

DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE MARCH 10, 2016 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee.

The next scheduled meeting of the Committee is Wednesday, May 11, 2016 with dinner at 6:00 p.m. and the meeting starting at 6:30p.m., at the offices of Jaffe Raitt Heuer & Weiss, P.C., 27777 Franklin Road, Suite 2500, Southfield, MI 48034. The meeting will be a joint meeting with the Bankruptcy Subcommittee of the Real Property Law Section of the State Bar of Michigan, featuring presentations on the Uniform Commercial Real Estate Receivership Act by the National Conference of Commissioners on Uniform State Laws by Kay Kress and the recent Michigan Supreme Court Administrative Office (SCAO) forms for receivership cases by Michael Leib.

2. Council Approval.

The Committee wants approval to advocate amendments to Michigan's exemptions which apply outside of bankruptcy for retirement savings and college savings accounts, substantially in the form attached. MCL 600.60231(k) and (l), as currently drafted, exempt only "an" plan or account—interpreted as just one plan or account being exempted. The proposed amendments would exempt all tax qualified amounts deposited in such plans or accounts more than 720 days before the collection activity, plus capped amounts deposited more recently, and college savings accounts for up to all of the debtor's children, step-children, grandchildren and step-grandchildren. The proposed language was adopted from language to that effect in the Bankruptcy Code and Internal Revenue Code.

3. Membership.

Holding regular meeting and programs assists in generating interest in the Committee and increases membership in the Committee.

4. Accomplishments Towards Committee Objectives

The Committee, subject to Council approval, has selected Vice Co-Chairs, to provide assistance to the Co-Chairs and possible successor leadership. The Vice Co-Chairs are Seth Drucker of Foster Swift Collins & Smith, P.C. and Paul Hage of Jaffe Raitt Heuer & Weiss, P.C.

5. Meetings and Programs.

The Committee, with the Bench of the Eastern District of Michigan Bankruptcy Court Judges, presented a 3-hour seminar on January 13, 2016 at the U.S. Courthouse on the recent amendments of the Federal Rules of Civil Procedure applicable to bankruptcy practice and on the amendments to the Local Bankruptcy Rules. The seminar was well attended and well received, with over 162 registrants. The District Court recorded the seminar and disks of the seminar are available.

The Committee's next program, on Receiverships, is discussed above in Section 1.

6. Publications

In Need of Repair: Secret Personal Property Liens in Michigan was published in the Fall 2015 issue of the Michigan Business Law Journal. Tom Morris is the author, written with the assistance of the Committee, which helped identify secret liens and prepared write-ups of various secret liens.

An article on the recently issued SCAO receivership forms by Judy Calton will be in the next issue of the Michigan Business Law Journal.

7. Methods of Monitoring Legislative/Judicial Administrative Developments are Sectional Action.

The Committee discusses legislative developments and case law at its meetings. The Co-Chairs and other members of the Committee are active in numerous bar activities monitoring legal developments. For example, the Co-Chairs and Committee members were active in the drafting of the amended local bankruptcy rules and MCR 2.622 on receiverships and receivership forms.

The Committee plans in its future meetings to include an educational event on the Uniform Commercial Real Estate Receivership Act issued by the National Conference of Commissioners on Uniform State Law in July 2015 and on the Supreme Court opinion of Husky Intern. Electronics, Inc. v. Ritz, Docket No. 15-145 (U.S.), when issued.

Paul Hage, our new Vice Co-Chair, plans to write bench notes of recent cases of interest for the meetings.

8. Miscellaneous

The Committee was active in the Michigan Supreme Court's adoption of amendments to MCR 2.622 on Receiverships and in requesting SCAO to adopt official court forms for receivership cases. On February 10, 2016 SCAO released four SCAO receivership's forms based on Committee work. We understand that two of the forms, which were checklists for obtaining appointment of a receiver and the contents of an order appointing a receiver, may receive future consideration.

