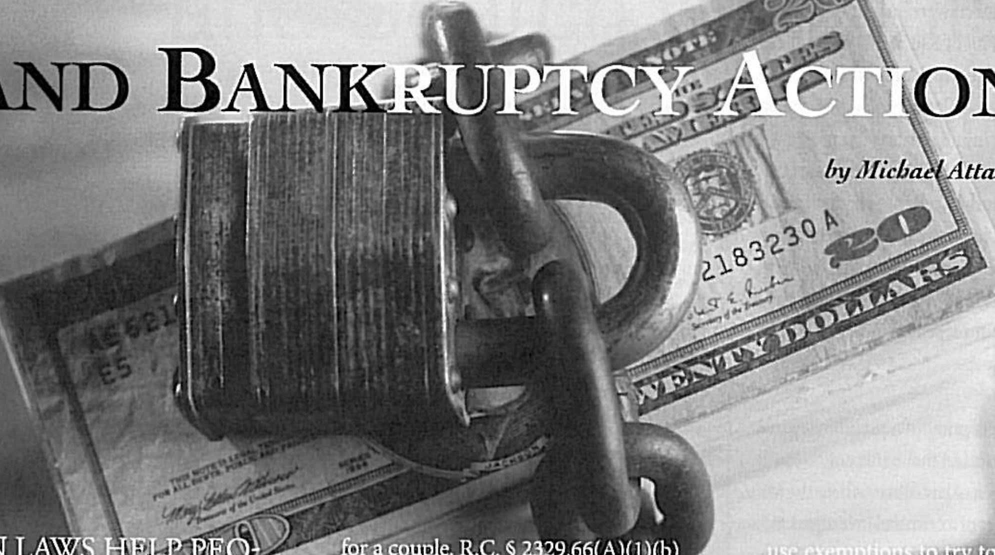
Ohio Increases Protection for Debtors in Collection and Bankruptcy Actions



by Michael Attali and Dave Dawson

EXEMPTION LAWS HELP PEOPLE protect their real and personal property from being taken to satisfy a court judgment or Chapter 7 liquidation. For years, Ohioans, and especially low income individuals in Ohio, have had to make difficult choices to provide for their families, realizing that paying the rent or putting food on the table would potentially put their property at risk.

Ohio had trailed most other states in the exemptions afforded debtors in collection and bankruptcy ever since the Ohio legislature opted out of the federal exemptions under the bankruptcy law in 1978. For 30 years, the legislature had not changed these exemptions. This inaction has had a severe effect on debtors, practically stripping them of all assets in collection actions or the opportunity to get a fresh start in bankruptcy.

At last, in these times of economic hardship, the Ohio legislature has thrown a much needed lifeline to Ohioans and low-income people faced with overwhelming debt. Sub.S.B.281 amended Ohio's exemption laws, primarily R.C. § 2329.66, bringing Ohio in line with exemption laws in most other states as well as with federal exemptions. The exemption amendments became effective on September 30, 2008.

The new law amends R.C. § 2329.66 in many important ways:

- Homestead exemption protecting equity in residential property increases from $5,000 to $20,200 for an individual and to $40,400 for a couple. R.C. § 2329.66(A)(1)(b)
- Equity protection in one motor vehicle increases from $1,000 to $3,225. R.C. § 2329.66(A)(2)
- Cash protection of $400 remains unchanged, but the protection now extends beyond just bankruptcy proceedings. The $400 cash protection can now be used against attachment actions as well. R.C. § 2329.66(A)(3)
- Household goods, wearing apparel, and furnishings increase from a maximum of $2,000 with a $200 maximum per item to $10,775 with a $525 maximum per item. R.C.§ 2329.66(A)(4)(a)
- Professional books and tools protection increases from $750 to $2,025. R.C. § 2329.66(A)(5)
- Earned Income Credit and Child Tax Credit, previously unprotected, will now be protected at 100%. R.C. § 2329.66(A)(9)(g)
- The exemption laws can be adjusted to account for changes in the Consumer Price Index for urban consumers every three years. R.C. § 2329.66(B)

The context for the use of exemption laws is all too familiar in bankruptcies and collections. In collections, creditors with judgments seek to satisfy those judgments by attaching debtors' bank accounts, levying on personal property or foreclosing on real property. In bankruptcies, the trustees use the debtors' property to pay the claims of the creditors. Meanwhile, the debtors use exemptions to try to retain whatever property they have to sustain themselves with the basic necessities of life or to get the "fresh start" promised by our bankruptcy laws. Until the recent amendments to Ohio's exemption statutes, protection of debtors' assets was extremely difficult.

