

## Exemptions in South Carolina: A Few Practice Pointers

### 1. Location, location, location:

The first question a practitioner needs to know is where a prospective client lives, and for how long. As an opt-out state, the South Carolina exemption scheme will apply to cases in which the debtor has been a resident for two years. As a practice note, the length of residency in South Carolina should come up in some form early in the representation. Often there are not-so-subtle clues—the client has an out-of-state driver’s license, for example. But, it never hurts to include that question in your client questionnaire. It won’t come up often, but there are situations where it is critical to your client’s outcome that you are able to claim South Carolina exemptions rather than another state, or the federal exemption scheme. There may be other situations where claiming under the federal statute gives the client a more favorable result. Notable differences between the South Carolina and Federal schemes include the following:

- Federal exemptions adjust every three years in April. 11 U.S.C. §104(a). The last adjustment occurred in 2016. South Carolina exemptions also adjust, every two years in July. South Carolina exemptions were also adjusted in July 2016.
- Homestead exemption under South Carolina scheme is currently \$59,100. Federal homestead exemption is currently \$23,675. Those amounts can be doubled for married couples filing jointly. S.C.C. §15-41-30(1).
- Vehicle exemption under the South Carolina statute is \$5,900; the federal exemption is \$3,775.

- The federal scheme allows a debtor to exempt up to \$12,625 in aggregate value of household goods, with a limitation of \$600 per individual item. The South Carolina statute allows \$4725, with no limitation on how that is applied.
- Both statutory schemes include a “wild card” exemption. The South Carolina statute currently allows a \$5,900 wild card exemption, and that exemption can come from any unused portion of the exemptions for homestead, cash in lieu of homestead, vehicle, household goods, jewelry, or tools of the trade. The Federal wildcard exemption is currently \$1250, plus up to \$11,850 of any unused portion of the homestead exemption.

## **2. Who actually owns that 2001 Saturn?**

It may seem obvious, but another critical bit of information that you will need to obtain is who actually owns the assets that your clients want to claim as exempt. In my practice it is not unusual to find that clients don't always know definitively whose name is on various assets. The best information to determine ownership is a copy of the deed to real estate, or the title or registration for a car. Be cautious about relying on a homeowner's or automobile insurance policy to determine ownership, especially if the policy covers more than one vehicle or parcel of real estate. The policy might appear to show joint owners, when the reality is that joint policy holders actually own separate property.

Similarly, the best evidence of ownership of a bank account is a bank statement, and not all online statements will show all of the owners (or even any of the owners) of a bank account. The best evidence of ownership of a life insurance policy is the policy itself. It is worth the paper chase to ensure that the client can actually claim the exemptions you intend to claim.

Admittedly, it can be like pulling hen's teeth to get a client to provide you with all of these documents, but the most important advice you give a client before filing a bankruptcy is whether they can keep their stuff, and knowing definitively what a client owns is key to that determination.

### **3. Oops. The debtor can't claim that as exempt.**

Ownership of property is also critical to claiming an exemption at all, and to avoiding judicial liens. A debtor may lose the right to claim an exemption by transferring property away, especially if that transfer is in fraud of creditors. It may be possible to re-convey the property to the debtor and purge that fraud, but there are always issues of value and timing that should be considered. The other issue that may be critical is the debtor's reason for the initial conveyance. If the debtor can articulate non-fraudulent reasons for the conveyance (estate planning, for example) you may feel more confident in the re-conveyance than if the debtor's reasons were clearly to delay or defraud creditors.

Similarly, a debtor may lose the ability to avoid judicial liens in property that could otherwise be claimed as the debtor's homestead if that property is transferred. For example, it is not at all unusual for a family court order or settlement to direct one of the parties to deed marital property to the other. If, however, there are judicial liens that have attached to the property prior to that transfer, those liens are not avoidable by the transferor. In such a case, the transferee spouse may want to unwind the transfer, at least long enough to allow for the avoidance of those liens.

