

**THE BANKRUPTCY EXEMPTION
STRUCTURE IN THE SOUTHEASTERN
UNITED STATES: A JUXTAPOSITION
or
(IS THE GRASS REALLY GREENER?)**
*Gloria Jean Liddell

I. INTRODUCTION

A CBS Newsmagazine, *60 Minutes*, brought to the public's attention the apparent beneficence of the bankruptcy exemption structure of the state of Florida. The newscast highlighted the bankruptcy case of a Florida resident who, although he had filed bankruptcy, was able to exempt and retain free from the reach of creditors his entire *homestead*, which can only modestly be described as a palatial estate. The homestead was speculatively valued at several million dollars.

How varying are the bankruptcy exemption structures adopted by various states? Is the grass really greener on the other side? To respond to these issues it is important to note that, although bank-

* Assistant Professor, Mississippi State University; J.D., 1976, Howard University; M.A.T., 1990, Antioch University; B.S., 1973, District of Columbia Teacher's College. A special word of appreciation to Ms. Priscilla Gardner, graduate assistant, for her invaluable assistance in the research and preparation of the graphs and charts. Appreciation is expressed also to the Division of Business Research, College of Business and Industry, Mississippi State University for its generous financial support. Thanks to my husband, Pearson Liddell, Jr., for his unfailing love and support. No words can express my heartfelt gratitude.

ruptcy is a creature of federal law,¹ states have the right to *opt-out* of the federal exemption structure if they so desire.² Many states have elected to do so, and all of the states which are the subject of this paper have opted-out of the federal exemption structure. Thus, residents of these states have no choice but to utilize the state exemption structures.

The objective of this paper is to compare various aspects of the opt-out exemption structures adopted by the states within the southeastern United States, including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. In addition, certain aspects of the exemption structures of these states will be juxtaposed against the federal exemption structure, thereby providing a comparison of the states within this model with all states which have not opted out of the federal exemptions.³ In this connection, it should be noted that Congress recently passed the Bankruptcy Reform Act of 1994, signed into law by President Clinton on October 22, 1994.⁴ In this law, the federal exemptions analyzed herein were essentially doubled in amount,⁵ and an automatic provision for future adjustments tied to the consumer price index was thereby codified.⁶

II. OVERVIEW

The amount of property a debtor is allowed to retain is of primary concern to most debtors contemplating whether or not to initiate a bankruptcy proceeding. If in spite of the commencement of a bankruptcy case, all of one's property would be lost, bankruptcy certainly would lose a significant portion of its desirability. Statutory exemptions allow debtors to retain certain types of property.

¹ Federal bankruptcy law encompasses the entirety of Title 11 of the United States Code. 11 U.S.C.S. § 522(b)(1) (1994).

³ It is not within the scope of this article to do an in-depth analysis of the case law surrounding each of the exemptions within each state; a cursory examination is instead done for comparison purposes. To do otherwise would constitute an opus of too great a magnitude for these purposes. Moreover, few would endeavor to read it. In addition, assets such as pensions plans, disability benefits, worker's compensation life insurance, annuity contracts and other assets of that nature will not be analyzed due to the complex character of these types of plans.

⁴ Pub. L. No. 103-394, 108 Stat. 4106 (codified in scattered sections of 11 U.S.C.S.).

⁵ 11 U.S.C.S. § 522(d) (1994).

⁶ 11 U.S.C.S. § 104(b) (1994).

Once exemptions are claimed, the exempt property is removed from the *estate*⁷ of the debtor, thereby becoming free from administration by the trustee who is appointed to administer the case. The property is free from claims of creditors to the extent of the allowable exemption. *A fortiori*, a debtor will normally attempt to exempt as much property as possible. Since an attempt, if not statutorily constrained, could conflict with the historic purpose for which such exemptions were designed; that is, "to protect a debtor from creditors by permitting the debtor to retain the basic necessities of life so that after creditors have levied on or received all nonexempt property the debtor would not be left destitute and a public charge."⁸ Statutes, however, being creatures of human invention, cannot possibly fit every situation perfectly, and oftentimes fall far short of the mark of carrying out the purpose for which they were designed.

