over 60 or disabled, the exemption amount increased from \$95,000 to \$160,000. Where a debtor has a fractional interest, the amount of the exemption that can be claimed is the lesser of \$160,000 or the product of the fractional share of the debtor's interest times \$240,000.

Additionally, in an effort to protect older Mainers and allow them to keep their homes when their spouse passes, the new statute allows for the surviving spouse to keep the maximum exemption, if the deceased joint owner is 67 or older and the surviving spouse is 60 or older. So, if a couple's maximum exemption is \$240,000, and a spouse who is 67 or older passes, provided that the surviving spouse is 60 or older, the surviving spouse can claim \$240,000 exemption in her or his residence.

Finally, an additional change is that when an individual sells her or his real property, the individual can exempt the same amounts as above for 12 months, while they are trying to reinvest that money into a new residence. That means if the property was exempt, the judgment debtor sells the property, any proceeds from the sale the debtor is entitled to remains exempt for 12 months only if the debtor reinvests the proceeds in a different residence.

For banks and other creditors, these changes mean that care should be taken when determining what collateral secures a loan, particularly when considering guaranties. These exemptions do not apply to consensual mortgages. Where there is an expanded exemption amount, however, that could mean less to secure a guaranty. Banks and creditors should carefully review their collateral packages when entering into new loans with individuals and small businesses, since the bank or creditor is going to be in a far superior position as a secured creditor, even in instances where they would ordinarily not take security. Additionally, when the borrower sells real property it should be noted that if a debtor files for bankruptcy

in the intervening 12 months, the equity proceeds are exempt, period, under recent case law and the Maine bankruptcy court's adoption of the so-called snapshot rule.

Cash and Bank Accounts

Maine law now has a new exemption for cash and bank accounts, which consumer attorneys and groups believe will assist debtors in bankruptcy achieve their fresh start. This exemption allows a debtor to claim as exempt the amount of \$3,000 in cash or a bank account. This provision also seeks to avoid confusion and litigation for instances where a debtor has an interest in more than one bank account, by allowing a plaintiff, defendant, or any account owner to file an ex parte motion for dissolution or modification in the court in which a judgment or prejudgment order was entered for a hearing to establish how and to which account any exemption should be applied. Rather than financial institutions guessing whether their customer's interest in protected from attachment or execution, this section will provide a hopefully simple procedure to determine those issues.

In the bankruptcy context, the author has not seen any litigation on this claim of exemption, but it seems that at a minimum, a creditor should be cautious to not violate the automatic stay when proceeding under this provision with an ex parte motion. That would seem to be a difficult needle to thread, so creditors should proceed with caution.

Additionally, the author is unaware of any banks taking advantage of the ex parte motion provision yet, but the additional category of exemption warrants banks and other creditors to review their deposit account agreements to, again, confirm their secured status in the accounts.

The landscape for banks and other creditors has changed in some ways, and knowing to deal with these changes will be important in the next few years as the economy recovers from the pandemic-related stresses.

*Prepared by Preti Flaherty attorney Anthony J. Manhart on behalf of Maine Bankers Association.
To learn more about Tony, you can visit his page [here](#).*