IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:	)
	)
CLERK'S INFORMATION REGARDING	)
11 U.S.C. § 522(q) AND "ELECTING"	)
EXEMPTIONS UNDER 11 U.S.C. §	)
522(b)(3)	)

EXEMPTION CAP UNDER 11 U.S.C. § 522(q)

The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") added subsection (q) to § 522 of the Bankruptcy Code to limit, in certain circumstances, the available homestead exemption for debtors who "elect" under § 522(b)(3)(A) to exempt property under State or local law. A debtor's homestead exemption is capped at $146,450.00 (2012) if:

> As a result of electing under subsection (b)(3)(A) to exempt property under State or Local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds the aggregate $146,450 [2012] if –
>
> (A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in [18 U.S.C. § 3156]), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of [title 11]; or
>
> (B) the debtor owes a debt arising from—
>
> (i) any violation of the Federal securities laws . . ., any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;
>
> (ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;
>
> (iii) any civil remedy under [18 U.S.C. § 1964]; or
>
> (iv) any criminal act, intentional tort, or willful or reckless misconduct that cause serious physical injury or death to another individual in the preceding 5 years.

11 U.S.C. § 522(q)(1).

Even though a "plain language" reading of the statute may lead a debtor to believe that § 522(q) only applies to a debtor who "elected" to exempt property under State or local law — that is, a debtor who resides in a state that has not "opted out" of the Federal exemption scheme — Congress intended that § 522(q)'s "homestead cap" apply to debtors in every state, regardless of whether a debtor actually had a choice of exemption scheme. *See e.g.*, *In re Kaplan*, 331 B.R.

483, 488 (Bankr. S.D. Fla. 2005) (citing H.R. Rep. No. 109-31, at 15-16 (2005) ("[t]he bill also restricts the so-called 'mansion loophole'").

At the recommendation of the Bankruptcy Methods and Analysis Program at the Administrative Office of the United States Courts, the Clerk's Office is providing this information regarding the Congressional intent behind the enactment of 11 U.S.C. § 522(q) for the benefit of debtors and attorneys practicing in this District. No representation is made regarding judicial interpretation of this statute in this District, or to the legal sufficiency of the Congressional intent behind § 522(q)'s enactment.

Notably, because West Virginia's "homestead" exemption is capped well below the $146,450.00 statutory threshold (which is indexed yearly) this issue will only arise in this District when a debtor uses another state's exemption scheme, which permits a homestead exemption greater than the statutory cap.

Updated: February 11, 2013