



Legal Note – Bankruptcy and the Loss of Asset Protection

The danger of filing bankruptcy is the conversion of otherwise exempt assets to assets available to a bankruptcy trustee. Certain assets unavailable to creditors in state court may become available to the same creditors in bankruptcy. For example, creditors seeking to reach equity held by a Florida debtor in his or her home may not generally force the sale of the home through a state court collection action. If, however, the creditor(s) can force the debtor into bankruptcy and prove that the debtor purchased the home within 1,215 days of the bankruptcy filing, the house will likely be sold as part of the bankruptcy estate, leaving the debtor with only \$136,875 of protected proceeds.

Bankruptcy may therefore be a less friendly alternative to debtors attempting to retain assets protected under state law. Under certain circumstances, voluntary bankruptcy (even for the insolvent debtor) should therefore be avoided. Unfortunately, creditor(s) may force a debtor into involuntary bankruptcy to reach otherwise exempt assets. Only a single creditor is required to force a debtor into bankruptcy if the debtor has fewer than twelve creditors. If the debtor has more than twelve creditors, three creditors may force the debtor into bankruptcy. Ironically, bankruptcy can therefore sometimes be used as a creditor remedy to reach otherwise exempt assets.