The most important change for homeowners is the substantial increase in the homestead exemption which allows an individual to protect $20,200 of equity in their home and a couple to protect $40,400. Debtors will have significantly fewer worries about losing their homes in a bankruptcy filing or that a judgment lien will take away their hard-earned equity. Many bankruptcies are filed in order to protect the family home from foreclosure. The new exemption value provides significantly more protection to the asset most families consider the center of their estate.

For the low–wage worker, the most important change is the new exemption which protects 100% of Earned Income Credit and Child Tax Credit from the bankruptcy trustee and creditors. Many low-income individuals rely on their tax refund, Earned Income Credit or Child Tax Credit to purchase items which they are unable to otherwise afford throughout the year. These items can be essential to the health and well-being of themselves and their dependants. They may include clothing, furniture or down-payments on automobiles. To lose this money, even for one year, puts the entire family financially behind as they try to achieve their fresh start in bankruptcy. A return of this money to pockets of the debtors helps to open the doors of the bankruptcy court to those most in need of relief.

Just as important is that this exemption closes the door on one of the most horrific consequences of a failed bankruptcy under the old exemption law. Year after year, struggling families would file bankruptcies in hope of a better life and end up in a worse position than before the bankruptcy was filed. This is how this situation would occur. Before the addition of the Earned Income Credit and Child Tax Credit exemption, the debtor in bankruptcy could be faced with a Catch-22 when they received an IRS refund the next year. If they are forced by circumstances to use that money to pay pending obligations such as the post petition gas bill or rent, they would invite the bankruptcy trustee to have their bankruptcy discharge revoked, thus tying them forever to their bankruptcy debt. The new exemption for 100% of Earned Income Credit and Child Tax Credit now allows those funds to flow unimpeded to the people for whom they were intended.

The new law on exemptions also creates protection for the judgment debtor by allowing people to protect $400 of otherwise non-exempt funds in a bank account if the account is attached by a creditor. This provision will have a tremendous effect on the low-income individual.

Take the situation of an elderly grandmother who unfortunately used her credit card beyond her limited means. She has her widows' check from Social Security direct-deposited in her bank account as Social Security has encouraged her to do. Along comes the credit card holder who wins a judgment for the balance due on the credit card and attaches her bank account. Her rent check bounces and life turns into a downward spiral as she tries to show the court that her widow's benefits are exempt from attachment by state and federal law.

Under the new exemption, $400 is automatically protected from her creditor so she has some limited resources to prevent checks from bouncing and to pay for basic necessities while she goes to court to assert her other exemptions. That $400 can be the difference between having and not having food or rent.

The $400 exemption is all the more important as the legislature also saw fit to accede to the wishes of the credit industry by eliminating an important protection for debtors from the new law. In exchange for the increase in exemptions, the legislature removed the provision that required creditors to certify that they had no knowledge that funds being attached were exempt funds such as Social Security benefits or other funds protected by state or federal law. R.C. § 2716.03(A)(2) This provision will help protect creditors from claims for wrongful attachment.

Another important provision of the new law ensures that Ohio exemptions will never fall so far behind the rest of the country again. As of April 1, 2010 and every three years thereafter, Ohio's exemptions can be changed by the legislature to reflect changes in the Consumer Price Index.

For far too many years the loss of assets in a Chapter 7 liquidation or through a collection action has devastated low-income Ohioans. They had to make difficult choices to provide for their families, deciding what they had to sacrifice to get through another year or another month. Until recently, the loss of a tax refund to creditors might represent the loss of one third to one half the sources of all funds for a family in any given year. The liquidation of a house would be, of course, unacceptable. With the recent amendment to the exemption statutes Ohioans will have better protection to deal with the vicissitudes of life. ■

Michael Attali is a staff attorney at The Legal Aid Society of Cleveland where he handles Chapter 7 bankruptcies; Dave Dawson is the Deputy Director at Legal Aid.