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Kentucky v. Florida – Choice of Residency Planning Chart

Protecting Assets From Creditors

KENTUCKY	FLORIDA
Bankruptcy Kentucky is a state that "opts in" to Federal bankruptcy exemptions.[1] Federal bankruptcy exemptions[2] protect the following: <u>Real Estate</u>: Up to $21,625 of the debtor's aggregate interest in: (1) real property or personal property that the debtor or debtor's dependent uses as a residence; (2) a cooperative owning property the debtor or debtor's dependent uses as a residence; or (3) a burial plot for the debtor or the debtor's dependent	**Bankruptcy** Florida is a state that "opts out" from Federal bankruptcy exemptions.[3] Florida state law bankruptcy exemptions include the following: <u>Homestead Real Estate</u>: Article X, section 4(a) of Florida's constitution protects real property owned by a natural person from forced sale. There is no limitation on the value of the homstead exemption. The exemption protects 1/2 acre (residence only) within a municipality, and up to 160 contiguous acres (and improvements thereon) outside a municipality. There are exceptions to this broad

[1] KRS 427.170; <u>MPM Financial Group v. Morton</u>, 289 S.W.3d 193, 196 (Ky. 2009).
[2] 11 U.S.C. § 522(d).
[3] F.S. 222.20

Motor Vehicle: Up to $3,450 of the debtor's interest in one motor vehicle

Household Goods: Up to $550 in value in any particular item, or $11,525 in aggregate value in household furnishings, goods, clothes, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or debtor's dependent

Jewelry: Up to $1,450 in aggregate value in jewelry held primarily for the personal, family, or household use of the debtor or debtor's dependent

Other Property/"Floating" Exemption: *Any* property, not to exceed $1,150 in value, plus up to $10,825 of any unused amount of the $21,625 real estate exemption provided for above

"Tools of Trade": Any implements, professional books, or tools of the trade of debtor or debtor's dependent, not to exceed $2,175 in value

Life Insurance (Death Benefit): Any unmatured life insurance

protection for property taxes, purchase mortgages or home improvement loans, and mechanics/workmen liens. Article X of the constitution also protects personal property to the value of $1,000. These exemptions inure to the benefit of a surviving spouse or heirs of the property owner.

Life Insurance (Death Benefit): unless the policy proceeds are payable by designation or default to the insured or the insured's estate, policy proceeds are protected from creditors of the insured. There is an exception to this general rule if the policy terms or a valid policy assignment provides otherwise.[4]

Life Insurance (Cash Value): The cash surrender value of a life insurance policy on the life of a Florida resident and the proceeds of an annuity contract issued to a Florida resident are protected from creditors of the insured or the annuitant (unless the policy or annuity was issued for the benefit of the creditor).[5]

Retirement Accounts. Florida protects retirement account assets from creditors of the owner, participant, or beneficiary if the account is substantially compliant with tax exemption requirements under section 401, 403, 408, 409, 414, 457, or 501 of the Internal Revenue Code. (It is not necessary that the plan be an ERISA-qualified plan in order to gain creditor protection.) Direct transfers or rollovers under IRC section 402(c) don't void the creditor protection. Note, however, that some courts have held that

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[4] F.S. 222.13
[5] F.S. 222.14
[6] F.S. 222.21
[7] F.S. 222.22

contract owned by the debtor (except a credit life insurance contract) Life Insurance (Cash Value): Up to $11,525 in aggregate cash value (or policy loan value) of any unmatured life insurance contract owned by the debtor, if the insured is the debtor or debtor's dependent. The protected amount is reduced by any cash value applied by the insurance company toward premium payment or to prevent policy forfeiture [11 USC sec. 542(d)] Health Aids: professionally prescribed health aids for the debtor or debtor's dependent Government Benefits/Alimony/Retirement Benefits: the debtor's right to receive social security, unemployment, welfare, veterans', disability, or illness benefit(s), the debtor's right to receive alimony, support, or maintenance (to the extent reasonably necessary for support of the debtor or debtor's dependent), stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service (to the extent reasonably necessary for support of the debtor or debtor's dependent) Personal Injury/Life Insurance/Tort Proceeds: The debtor's right to receive (or property traceable to) a crime victim reparation award, recovery for wrongful death of a person of whom the debtor was a dependent (to the extent reasonably necessary for support of the debtor or debtor's dependent), life insurance proceeds from the	inherited IRAs are not exempt from the new owner's creditors (see, e.g., *In re Chilton*), and accounts remain subject to obligations under QDROs or to a surviving spouse.[6] MSAs/529s/Hurricane Insurance Accounts. Creditors cannot reach assets in medical savings accounts (IRC section 220 or 223), Coverdell education IRA, section 529 plans, or hurricane savings accounts (to provide for deductibles under property insurance policies, but only when Federal law provides tax-deferred or tax-exempt status for such accounts).[7]

death of a person of whom the debtor was a dependent when the person died (to the extent reasonably necessary for support of the debtor or debtor's dependent), and up to $21,625 in personal injury damages (not including lost wages or pain and suffering) of the debtor or a person on whom the debtor is dependent, or payment for loss of future earnings of the debtor, or a person on whom the debtor is dependent (to the extent reasonably necessary for support of the debtor or debtor's dependent) <u>Retirement Funds</u>: Retirement funds to the extent those funds are in a fund or account that is exempt from taxation under IRC sections 401, 403, 408, 408A, 414, 457, or 501(a) [this includes IRAs and 401(k)s] **Non-bankruptcy (Kentucky state law**) *Retirement Accounts* ERISA (Federal law) protects 401(k), 403(b), and 457 plans. KRS 427.150(2)(f) protects IRAs (except for amounts contributed within 120 days of entry of a judgment; there are also exceptions for maintenance and child support) *Section 529 Plans* Kentucky Educational Savings Plan Trust contributions and earnings are protected from creditors by KRS 164A.350(9) *Tort recovery* KRS 427.150 provides limited protection for certain tort recoveries for personal injury and loss of future earnings.	