Judy B. Calton
Judith Greenstone Miller
Co-Chairs

Seth Drucker
Paul Hage
Vice Co-Chairs

600.6023(j)

(j) All individual retirement accounts or individual retirement annuities as defined in section 408 or 408A of the internal revenue code of 1986, 26 USC 408 and 408a, as amended and the payments or distributions from the account or annuity to the initial owner and his dependents as that term is defined in section 152 of the internal revenue code of 1986, 26 USC 152, as amended This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522, as amended. This exemption does not apply to any amounts contributed to the individual retirement account or individual retirement annuity if the contribution occurs within 120 days before the debtor files for bankruptcy. This exemption does not apply to an individual retirement account or individual retirement annuity to the extent that any of the following occur:

(i) The individual retirement account or individual retirement annuity is subject to an order of a court pursuant to a judgment of divorce or separate maintenance.

(ii) The individual retirement account or individual retirement annuity is subject to an order of a court concerning child support.

(iii) Contributions to the individual retirement account or premiums on the individual retirement annuity, including the earnings or benefits from those contributions or premiums, exceed, in the tax year made or paid, the deductible amount allowed under section 408 of the internal revenue code of 1986, 26 USC 408, as amended. This limitation on contributions does not apply to a rollover of a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code of 1986, 26 USC 401 as amended, or an annuity contract under section 403(b) of the internal revenue code of 1986, 26 USC 403(b) as amended

(k) The right or interest of a person in all pension, profit-sharing, stock bonus, or other plans that are intended to qualify under section 401 of the internal revenue code of 1986, 26 USC 401 as amended, or an annuity contract intended to comply with section 403(b) of the internal revenue code of 1986, 26 USC 403 as amended, if the plan or annuity is subject to the employee retirement income security act of 1974, Public Law 93-406, as amended, 88 Stat. 829. This

Comment [A1]: To coordinate with 600.5451

Comment [A2]: Proper title for Roth IRA

Comment [A3]: This includes a "qualifying child" i.e. lives in same home, is under age 19 or 24 if a student and where the parent provides over 1/2 of the support; could include minor brother, sister, stepchild or grandchild, the key being a dependent for Federal Income tax purposes

Comment [A4]: By IRS Announcement 2015-19, July 21, 2015, IRS announced it is eliminating the "staggered 5-year determination letter remedial amendment cycle program for individually designed 401 type plans. The IRS has started issuing determination letters for 403(b) annuities under Rev.Proc 2013-22 as to form only. Both 401 and 403 plans have programs allowing for the adoption of a "pre-approved" form of document.

exemption applies to the operation of the federal bankruptcy code, as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522, as amended. This exemption does not apply to any amount contributed to a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 as amended or a 403(b) annuity or annuity contract issued with the intent to qualify for current income tax exemption under section 403(b) of the internal revenue code of 1986, 26 USC 403, as amended, if the contribution occurs within 120 days before a petition in bankruptcy is filed by or against the debtor. This exemption does not apply to the right or interest of a person in a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 as amended or 403(b) of the internal revenue code of 1986, 26 USC 403b as amended to the extent that the right or interest in the plan or annuity is subject to either of the following:

(i) An order of a court pursuant to a judgment of divorce or separate maintenance or

(ii) An order of a court concerning child support.

(l) Any interest in the following as to contributions made more than 120 days before a petition in bankruptcy is filed by or against the debtor for an annual amount that is limited to the annual gift tax of a present interest tax exclusion of section 2503(b) of the internal revenue code of 1986, 26 USC 2503(b) as amended:

(i) A trust, fund, or advance tuition payment contract established under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442.

(ii) An account established under the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486.

(iii) An account in a qualified tuition program or educational savings trust under section 529, 529A or 530 of the internal revenue code of 1986, 26 USC 529 and 530.

(2) The exemptions provided in this section do not extend to any lien on the exempt property that is excluded from exemption by law.

Comment [A5]: This is the current \$14,000 annual gift tax exclusion.

Comment [A6]: 529A is ABLE accounts enacted by Federal legislation on 2/13/2013 with the Michigan counterpart having been enacted on 10/28/15 by PA 161 of 2015-tax-advantaged savings account if disabled before age 26.

(3) If the owner of a homestead dies, leaving a surviving spouse but no children, the homestead is exempt, and the rents and profits of the homestead shall accrue to the benefit of the surviving spouse before his or her remarriage, unless the surviving spouse is the owner of a homestead in his or her own right.

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