### **4. Worker's Compensation Awards:**

It is easy to assume that all worker's compensation claims will be exempt under South Carolina law, but that is not always the case. There are other worker's compensation schemes that are applicable to certain employees. For example, people who work on interstate railroads are covered by the Federal Employers Liability Act [FELA]. Seamen on navigable waters are covered by the Merchant Marine Act, and people loading and unloading vessels are covered by the Longshore and Harbor Workers' Compensation Act [DLHWC]. Several classes of federal workers, such as postal workers and employees at veterans' hospitals are covered by various programs administered by the Office of Workers' Compensation Programs [OWCP].

Some of these acts have their own internal exemption statutes that will apply to the specific statutory scheme that covers that particular type of claim. For example, section 916 of the DLHWC specifically exempts awards under that statute from the claims of creditors. 18 U.S.C. §916. However, not all such schemes have an internal exemption statute. FELA, which covers railroad workers, has no such exemption statute—apparently an oversight on the part of drafters of the statute, but one which has existed for a number of years. 45 U.S.C. §51 *et seq.*

The South Carolina statute that exempts workers' compensation awards from the claims of creditors is found in S.C.C. §42-9-360(A), which states that “[n]o claim for compensation *under this title* shall be assignable and all compensation and claims therefor shall be exempt from all claims of creditors and from taxes.” (Emphasis added.) The phrase “under this title” has been interpreted to limit the exemption to claims arising under that specific statute, meaning that the South Carolina statute may not be used to claim as exempt an award due under, for example, the FELA statutory scheme. Section 522(d)(10) offers a general exemption

for workers' compensation awards in those cases in which it is appropriate to claim under the federal exemption scheme. 11 U.S.C. §522(d)(10).

In determining which statutory scheme applies, your best resource may be the attorney who is handling the case for the client. Any time the client has an attorney for their worker's compensation claim, it is a good idea to discuss bankruptcy, especially the timing of the bankruptcy. They often have the expertise to point you in the proper direction within the various schemes, particularly those under federal law. These kinds of workers' compensation claims are not unusual. Certainly railroad workers are not rare in South Carolina; neither are longshoremen, harbor workers, postal workers, or veterans' hospital workers. Therefore, it is of critical importance to know which statutory scheme your client is claiming under, and to claim the appropriate exemption if one exists. Where no exemption is available, you may want to wait to file a bankruptcy until the worker's compensation claim is finally resolved, and advise your client how to invest those funds so as to maximize the exemptions available. While it may be possible to claim some portion of a worker's compensation award exempt as a personal injury, the South Carolina statute, which specifies "bodily injury" is unlikely to cover an entire award, since a worker's compensation award is largely based on lost wages rather than bodily injury.

#### **5. Stacking exemptions in high-earner cases:**

Attached is a Schedule C from a case which took a bit of thought and planning to maximize the clients' exemptions. To give a bit of context, the debtors are a married couple. The husband is highly educated and holds a job which provides him an annual income well into

six figures. The wife has been self-employed for most of their marriage, and purchased a commercial building from which to operate her business in 2006. The debtors put the real estate in a holding company, which they owned jointly, and both personally guaranteed the debt on the building. Like most commercial real estate purchased in 2006, the value of the real estate tanked about a year later. In addition to the problems with the real estate, the wife's business collapsed at about the same time. In order to try to salvage the business and the real estate investment, the debtors also borrowed a significant sum which was used for working capital, again with both guaranteeing that loan, and granting the lender a second mortgage on their home. By the time their case was filed, their home had been foreclosed, as had the commercial real estate, leaving a significant deficiency on the commercial loan.

Because their debts were primarily business debts, they qualified for Chapter 7, with significantly greater assets than the ordinary Chapter 7 case. In addition to vehicles and household belongings, the debtors had business assets, a sizable 401k, and a cash in savings accounts. The debtors did not have a homestead in which to claim an exemption, however, so they were limited to claiming cash in lieu of a homestead exemption. That meant, for the husband, that his cash exemption was maxed out pretty quickly, leaving more than half his savings unprotected. We were able to eek out a bit more by claiming his wildcard exemption, basing that claim on unused portions of his vehicle exemption, household goods exemption, jewelry exemption, and tools of the trade exemption. Similarly, his wife's business assets were claimed as tools of the trade, with a wildcard exemption claimed based on the unused portion of her cash exemption and jewelry exemption. While the debtors still had non-exempt cash

that went to the trustee to pay their creditors, they were able to retain enough of their savings to make a fresh start.