The imperfectness of this situation may subject itself to amplification in this particular setting where a federal law, the U.S. Bankruptcy Code (*the Code*), carves out a portion of its jurisdiction by allowing each individual state to make its own exemption structure law, while most of the remainder of that federal law remains applicable. In bankruptcy circles, this process, as stated previously, is referred to affectionately as opting-out. The result is a potpourri of laws which may or may not bear resemblance to either the exemptions contained in the Code⁹ or to each other.¹⁰ Hence, the initial query posited is, maybe the grass really is greener?

III. COMPARATIVE ANALYSIS

A. WHEN A HOUSE IS NOT A HOME (STEAD) AND OTHER RESIDENTIAL ISSUES

⁷ See 11 U.S.C.S. § 541(a) (1994) (defining *estate* as generally including all legal and equitable interests of the debtor in everything plus the kitchen sink, with a few limited exceptions).

⁸ 9A Am. Jur. 2d *Bankruptcy* § 1098 (1991).

⁹ 11 U.S.C. § 522(d) (1994) (containing the federal exemptions available to those debtors residing in states that have not *opted-out*).

¹⁰ See generally National Bankruptcy Conference, *Reforming the Bankruptcy Code: The National Bankruptcy Conference's Bankruptcy Code Review Project Final Report*, May 1, 1994 (on file with author). The report recommended the repeal of the federal bankruptcy exemption opt-out provisions, because: "[M]ost states (36 in all) have opted out, largely eliminating the uniformity in bankruptcy law across state lines that the drafters sought to achieve" *Id.* at 109.

1. Extent of Exemption

There truly is "... *No Place like Home(stead) in Florida*"¹¹ As demonstrated,¹² Florida's homestead exemption extends *ad infinitum*,¹³ whereas, the other states in the model restrict the dollar value of the homestead property exemption. Mississippi has a seventy-five thousand dollar homestead exemption¹⁴ while the federal exemptions allow only fifteen thousand dollars, even with the most recent amendment to the federal exemption structure.¹⁶ Alabama, Georgia, Kentucky, South Carolina and Tennessee each allow even less with five thousand dollars as their homestead exemption for certain property used as a residence.¹⁶

In the case of a joint proceeding,¹⁷ a husband and wife in some states are entitled to *stack* their exemptions to increase the value of the exemption.¹⁸ The Fourth Circuit held in *Cheeseman v. Nachman*¹⁹ that a state cannot have an exemption scheme that conflicts with subsection 522(m) of the Code which provides for debtors to claim separate exemptions. However, two years later the Eleventh Circuit reached an opposite result in *First National Bank of Mobile v. Norris*²⁰ where the court required both debtors to share a single exemption, notwithstanding section 522(m) of the Code. Alabama and South Carolina both, however, have provisions in their statutory scheme allowing doubling of exemptions.²¹ In Tennessee the debtors may claim up to seventy-five hundred dollars as their homestead exemption in a joint proceeding.²²

¹¹ Donna Litman Seiden, *There's No Place Like Home(stead) in Florida - Should it Stay that Way?*, 18 Nova L. Rev. 801 (1994).

¹² See Appendix 1. The figures contained in this paper are for simplistic comparison purposes only, and do not reflect various idiosyncracies as may have developed in individual states' case law.

¹³ FLA. CONST. art. X, § 4(a)(1).

¹⁴ MISS. Code Ann. § 85-3-21 (1993).

¹⁵ 11 U.S.C.S. § 522(d)(1) (1994).

¹⁶ ALA. CODE § 6-10-2 (1994); GA. CODE ANN. § 44-13-100(a)(l) (1994); KY. REV STAT ANN. § 427.060 (Baldwin 1993); S.C. CODE ANN. § 15-41-30 (1) (Law Co-OD 1993)-TFNN CODE ANN. § 26-2-301 (1994).

¹⁷ 11 U.S.C.S. § 302 (1994). See also Fed. R. Bankr. R 1015(b).

