

**REPORT FOR THE DECEMBER 6, 2008
COUNCIL MEETING BY THE
DEBTOR/CREDITOR RIGHTS COMMITTEE**

1. Next Scheduled Meeting of the Committee

The next scheduled meeting of the Committee is on the evening of February 24, 2009 at the Oakland County offices of Honigman Miller Schwartz and Cohn.

2. Council Approval

The Committee has previously received Council approval to support amending Michigan's exemption statutes, approving specific language. That proposed language has been revised, primarily based on the efforts of the Tom Morris, and is attached. The Committee seeks authority to support adoption of the revised language.

3. Membership

The Committee membership is active with over 500 attorneys on the Committee's list serv. Approximately forty members attended the Committee's November 28, 2008 meeting. Several were first time attendees at a Committee event.

4. Accomplishments Toward Committee Objections

We believe the Committee is accomplishing its goals. Our membership is active and volunteers to work on Committee initiatives.

5. Meetings and Programs

At the Committee's November 18, 2008 meeting there was an educational roundtable discussion of issues related to Section 503(b)(9) and Reclamation Claims, led by John T. Gregg, co-chair Judith Greenstone Miller and Ronald L. Rose.

6. Publications

Two members of the Committee who spoke at its February 2008 seminar on alternatives to bankruptcy turned their seminar materials into articles for the November 2008 issues of the Michigan Business Law Journal. The Committee is responsible for the March 2010 issue of the Michigan Business Law Journal and is already discussing plans for the issue.

7. Legislative/Judicial/ Administrative Developments

As discussed above, the Committee is working on amending Michigan's exemptions statutes.

The Federal Rules of Bankruptcy Procedure are being amended effective December 1, 2008 and December 1, 2009. The Bankruptcy Court for the Eastern District of Michigan has asked co-chair Judy Calton to lead a group to amend the local rules to be consistent with the amended federal rules.

**Judy B. Calton, co-chair
Judith Greenstone Miller, co-chair**

PROPOSED REVISION TO MCL 600.6023
(proposed new text of statute)

(1) The following property of the debtor and the debtor's dependents shall be exempt from garnishment, attachment, levy and sale under any execution or any other process for satisfaction of a judgment:

- (a) Family pictures.
- (b) Arms and accoutrements required by law to be kept by a person.
- (c) Wearing apparel, excluding furs.
- (d) Cemeteries, tombs, and rights of burial in use as repositories for the dead of the debtor's family or kept for burial of the debtor.
- (e) Professionally prescribed health aids.
- (f) Provisions and fuel for comfortable subsistence of each householder and his or her family for 6 months.
- (g) The interest, not to exceed a value of \$525.00 in each item and an aggregate value of \$3,450.00, in household goods, furniture, utensils, books, appliances, and jewelry.
- (h) The interest, not to exceed \$575.00 in value, in a seat, pew, or slip occupied by the debtor or the debtor's family in a house or place of public worship.
- (i) The interest, not to exceed \$2,300.00 in value, in crops, farm animals, and feed for the farm animals.¹
- (j) The interest, not to exceed \$575.00 in value, in household pets.
- (k) The interest, not to exceed \$3,175.00 in value, in 1 motor vehicle.
- (l) The interest, not to exceed \$575.00 in value, in 1 computer and its accessories.
- (m) The interest, not to exceed \$2,300.00 in value, in the tools, implements, materials, stock, apparatus, or other things to enable a person to carry on the profession, trade, occupation, or business in which the person is principally engaged.

¹

Current (2008) adjusted dollar amounts of 5451 correspond to proposal.

- (n) Money or other benefits paid, provided, or allowed to be paid, provided, or allowed, by a stock or mutual life, health, or casualty insurance company or a voluntary employees' beneficiary association (VEBA) under Internal Revenue Code Section 501(c)(9) because of the disability due to injury or sickness of an insured person, whether the debt or liability of the insured person or beneficiary was incurred before or after the accrual of benefits under the insurance policy or contract, except that this exemption does not apply to actions to recover for necessities contracted for after the accrual of the benefits.
- (o) Funds in any medical savings account or health savings account under section 220 or 223 of the Internal Revenue Code of 1986, but excluding excess contributions as defined in those sections.
- (p) All Retirement Funds as defined in this section, but subject to the following limitation:
 - (i) This exemption does not apply to the right or interest of a person in any Retirement Funds so as to exempt it from the operation of an order of a court pursuant to a judgment of divorce or separate maintenance, or an order of a court concerning child support.
- (q) The interest of the debtor, the co-debtor, if any, and the debtor's dependents, not to exceed, in the aggregate, \$34,450.00 in value or, if the debtor or a dependent of the debtor at the time of the execution is 65 years of age or older or disabled, not to exceed, in the aggregate, \$51,650.00 in value, in a homestead.
- (r)
 - (i) The homestead of a family, after the death of the owner of the homestead, from the payment of his or her debts in all cases during the minority of his or her children.
 - (ii) If the owner of a homestead dies, leaving a surviving spouse but no children, the surviving spouse before his or her remarriage, unless the surviving spouse is the owner of a homestead in his or her own right, may exempt the homestead and the rents and profits of the homestead.
- (s) Property described in section 1 of 1927 PA 212, MCL 557.151; 2002 PA 686, MCL 450.4504, or real property, held jointly by a husband and wife in a tenancy by the entirety, except that this exemption shall remain subject to the limitations and attributes developed in the common law, including non-application to a claim based on a joint debt of the husband and wife.
- (t) Any interests in any Education Savings Account as defined in this section.