In order to calculate the available exemption amounts to fund the wildcard exemptions, I used a spreadsheet that mirrored the property shown on Schedule A/B, and matched the available amounts with the non-exempt amounts. This process was made easier by the fact that the debtors each had separate bank accounts. That happened to be a lucky break for me, but the next time I am faced with this type of calculation, I will recommend that the clients separate their bank accounts, and other assets where possible.

**Fill in this information to identify your case:**

Debtor 1 [REDACTED]  
 First Name Middle Name Last Name

Debtor 2 [REDACTED]  
 (Spouse if, filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: DISTRICT OF SOUTH CAROLINA

Case number [REDACTED]  
 (if known)

Check if this is an amended filing

# Official Form 106C

## Schedule C: The Property You Claim as Exempt

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.

**Part 1: Identify the Property You Claim as Exempt**

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.

- You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
- You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.

| Brief description of the property and line on <i>Schedule A/B</i> that lists this property  | Current value of the portion you own<br><small>Copy the value from <i>Schedule A/B</i></small> | Amount of the exemption you claim<br><small>Check only one box for each exemption.</small>  | Specific laws that allow exemption  |
|---|--|---|---|
| <b>1999 Mercedes Benz C280</b><br><span style="background-color: black; color: black;">[REDACTED]</span><br>Mileage: 175,000<br>Line from <i>Schedule A/B</i> : 3.1 | <u>\$3,825.00</u>  | <input checked="" type="checkbox"/> <u>\$3,825.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(2)   |
| <b>2006 Ford Focus</b><br><span style="background-color: black; color: black;">[REDACTED]</span><br>Mileage: 112,408<br>Line from <i>Schedule A/B</i> : 3.2         | <u>\$3,200.00</u>  | <input checked="" type="checkbox"/> <u>\$3,200.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(2)   |
| <b>Furniture, appliances and miscellaneous household items</b><br>Line from <i>Schedule A/B</i> : 6.1   | <u>\$6,445.00</u>  | <input checked="" type="checkbox"/> <u>\$3,222.50</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(3) Debtor 1's household goods exemption          |
| <b>Furniture, appliances and miscellaneous household items</b><br>Line from <i>Schedule A/B</i> : 6.1   | <u>\$6,445.00</u>  | <input checked="" type="checkbox"/> <u>\$3,222.50</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim of household goods exemption |
| <b>Fold Down Top Desk</b><br>Line from <i>Schedule A/B</i> : 6.2  | <u>\$50.00</u>   | <input checked="" type="checkbox"/> <u>\$50.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit    | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim                              |

| Brief description of the property and line on Schedule A/B that lists this property | Current value of the portion you own<br><small>Copy the value from Schedule A/B</small> | Amount of the exemption you claim<br><small>Check only one box for each exemption.</small>  | Specific laws that allow exemption  |
|---|---|---|---|
| <b>Art Print Collection (reproductions)</b><br>Line from Schedule A/B: 8.1          | <u>\$400.00</u>   | <input checked="" type="checkbox"/> <u>\$400.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim  |
| <b>Personal Camera Equipment</b><br>Line from Schedule A/B: 9.1                     | <u>\$250.00</u>   | <input checked="" type="checkbox"/> <u>\$250.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim  |
| <b>Kayak and Camping Equipment</b><br>Line from Schedule A/B: 9.2                   | <u>\$300.00</u>   | <input checked="" type="checkbox"/> <u>\$300.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim  |
| <b>Clothing</b><br>Line from Schedule A/B: 11.1                                     | <u>\$400.00</u>   | <input checked="" type="checkbox"/> <u>\$400.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(3) Debtor 2's claim  |
| <b>Cash</b><br>Line from Schedule A/B: 16.1   | <u>\$251.00</u>   | <input checked="" type="checkbox"/> <u>\$251.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's claim  |
| <b>Carolina Foothills checking account</b><br>Line from Schedule A/B: 17.1          | <u>\$1,101.96</u>   | <input checked="" type="checkbox"/> <u>\$1,101.96</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(5) Debtor 1's claim  |
| <b>Carolina Foothills savings account</b><br>Line from Schedule A/B: 17.2           | <u>\$12,834.36</u>  | <input checked="" type="checkbox"/> <u>\$4,723.04</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(5) Debtor 1's claim  |
| <b>Carolina Foothills savings account</b><br>Line from Schedule A/B: 17.2           | <u>\$12,834.36</u>  | <input checked="" type="checkbox"/> <u>\$2,625.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 1's vehicle exemption                  |
| <b>Carolina Foothills savings account</b><br>Line from Schedule A/B: 17.2           | <u>\$12,834.36</u>  | <input checked="" type="checkbox"/> <u>\$1,427.50</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 1's household goods exemption          |
| <b>Carolina Foothills savings account</b><br>Line from Schedule A/B: 17.2           | <u>\$12,834.36</u>  | <input checked="" type="checkbox"/> <u>\$1,175.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 1's jewelry exemption                  |
| <b>Carolina Foothills savings account</b><br>Line from Schedule A/B: 17.2           | <u>\$12,834.36</u>  | <input checked="" type="checkbox"/> <u>\$598.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 1's exemption for books/tools of trade |