¹⁸ See 9A Am. Jur. 2d *Bankruptcy* § 1114 (1991). *Stacking* is applicable to all exemptions, not just the homestead provision in those states that have determined this provision to be applicable.

¹⁹ 656 F.2d 60 (4th Cir. 1981).

²⁰ 701 F.2d 902,905 11th Cir. 1983).

²¹ ALA. CODE § 6-10-2 (1994); S.C. CODE ANN. § 15-41-30(1) (Law Co-op 1993)

²² TENN. CODE ANN. § 26-2-301(a) (1994).

Limitations are placed on the amount of the exemption also to the extent that most of these states allow the debtor to exempt only the unencumbered portion of the property, that is, only to the extent of actual equity in the property. Kentucky, however, is even more restrictive than most states in that its homestead exemption does not apply to any "debt or liability that existed prior to the purchase of the property or the erection of the improvements thereon."²³ Some states go even further in not allowing a debtor to exempt any property in which the debtor does not have equity.²⁴ Tennessee, on the other hand, does not restrict its homestead exemption to equity interest.²⁶ Georgia also recognizes that a debtor's interest in property should not be limited to his equity, but should also include the debtor's "...right to possession, equity of redemption and right to create future equity..."²⁶ Additionally, some relief is provided with respect to such limitations in an applicable portion of the Code which allows a debtor to "avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled" if the lien is a judicial lien or a nonposses- sory, nonpurchase-money security interest in certain personal, family or household items.²⁷ Furthermore, a provision in the newly enacted Bankruptcy Reform Act makes it clear that a debtor is entitled to take advantage of this avoidance provision whether or not the liens on the property exceed the value of the property!"

Separate and apart from dollar value considerations, Alabama, Florida and Mississippi each limit the amount of acreage that can be claimed pursuant to this type of exemption to one hundred sixty acres. Florida goes one step further to require that the one hundred sixty acres be situated outside of a municipality, and limits the amount of acreage to one-half acre within a municipality.²⁹ Georgia,

²³ KY. Rev. Stat. Ann. § 427.060 (Baldwin 1993).

²⁴ See, e.g., *In re Yates*, 13 B.R. 80 (E.D.N.C. 1981) and *In re Boteler*, 5 B.R. 408 (S.D. Ala. 1980) (holding that a debtor must have equity in the property in order for the property to be exempt).

²⁵ *Farley v. Moore's Bldg. Supplies*, 19 B.R. 868 (E.D. Tenn. 1982).

²⁶ See *Cravey v. L'Eggs Prods., Inc.*, 100 B.R. 119 (S.D. Ga. 1989) and *Moyer v. Fleet Fin.*, 39 B.R. 211 (N.D. Ga.), *aff'd*, 746 F.2d 814 (11th Cir. 1984), *cert. denied*, 471 U.S. 1053(1985).

²⁷ 11 U.S.C.S. § 522(f) (1994).

²⁸ 11 U.S.C.S. § 522(f) (2) (A) (1994) (providing a mathematical means for determining whether an interest in property has been impaired in order to clarify that a debtor may avoid liens on property to preserve a possessory interest even where the debtor has no equity.)

²⁹ Ala. Code § 6-10-2 (1994); Fla. Const. art. X, § 4(a)(1); Miss. Code Ann. § 85-3-21 (1993).

Kentucky, North Carolina, South Carolina, Tennessee and the federal exemptions, on the other hand, contain no such limitation.

2. Use or Occupancy: The *sine qua non* of the Homestead Exemption³⁰

Most states require that a debtor be in occupancy of the premises claimed as a homestead in order to take advantage of the homestead exemption and that the property actually be used as a residence.³¹ Tennessee is an exception, however, in that, although the plain language of the statute states that the homestead exemption applies to real property owned and used as a "principal place of residence," the case law provides that "[O]ne does not have to reside on the homestead in Tennessee, since the right exists if the head of the family owns or is possessed of the land."³² In addition, in 1968 Florida amended its Constitution by removing the phrase "resided in the state"³³ from the homestead exemption law, thereby relaxing the residency requirement. Not only is it apparently not necessary to reside on the homestead property, but also, it appears that the debtor need not reside in the state,³⁴ although *domicile* or *permanent residency* remains a relevant inquiry.³⁵ Mississippi also has a special *senior citizen discount* for persons over the age of sixty to be free from the residency requirement.³⁶

³⁰ 9A Am. Jur. 2d *Bankruptcy* § 1146 (1991).