(2) An exemption under this section does not apply to a mortgage, lien, or security interest in the exempt property that is consensually given or lawfully obtained unless the lien is obtained by

judgment, attachment, levy, or similar legal process in connection with a court action or proceeding against the debtor.

(3) If property that is exempt under this section is sold, damaged, destroyed, or acquired for public use, the right to receive proceeds or, if the owner receives proceeds and holds them in a manner that makes them identifiable as proceeds, the proceeds received are exempt in the same manner and amount as the exempt property. An exemption under this subsection may be claimed up to 1 year after the receipt of the proceeds by the owner.

(4) On March 1, 2011 and at the end of each 3-year period after 2011, the state treasurer shall adjust each dollar amount in this section or, for each adjustment after March 1, 2011, 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 beginning on 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.
- (b) "Disabled" means unable to engage in substantial gainful activity, as defined by 42 USC 1382c(a)(3)(E), as a result of a physical or mental impairment and receiving supplemental security income under 42 USC 1382(a)(3)(A) and (C).
- (c) "Education Savings Account" means any of 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) any other interest in a "qualified tuition program" or "Coverdell education savings account" under section 529 or 530 of the Internal Revenue Code, 26 USC 529 and 530.
- (d) "Homestead" means 1 of the following owned or being purchased under an executory contract by the debtor that the debtor or a dependent of the debtor occupies as his or her principal residence:

- (i) If the land is located outside of a recorded plat, city, or village, a residential dwelling and appurtenances and the land on which they are situated, not exceeding 40 acres.
 - (ii) If the land is located within a recorded plat, city, or village, a residential dwelling and appurtenances and the land on which they are situated, not exceeding 1 lot or parcel.
 - (iii) A residential dwelling situated on land not owned by the debtor.
 - (iv) A condominium unit.
 - (v) A unit in a cooperative.
 - (vi) A motor home.
 - (vii) A boat or other watercraft.
 - (viii) An equity of redemption as described in section 6060.
- (e) "Proceeds" means money payable or paid as a result of 1 or more of the following:
- (i) Sale of the property.
 - (ii) Insurance or other indemnification for damage or destruction of the property.
 - (iii) Compensation for the acquisition for public use of the property.
- (f) "Residential dwelling" includes, but is not limited to, a house or a manufactured or mobile home.
- (g) "Retirement Funds" means:
- (i) An interest in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.
 - (ii) The term "Retirement Funds" does not include the portion of an individual retirement account or individual retirement annuity that is attributable to contributions to the individual retirement account or premiums on the individual retirement annuity, including the earnings or benefits from those contributions or premiums, that, in the tax year made or paid, exceeded the deductible amount allowed under section 408 of the Internal Revenue Code,

26 USC 408. This limitation on contributions does not apply to a Roth IRA or similar plan or device to the extent that such contributions were permitted under the Internal Revenue Code, or to a rollover of a pension, profit-sharing, stock bonus plan, or other plan that is qualified under section 401 of the Internal Revenue Code, 26 USC 401, or an annuity contract under section 403(b) of the Internal Revenue Code, 26 USC 403.

(iii) Retirement Funds are subject to the following additional rules:

- (A) If the Retirement Funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect, those funds shall be presumed to be exempt.
- (B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt if the debtor demonstrates that—
 - (1) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and
 - (2)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or
 - (II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.
- (C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption by reason of such direct transfer.
- (D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption by reason of such distribution.
- (3) A distribution described in this clause is an amount that—
 - (I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and
 - (II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(6) This section does not preempt any other exemption provided by law, nor shall it be construed so as to be inconsistent with any provision of federal law. In the event that one or more provisions of this section are determined to be invalid, the balance of this section shall remain in force.

(7) M.C.L. 600.5451 is deleted.

(8) The following references to other exemptions are listed without affecting the validity of those provisions: various veterans' benefits, MCL 35.926; 35.977; various state employee retirement benefits, MCL 38.40(1); 38.2308(1); 38.1057(1); 38.1346(1); public welfare benefits, MCL 400.63(1); workers' compensation, MCL 415.821; unemployment compensation, MCL 421.30; fraternal benefit society, MCL 500.8181; life insurance, MCL 500.2207.

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