10 Things Every Lawyer Should Know About Bankruptcy: #4 Most People Keep All of Their Property

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One of the many common bankruptcy myths is that a debtor in a bankruptcy case will lose much of their property. Recently, one of the financial “experts” on the Today Show stated that in a Chapter 7 bankruptcy case, “you lose all of your property except for your retirement accounts.” Now, millions of people believe this, and it is completely untrue.

In fact, most bankruptcy debtors do not lose any of their property. Particularly in Texas, the bankruptcy exemptions are very generous. In most cases, the debtor’s entire homestead, a vehicle for every adult, all retirement accounts, and up to $30,000 of personal property (such as furniture, clothing, jewelry, and other household goods) are completely protected. In the case of a married couple, the exemption rises to $60,000.

The purpose of the bankruptcy laws is to protect a debtor’s assets and allow them to get a fresh start. Stripping a debtor of all of their property would do nothing to advance that goal. The last thing a bankruptcy trustee wants is a truckload of used furniture and used vehicles to liquidate and distribute to creditors.

It is true that if a person has a large amount of cash available, either in bank accounts or hidden under the mattress, it may have to be turned over to the trustee to distribute to creditors. However, an experienced bankruptcy attorney can advise a potential debtor with regard to appropriate pre-bankruptcy planning in order to avoid having such assets seized. For example, if the debtor is behind with house payments or car payments, it is completely appropriate to bring those payments up to date. Also, the debtor may have needs such as visiting the dentist, buying new glasses, making household repairs, or otherwise using the money to stabilize their family's financial well-being before filing a bankruptcy case.

However, care should be taken not to spend such assets inappropriately. For instance, if a debtor repays loans to family members or business associates shortly before a case is filed, the trustee can retrieve that money and distribute it equally to all creditors. Therefore, it is important for any person who is considering bankruptcy to consult with an experienced bankruptcy attorney before repaying any debts or otherwise spending down their assets.

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