³¹ See *id.* See also *In re Love*, 42 B.R. (E.D.N.C. 1984), *ajfd*, 54 B.R. 947 (E.D.N.C. 1985); *Brinson v. Edwards*, 10 So. 219 (Ala. 1891); *Blum v. Carter*, 63 Ala. 235 (1879) Actual occupancy by a surviving spouse and minor children is an exception in Alabama. Ala. Code § 6-10-102 (1994).

³² *Hinds v. Buck*, 150 S.W.2d 1071 (1941). See also *Dunn v. McLeary*, 5 Tenn Civ. App. (5 Higgins) 600 (1914) (allowing homestead to be claimed in vacant lands)

³³ Michael G. Williamson & Benjamin P. Butterfield, *Florida Exemption Law- Haven for Debtors or Protection from Destitution*, 15 Stetson L. Rev. 437, 449 n 61 (1986)

³⁴ *Id.* (citing *Reed v. Leitner*, 86 So. 425 (1920) which states that Florida property can be claimed as homestead even though the debtor may temporarily reside in another state for business, education or health purposes, or for family comfort)

³⁵ See *id.* at 448. See also *Engel v. Engel*, 97 So. 2d 140, 142 (Fla Dist Ct App 1957) ("[P]ermanency does not mean ... that there must be an avowed and conclusive intent to forever remain in a given place of abode, eternally or even 'until death do us part.' The only proper concept of permanency ... means the presence of the intention to reside at that particular place for an indefinite period of time.")

³⁶ See *supra* note 14.

3. When A Home(stead) is Not a House

It is consistently held that homestead exemptions are to be liberally construed in favor of the debtor.³⁷ Most of the states within this model recognize, that a home is not always a house; that is, they allow a debtor to obtain an exemption in properties other than real property. In Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and in the federal exemption structure, debtors can utilize the homestead exemption for real or personal property used as a residence, thus, encompassing such items of personal property as mobile homes, modular homes, house boats and other similar structures.³⁸

In both Mississippi and Tennessee, the homestead exemption appears to be restricted to real property. Some homestead statutes allow interests less than *ownership* interests to be included within the homestead exemption structure. In Florida and Tennessee certain leasehold interests are exempt by statute.³⁹ In Mississippi courts have stated that *land* embraces leasehold interests⁴⁰ and that all that is necessary is that the exemptionist have an "assignable interest."⁴¹

Finally, many states have expressly provided by statute for exemption of *the permanent home*, that is, the burial plot, either as an alternative to the homestead exemption or as a separate provision. Specifically, the states within this model which have such exemptions include the federal exemptions, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Alabama. Alabama has the added feature of exempting the church pew or seat.⁴²

³⁷ See, e.g., *First Ala. Bank v. Renfro*, 452 So. 2d 464 (Ala. 1984); *Sherbill v. Miller Mfg. Co.*, 89 So. 2d 28, 31 (Fla. 1956); *Levins-Zukoski Mercantile Co. v. McIntyre*, 47 So. 435 (Miss. 1908). See also *Dickinson V. Mayer*, 58 Tenn. 515 (1872).

³⁸ Ala. Code § 6-10-2 (1994); Fla. Stat. Ann. § 222.01 (West 1994); Ga. Code § 44-13-100(a)(1) (1994); Ky. Rev. Stat. Ann. § 427.060 (Baldwin 1993); N.C. Gen. Stat. § 1C-1601(a)(1) (1993); S.C. Code Ann. § 15-41-30(1) (Law Co-op. 1993); 11 U.S.C.S. § 522(d)(1) (1994).

³⁹ Fla. Stat. Ann. § 222.05 (West 1994); Tenn. Code Ann. § 26-2-303 (1994).

⁴⁰ *Johnson v. Richardson*, 33 Miss. 462 (1857).

