

DEBTOR/CREDITOR RIGHTS COMMITTEE REPORT
PREPARED FOR THE OCTOBER 8, 2016 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee:

The next scheduled meeting of the Committee will be on Wednesday, November 16, 2016 at the offices of David Ruskin, 26555 Evergreen Road, Suite 1101, Southfield, Michigan. Dinner will be at 6:00 p.m., with the business meeting at 6:30 p.m. The Committee plans to discuss the proposed amendments to the Federal Rules of Bankruptcy Procedure, for which written comments are due by February 15, 2017, and a pending Michigan Senate Bill to replace Michigan's Uniform Fraudulent Transfer Act, MCL 566.31 *et. seq.* with the Uniform Voidable Transactions Act.

2. Council Approval

The Council previously approved the Committee advocating amendments to MCL 600.6023 so that exemptions outside bankruptcy are not limited to only one IRA or one college savings plan, but apply to all eligible IRAs and college savings plan. A subcommittee of Kal Goren, Tom Morris and Seth Drucker has been working on this, and obtained the support of the Probate and Employee Benefits Sections of the State Bar. They have been in discussions with the Oakland County Bar Association (OCBA). The lobbyist for the OCBA recommended waiting until the next legislative session before beginning to contact legislators.

The wording of the proposed amendment has changed somewhat as a result of those decisions. The current version is attached and, therefore, the Committee is requesting that the Council confirm and approve the new revised version of the proposed statutory amendment.

3. Membership

The Committee communicates regularly with its membership through its list serve, with announcements of Committee events, case law alerts, and announcements of events of interest to

bankruptcy and insolvency law practitioners. This increases the Committee's profile. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals.

The Committee works with other bankruptcy/insolvency bar groups, which exposes the members of those groups to the Committee and its activities, also increasing interest in the committee.

The Committee has healthy attendance at its meetings and events.

4. Accomplishments Toward Committee Objectives

The Committee has and will hold three meetings this year.

Our May 11, 2016 joint meeting with the Bankruptcy Committee of the Real Estate Section of the State Bar featured a presentation by Kay Kress on the Uniform Commercial Real Estate Receivership Act from the National Conference of Commissioners on Uniform State Laws, by Michael Leib on the recently adopted SCAO forms for receivership cases, and Michelle C. Harrell on the issues presented in her article co-authored with Scott Garrison, entitled *The Reports Runneth Over: A Practical Approach for the Bench and Bar to Address an Overflow of Receivership Reports*, Michigan Bar Journal, Vol. 95, at 34 (March 2016).

Our August 17, 2016 meeting included discussions on the changes to the Federal Rules of Bankruptcy Procedure which will become effective December 1, 2016, and proposed rule changes sent out for public comment.

The November 17, 2016 meeting is described above in Section 1.

The Committee presented a seminar on January 13, 2016 with the Bench of the Eastern District of Michigan Bankruptcy Court on recent amendments to the Federal Rules of

Bankruptcy Procedure and on Local Bankruptcy Rules, which was well attended and increased the Committee's profile. Committee members had worked with the Bench in drafting the local court rules amendments which became effective February 1, 2016.

The Committee organized and co-sponsored a September 14, 2016 reception at the Rattlesnake Club in Detroit to honor Bankruptcy Judge Walter Shapero on his retirement and to welcome incoming Bankruptcy Judge Maria Oxholm (formerly a Judge of the Wayne County Circuit Court). The event had over 300 attendees, including several Federal District Court Judges, Bankruptcy Court Judges and Wayne County Circuit Court Judges.

As described above, the Committee is advocating amendments to MCL 600.2023.

A subcommittee of the Committee continues to work with SCAO on creating a form motion to appoint a receiver.

5. Meetings and Programs

In addition to the meetings and programs described above, the Committee is holding a reception on September 29, 2016 to honor long-time co-chair Judy Calton upon her becoming Chair of the Business Law Section. Almost 50 people, thus far, have reserved to attend the event at Jaffe's Southfield Office.

6. Publications

The Summer 2016 Michigan Business Law Journal published an article, *New Ruling by U.S. Supreme Court on Standing to Pursue Litigation-Alleging a "Mere Statutory Violation" is Not Sufficient to Confer Article III Standing for Federal Cause of Action* by co-chair Judith Greenstone Miller and her colleague, Jonathan Sriro.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action

The Committee leadership is active in monitoring new statutes, rules and cases of interest to our members. Vice-Co-Chair Paul Hage writes case notes for the American Bankruptcy Institute's monthly magazine, and also keeps the Committee apprised of new case law developments.

