Florida Chapter 7 & 13 Bankruptcy special rules

If you are considering filing for Chapter 7 or Chapter 13 bankruptcy in the state of Florida, you may have questions concerning property that is exempt during the bankruptcy. In short, [exempt](https://www.myfloridalaw.com/bankruptcy/chapter-7/) means you get to keep that asset at the end of your bankruptcy case.

Chapter 13 bankruptcy is generally considered “reorganization,” while Chapter 7 is considered “liquidation.” To qualify for Chapter 7, you must have very little disposable income and pass the means test, while qualification for Chapter 13 bankruptcy requires less than $383,175 in unsecured debt or $1,149,525 of secured debt. A discharge for Chapter 7 bankruptcy generally takes from three to five months, while a Chapter 13 discharge is not received until the payment plan is completed (from three to five years). Non-exempt property will be sold to pay creditors in a [Chapter 7](https://www.myfloridalaw.com/new-port-richey-bankruptcy-attorneys/) bankruptcy, while Chapter 13 debtors can keep most of their property, but must pay their unsecured creditors an amount which is equal to the value of their non-exempt assets. A Chapter 7 bankruptcy allows you to quickly discharge most of your debts, obtaining a fresh financial start. Chapter 13 bankruptcy allows you to catch up on missed payments and retain your property.

 In the state of Florida, debtors are **not** allowed to use the federal bankruptcy exemptions, rather residents of the state must use the state exemptions. Federal bankruptcy exemptions, as well as state bankruptcy exemptions, protect specific property. In case you are curious as to the differences between federal and Florida state exemptions, here are the federal exemptions: The federal amounts are adjusted every three years in April, and if no dollar amount is stated, you can exempt the entire asset. The federal homestead exemption allows you to protect $22,975 of equity in your home, $3,675 for your automobile, $1,550 for your jewelry, $12,250 total on household goods, furnishings, appliances, books, clothing, animals, musical instruments or crops, $2,300 for tools of your trade, all health aids, all life insurance policies which have not matured, and $12,250 in the loan value of a life insurance policy (for whole life policies).

In fact, Florida’s bankruptcy exemptions are extremely favorable to residents, including unlimited exemptions for homestead, annuities, and the cash surrender value of a life insurance policy. You must have lived in the state of Florida for a minimum of 730 days prior to filing your bankruptcy petition to be eligible to use the property and other exemptions in the state.  If you are ineligible for any state’s exemptions, you will be allowed to use the federal bankruptcy exemptions. Florida has one of the most generous homestead exemptions in the entire country. Under Florida bankruptcy laws you are allowed to exempt an unlimited amount of value in your home or any other property which is covered by the homestead exemption. The only restrictions include: the property may not be bigger than half an acre in a municipality, or 160 acres elsewhere. You must have owned the property in question for a minimum of 1,215 days before you file for your Florida bankruptcy. Under the bankruptcy laws in the state of Florida, personal property up to $1,000 is exempt. You get an extra $4000 in protected assets if you do not own real estate (or are using the homestead property exemption). The Florida motor vehicle bankruptcy exemption allows you to protect $1,000 in car equity, or $2,000 if you are married and filing joint bankruptcy. The motor vehicle bankruptcy exemption in Florida plays a major role in determining whether your bankruptcy trustee can keep your vehicle, selling it to unsecured creditors. Other pensions which are exempt during a Florida bankruptcy include tax-exempt retirement accounts such as 401(k)s, 403(b)s, profit sharing plans, money purchase plans, SEP and SIMPLE IRA’s, state and county pensions, firefighter pensions, police officer pensions, IRAs and Roth IRAs (up to $1,171,650) and teacher pensions. The rule of thumb is that any pensions that are covered under federal tax exemptions are considered fully exempt property.  When in doubt ask your plan administrator whether the plan is an “ERISA” plan. If it is – the retirement plan is exempt. Earned income tax credits are protected under the Florida bankruptcy wage exemption as are public assistance benefits, unemployment benefits, VA benefits, workers’ compensation benefits, crime victim’s compensation, alimony and child support necessary for support and Social Security benefits. As far as insurance benefits are concerned, the following are protected under the Florida bankruptcy wage benefits exemption: Death benefits which are payable to a specific person, life insurance cash surrender value, annuity contract proceed except winnings from the lottery, disability or illness benefits and fraternal benefit society benefits. A debtor is allowed to claim up to $4,000 of personal property if he or she does not take advantage of the homestead exemption. For joint debtors in the state of Florida, the wildcard exemption is $8,000.

This is normally conducted under the “honor system”. It is assumed that you know the condition and value of your assets, therefore your Florida bankruptcy attorney relies on you to submit the correct values on your Questionnaire. The Trustee has 30 days after meeting with you in which to object to any of your exemptions—if there is no objection within that 30-day periods, you can assume the asset is exempt and you are allowed to do with it what you choose.