⁴¹ *Clark v. Edwards*, 177 So. 361 (Miss., 1937), *overruled on other grounds*, *Dogan v. Cooley*, 185 So. 783 (Miss. 1937).

⁴² Ga. Code Ann. § 44-13-100(a)(1) (1994); Ky. Rev. Stat. Ann. § 427.060 (Baldwin 1993); N.C. Gen. Stat. § 1C-1601(a)(1) (1993); S.C. Code Ann. § 15-41-30(1) (Law. Co-op. 1993); 11 U.S.C.S. § 522(d)(1) (1994) (including the burial plot exemption as a part of the homestead exemption); Ala. Code Ann. § 6-10-5 (1994) (unlimited in amount for entire family); Tenn. Code Ann. § 26-2-104(b) (1994) (allowing the burial plot exemption as a separate exemption, not to exceed one acre).

B. PERSONAL PROPERTY EXEMPTIONS - GENERALLY

1. Everything But the Kitchen Sink

In the states of Alabama, Florida and Tennessee, a debtor is able to exempt "any personal property," from a pot to a car and more, by utilization of the general personal property exemption since in those states there is no restriction in the wording of the statute as to the kinds of personal property one can exempt.⁴³ In addition, Mississippi's personal property exemption statute is broadly worded, but is more limited than the aforementioned states in exempting "tangible personal property."⁴⁴ The dollar values of the personal property exemptions for these states range from ten thousand dollars in Mississippi to one thousand dollars in Florida, with Alabama and Tennessee falling at middle range at three thousand dollars and four thousand dollars, respectively.⁴⁵

In Georgia, Kentucky, North Carolina, South Carolina and in the federal exemption structure, however, the general personal property exemption is more restrictive.⁴⁶ The Georgia, North Carolina, South Carolina and federal exemption structures are all worded similarly in regard to the description of the types of property that can be exempted according to these provisions.⁴⁷ Such exemptions encompass, in general, household items, wearing apparel, appliances, books, animals, crops or musical instruments held primarily for the personal, family or household use of the debtor or dependents.⁴⁸ Kentucky's statute is slightly different in that its exemption in this regard refers only to household furnishings, jewelry, personal clothing and ornaments.⁴⁹

⁴³ Ala. Code Ann. §§ 6-10-6 & 6-10-126 (1994). *See also* Ala. Const. art. IV, § 92 & art. X, § 204; Fla. Const. art. X § 4; Fla. Stat. ch. 222.21 (1993); Tenn. Code Ann. § 26-2-102 (1994). *See also* Appendices 2 and 3.

⁴⁴ Miss. Code Ann. § 85-3-1 (1993).

⁴⁵ Ala. Code Ann. §§ 6-10-6 & 6-10-126 (1994); Fla. Const. art. X § 4; Fla. Stat. ch. 222.21 (1993); Miss. Code Ann. § 85-3-1 (1993); Tenn. Code Ann. § 26-2-102 (1994). Tennessee also allows an exemption unlimited in dollar value for certain family pictures and books. Tenn. Code Ann. § 26-2-103(2) & (3) (1994). *See also* Appendices 2 and 3.

⁴⁶ GA. CODE ANN. § 44-13-100(4) (1994); KY. REV. STAT. ANN. § 427.010(1) (Baldwin 1993); N.C. GEN. STAT. § 1C-1601(a)(4) (1993); S.C. CODE ANN. § 15-41-30(3) (Law Co-op 1993); 11 U.S.C.S. § 522(d)(3)(1994).

⁴⁷ GA. CODE ANN. § 44-13-100(4) (1994); N.C. GEN. STAT. § 1C-1601(a)(4) (1993); S.C. CODE ANN. § 15-41-30(3) (Law. Co-op. 1993); 11 U.S.C.S. § 522(d)(3) (1994).

⁴⁸ *See* provisions cited *id.*

⁴⁹ KY. REV. STAT. ANN. § 427.010(1) (Baldwin 1993).