8. Miscellaneous

The Committee discusses legislative developments and case law at its meetings, many of which are brought to our attention by our members.

Judy B. Calton, Co-Chair

Judith Greenstone Miller, Co-Chair

Seth A. Drucker, Vice Co-Chair

Paul R. Hage, Vice Co-Chair

State Bar of Michigan
Business Law Section
Debtor-Creditor Rights Committee
2016 subcommittee for the revision of MCL 600.6023

Proposed revision to MCL 600.6023 to permit the exemption of more than one IRA and more than one of each type of education-savings plan, and to improve the statutory language pertaining to retirement funds. Because this proposed revision would extensively change the wording of the statute, it is not presented in blackline format. Rather, the relevant subsections of the present statute are reproduced below. Comments for discussion are included.

600.6023 Property exempt from levy and sale under execution; lien excluded from exemption; homestead exemption; rents and profits (proposed revision).

Sec. 6023.

(1) The following property of a judgment debtor and the judgment debtor's dependents is exempt from levy and sale under an execution:

* * *

(j) Retirement funds exempt from taxation under Internal Revenue Code sections 401, 403, 408, 408A, 414, 457 or 501(a), 26 USC 401, 403, 408, 408A, 414, 457 or 501(a), as amended. This exemption does not exempt retirement funds from 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.

(k) The following types of education savings accounts or tuition contracts: trusts, funds, or advance tuition payment contracts established under the Michigan Education Trust Act, 1986 PA 316, MCL 390.1421 to 390.1442; accounts established under the Michigan Education Savings Program Act, 2000 PA 161, MCL 390.1471 to 390.1486; and accounts in a qualified tuition program or educational savings trust under sections 529 or 530 of the Internal Revenue Code of 1986, 26 USC 529 and 530, provided that the following rules or limits apply to any account or contract claimed as exempt, and to any funds paid into such account or for the purchase of such contract:

(i) The designated beneficiary of such account or contract must have been a child, stepchild, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid;

(ii) The funds must not have been paid later than 365 days before the date of the entry of the judgment sought by the creditor to be enforced;

(iii) In the case of funds paid into or for all such accounts or contracts having the same designated beneficiary not earlier than 720 days nor later than 365 days before the date of the entry of the judgment sought by the creditor to be enforced, only so much of such funds as does not exceed \$6,225 [as adjusted under 600.5451], measured by the value refundable to the debtor as of the date of the enforcement of the judgment by garnishment or otherwise;

(iv) With respect to accounts to which the Internal Revenue Code rules on excess contributions are applicable, such funds must not be excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986, 26 USC 4973(e)); and

(v) With respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much as does not exceed the total contributions permitted under section 529(b)(6) of the Internal Revenue Code of 1986, 26 USC 529(b)(6)) with respect to such beneficiary.

CPI-adjustment language from MCL 600.5451.

(4) On March 1, 2005 and at the end of each 3-year period after 2005, the state treasurer shall adjust each dollar amount in this section or, for each adjustment after March 1, 2005, each adjusted amount, by an amount determined by the state treasurer to reflect the cumulative change in the consumer price index for the 3-year period ending on the December 31 preceding the adjustment date and rounded to the nearest \$25.00. The state treasurer shall publish the adjusted amounts. The adjusted amounts apply to cases filed on or after April 1 following the adjustment date.

(5) As used in this section:

(a) "Consumer price index" means the consumer price index for all urban consumers in the area of Detroit-Ann Arbor-Flint, Michigan, published by the United States department of labor or, if the United States department of labor ceases publishing that index, the most similar index available.

Current text of the relevant provisions of MCL 600.6023:

(j) An individual retirement account or individual retirement annuity as defined in section 408 or 408a of the internal revenue code of 1986, 26 USC 408 and 408a, and the payments or distributions from the account or annuity. 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. 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. 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, or an annuity contract under section 403(b) of the internal revenue code of 1986, 26 USC 403.

(k) The right or interest of a person in 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, or an annuity contract under section 403(b) of the internal revenue code of 1986, 26 USC 403, if the plan or annuity is subject to the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829. 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. This exemption does not apply to any amount contributed to a pension, profit-sharing, stock bonus, or other qualified plan or a 403(b) annuity if the contribution occurs within 120 days before the debtor files for bankruptcy. This exemption does not apply to the right or interest of a person in a pension, profit-sharing, stock bonus, or other qualified plan or a 403(b) annuity 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.

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

(l) Any interest in the following:

(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 or 530 of the internal revenue code of 1986, 26 USC 529 and 530.