Debtor 1  
Debtor 2

Case number (if known)

| Brief description of the property and line on Schedule A/B that lists this property                                       | Current value of the portion you own<br><small>Copy the value from Schedule A/B</small> | Amount of the exemption you claim<br><small>Check only one box for each exemption.</small>  | Specific laws that allow exemption   |
|---|---|---|--|
| <b>TD Bank checking account for [REDACTED], LLC</b><br>Line from Schedule A/B: 17.3                                       | <u>\$1,306.00</u>   | <input checked="" type="checkbox"/> <u>\$1,306.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's cash exemption                      |
| <b>TD Bank personal checking account</b><br>Line from Schedule A/B: 17.4  | <u>\$232.00</u>   | <input checked="" type="checkbox"/> <u>\$232.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's cash exemption                      |
| <b>TD Bank personal savings account</b><br>Line from Schedule A/B: 17.5   | <u>\$100.40</u>   | <input checked="" type="checkbox"/> <u>\$100.40</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's claim                               |
| <b>[REDACTED] 401k plan</b><br>Line from Schedule A/B: 21.1   | <u>\$335,716.00</u>   | <input checked="" type="checkbox"/> <u>100%</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit       | S.C. Code Ann. § 15-41-30(A)(14) Debtor 1's claim                              |
| <b>Spartanburg Water deposit</b><br>Line from Schedule A/B: 22.1  | <u>\$20.00</u>  | <input checked="" type="checkbox"/> <u>\$20.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit    | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's cash exemption                      |
| <b>Current year's tax refund, if any</b><br>Line from Schedule A/B: 28.1  | <u>Unknown</u>  | <input checked="" type="checkbox"/> <u>\$1,365.60</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(5) Debtor 2's cash exemption                      |
| <b>[REDACTED] office furniture (desk, chair, etc)-property of [REDACTED], LLC</b><br>Line from Schedule A/B: 39.1         | <u>\$300.00</u>   | <input checked="" type="checkbox"/> <u>\$300.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 2's jewelry exemption |
| <b>Home computers</b><br>Line from Schedule A/B: 39.2   | <u>\$350.00</u>   | <input checked="" type="checkbox"/> <u>\$350.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit   | S.C. Code Ann. § 15-41-30(A)(3)  |
| <b>[REDACTED] etc, which are property of [REDACTED], LLC. See itemized list attached.</b><br>Line from Schedule A/B: 40.1 | <u>\$4,300.00</u>   | <input checked="" type="checkbox"/> <u>\$1,750.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(6) Debtor 2's claim                               |
| <b>[REDACTED] etc, which are property of [REDACTED], LLC. See itemized list attached.</b><br>Line from Schedule A/B: 40.1 | <u>\$4,300.00</u>   | <input checked="" type="checkbox"/> <u>\$2,550.00</u><br><input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit | S.C. Code Ann. § 15-41-30(A)(7) Unused portion of Debtor 2's cash exemption    |

3. Are you claiming a homestead exemption of more than \$155,675?

(Subject to adjustment on 4/01/16 and every 3 years after that for cases filed on or after the date of adjustment.)

- No
- Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
- No
- Yes

Debtor 1  
Debtor 2



Case number (if known)