With respect to the monetary value of these exemptions, these jurisdictions are very similar, with Georgia, North Carolina and South Carolina all limiting this type of exemption to thirty-five hundred dollars, but the federal exemption now reaches eight thousand dollars.⁵⁰ However, both Georgia and the federal exemptions limit the value of any single item that can be exempted in this case to two hundred dollars and four hundred dollars, respectively.⁵¹ North Carolina, on the other hand, has a bonus provision, allowing an additional seven hundred fifty dollars per dependent so long as the total amount for dependents does not exceed three thousand dollars.⁵²

2. Keeping the Shirt on your Back

Georgia, Kentucky, North Carolina and South Carolina, as well as the federal exemptions, all provide for the exemption of items of wearing apparel within the general personal property exemption, as pointed out previously.⁵³ Neither Alabama, Florida, Mississippi nor Tennessee refer to wearing apparel in their general personal property statutes since their statutes in this regard are unlimited as to the types of property that can be exempted by those provisions.⁵⁴ However, both Alabama and Tennessee grant an unlimited allowance for necessary wearing apparel.⁵⁵ Tennessee goes one step further in providing an exemption for all necessary receptacles for wearing apparel. Furthermore, the term *necessary* has been interpreted to mean "more than those items that are indispensable to the bare existence of the debtor and the debtor's family."

3. All that Glitters is not Exemptible

Some states have a separate exemption exclusively for personal or family jewelry; however, such exemptions are usually limited. In the case of the study's jurisdictions, Georgia and South Carolina have a specific exemption for jewelry with a limit of five hundred dollars.⁵⁷ In the federal exemption structure the exemption for jewelry is now

⁵⁰ *See* provisions cited *supra* note 47.

⁵¹ Ga. Code Ann. § 44-13-100(4) (1994); 11 U.S.C.S. § 522(d)(3) (1994).

⁵² N.C. Gen. Stat. § 1C-1601(a)(4) (1993).

⁵³ *See supra* text accompanying notes 48 and 49.

⁵⁴ *See* provisions cited *supra* note 45. *See also* Appendix 3.

⁵⁵ Ala. Code Ann. § 6-10-6 (1994); Tenn. Code Ann. § 26-2-103(1) (1994).

⁵⁶ *See, e.g., In re Coleman*, 5 B.R. 76 (M.D. Tenn. 1980).

⁵⁷ Ga. Code Ann. § 44-13-100(5) (1994); S.C. Code Ann. § 15-41-30(4) (Law. Co-op. 1993).

one thousand dollars.⁵⁸ Kentucky itemizes jewelry as a category within its general personal property exemption structure.⁵⁹ If a debtor in Alabama, Florida, Mississippi or Tennessee has jewelry to exempt, the broad personal property exemptions of those jurisdictions would have to be used. However, a *timeworn* decision by the Fifth Circuit has construed a *plain gold watch* to fit within the meaning of the Alabama exemption for “necessary and proper wearing apparel.”⁶⁰ In North Carolina, a debtor may have to employ an available unused homestead exemption, but a North Carolina court has allowed the general personal property exemption category to be utilized for a diamond engagement ring where the ring was considered to be a part of the “daily wearing apparel” of the debtor.⁶¹

4. When a Lemon Tastes Sweet

Most of us would never think a lemon tasted sweet, especially if that lemon is a car. However, in the context of the bankruptcy laws, in the interest of exempting as much of the value of the car as possible, the *opportunity* to devalue the car for parts that have depreciated takes on an original flavor. In Florida, Georgia, Kentucky, North Carolina, South Carolina and in the federal exemption structure debtors are entitled to a specific motor vehicle exemption.⁶² However, these exemptions are limited with Kentucky *leading the pack* at twenty-five hundred dollars for one motor vehicle and accessories, including one spare tire. The federal exemption is now a close second at twenty-four hundred dollars for one motor vehicle, with Florida and Georgia in last place at one thousand dollars.⁶³ North Carolina and South Carolina fall in between allowing up to fifteen hundred dollars and twelve hundred dollars, respectively for one motor vehicle.⁶⁴

⁵⁸ 11 U.S.C.S. § 522(d)(4) (1994). See also **Appendices 2 and 3.**

⁵⁹ Ky. Rev. Stat. Ann. § 427.010(1) (**Baldwin 1993**).