Alimony & child support KRS 427.150 protects these payments, to the extent they are reasonably necessary for the support of a person and the person's dependent(s)	

Taxes	
Estate/Inheritance Taxes	
KENTUCKY	FLORIDA
At least until December 31, 2010, Kentucky has no estate tax (a limited "pick-up" tax relating to the federal estate tax credit for state death taxes paid could return if EGTRRA sunsets as scheduled).[8] Kentucky does impose an inheritance tax. (An estate tax is imposed on wealth of the decedent, while an inheritance tax is imposed on wealth that passes to a particular beneficiary.) In many instances, however, Kentucky exempts transfers of interests in IRAs and retirement accounts to beneficiaries.[9] Kentucky groups beneficiaries into three classes: Class A, Class B, and Class C.[10]	Florida has no inheritance tax. Florida's limited "pick-up" estate tax is dormant until at least December 31, 2010. (Details depend on whether EGTRRA sunsets as scheduled.) Note, however, that if a Florida resident owns real property in another state (e.g., Kentucky), estate or inheritance tax could be due with respect to that real property. See, e.g., KRS 140.010.

[8] KRS 140.130
[9] KRS 140.063
[10] KRS 140.070
[11] KRS 140.080

Class A Beneficiaries of the decedent include: parents, a surviving spouse, children, stepchildren, most (but not all) adoptees, grandchildren, step-grandchildren, children of most (but not all) adoptees, siblings, or half-siblings. *Class B Beneficiaries* of the decedent include: nephews, nieces, half-nephews or half-nieces, aunts, uncles, daughters-in-law, sons-in-law, or great-grandchildren. *Class C Beneficiaries* of the decedent are all other takers who aren't exempt charities or municipalities under KRS 140.060. There is no tax on transfers to Class A Beneficiaries. There is a $1,000 exemption for transfers to Class B Beneficiaries, and a $500 exemption for transfers to Class C Beneficiaries.[11] Marginal inheritance tax rates range between 4% and 16% for Class B Beneficiaries, and between 6% and 16% for Class C Beneficiaries. The highest marginal rate begins at $200,000 for Class B Beneficiaries, and $60,000 for Class C Beneficiaries.	

Income Taxes

KENTUCKY	FLORIDA
Kentucky levies a progressive state income tax beginning at 2% on $3,000 of net income, rising to 6% on income over $75,000.[12] (Because a 5.8% bracket begins at $8,000, for basic planning purposes, one can think of Kentucky having a 6% flat income tax.)	Florida has no state income tax. Individuals domiciled in Florida may still be subject to income tax in other states with which they have substantial connections (e.g.,

[12] KRS 141.020

Kentucky also authorizes cities to levy occupational license taxes (city income taxes by any other name…). Louisville has a 2.2% occupational license tax, while Lexington's is 2.75%.	owning rental property, part year resident, etc.)

Gift Taxes

KENTUCKY	FLORIDA
Kentucky does not have a gift tax.	Florida does not have a gift tax.

Generation-Skipping Transfer Taxes

KENTUCKY	FLORIDA
Kentucky does not impose generation-skipping transfer taxes (but see above for Kentucky inheritance taxes applying to transfers to great-grandchildren and other Class C Beneficiaries)	Florida has only a "pick-up" GST tax, which is currently non-operative (but may return, if EGTRRA sunsets as scheduled)[13]

Intangible Taxes

KENTUCKY	FLORIDA
Kentucky used to have an intangible property tax, but it was repealed effective January 1, 2006 (2005 Session House Bill 272)	Florida used to have an intangible personal property tax, but it was repealed (effective January 1, 2007)

Sales Taxes

KENTUCKY	FLORIDA
Kentucky has a 6% sales tax.[14]	Florida's state-level sales tax is 6%. Florida authorizes counties to impose an additional discretionary sales surtax. Some counties levy no such tax, but most counties do, at levels ranging from 0.5% to 1.5%.

[13] F.S. 198.201
[14] KRS 139.200

N.B. Kentucky also imposes a real estate transfer tax under KRS 142.050, while Florida imposes a documentary stamp transfer tax (see F.S. 201.01 *et seq*.)

This chart was inspired by the fine chart prepared by Greg Herman-Giddens for his *North Carolina Estate Planning Blog* providing a similar comparison of Florida and North Carolina creditor protection and tax laws. (http://www.ncestateplanningblog.com/2010/03/articles/asset-protection/north-carolina-vs-florida-creditor-protection-taxes/)

For more information on Florida's tax and asset protection laws, see David Pratt and Lisa Stern, Tax and Asset Protection Benefits Afforded Florida Domiciliaries, Fla. B. J. 32, 27 (Feb. 2010). (https://flabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/259f3d6a2209d85f852576b9006c9150!OpenDocument)

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