⁶⁰ *Sellers v. Bell*, 94 F. 801 (5th Cir. 1899).

⁶¹ *In re Mims*, 49 B.R. 283 (E.D.N.C. 1985).

⁶² Fla. Stat. ch. 222.25 (1993); Ga. CONST. art. I, § 1, 1 26; Ga. CODE ANN. § 44-13-

100(3) (1994); Ky. Rev. Stat. Ann. § 427.010(1) (**Baldwin 1993**); N.C. Gen. Stat. § 1C-

160(a)(3) (1993) (but not exempt if purchased within ninety days of bankruptcy filing, subject to support obligations); S.C. Code Ann. § 15-41-30(2) (Law. Co-op. 1993); 11 U.S.C.S. § 522(d)(2) (1994).

⁶³ Fla. Stat. ch. 222.25 (1993); Ga. Const. art. I, § 1, f 26; Ga. Code Ann. § 44-13- 100(3) (1994); Ky. Rev. Stat. Ann. § 427.010(1) (**Baldwin 1993**); and 11 U.S.C.S. § 522(d)(2) (1994) Georgia generously allows the exemption to be taken in as many motor vehicles as are owned as long as the aggregate amount does not exceed one thousand dollars.

⁶⁴ N.C. Gen. Stat. § 1C-160(a)(3) (1993) (but not exempt if purchased within ninety days of bankruptcy filing, subject to support obligations); S.C. Code Ann. § 15-41-30(2) (Law. Co-op. 1993). See also Appendix 4.

Valuation is an important tool to utilize when determining to what extent an asset will be exempt. With most of the statutory limitations on dollar value for motor vehicles barely meeting the Official NADA Used Car Guide's value for a very bad piece of junk, the incentive is to lower the value of the motor vehicle to the greatest extent possible by depreciating it for any repairs or replacements needed. Thus, valuation becomes particularly significant in regard to the exemption of motor vehicles.

5. Claiming to be a “Jack (or Jill) of All Trades”

Of course, one should speak the truth, the whole truth and nothing but the truth at all times, not only because the Bible so instructs, but also because of the severe penalties for perjury, including fines and imprisonment, that attach to the failure to do so.⁶⁵ Therefore, do not *call a spade a spade* if it is really a golf club. The word *trade*, which is not defined in the Bankruptcy Code, has been given its plain and ordinary meaning.⁶⁶ A *tool of the trade* has been defined in Georgia as “an implement used by a person in that person's work...[it] contemplates that the person uses the tool with his hands, and that the person's work requires some degree of manual skill.”⁶⁷ Thus, as the cited case exemplifies, “tools of the trade” may be skimpily defined and limited to tools which are “inexpensive, hand-held, or reasonably limited in bulk, complexity, and artificial power, used by artisans, professional persons in a strict sense, or other skilled or semi-skilled workers in the personal exercise of the workers' special aptitudes.”⁶⁸ If the debtor is engaged in what can legitimately be called a *trade or profession*, exemptions are allowed by the laws of the states of Georgia, Kentucky, North Carolina, South Carolina, Tennessee and the federal exemptions, for certain professional books, tools of the trade and implements.⁶⁹ A debtor engaged in a trade who resides in Kentucky is blessed with an additional set of exemptions for various other professions/trades. As a farmer, the debtor may exempt three

⁶⁵ See 18 U.S.C.S. §§ 151-157, 1910, 1911, 1961(1), 2516(l)(e), 3057, & 3284 (1994).

⁶⁶ 9A Am. Jur. 2d *Bankruptcy* § 1163 (1991). See, e.g., *In re Harrell*, 72 B.R. 107 (N.D. Ala. 1987).

⁶⁷ *Curry v. Dial Fin. Corp.*, 18 B.R. 358 (N.D. Ga. 1982).

⁶⁸ 9A Am. Jur. 2d *Bankruptcy* § 1163 (1991). See, e.g., *In re Trevino*, 96 Bankr. 608 (E.D.N.C. 1989) (holding truck used by the debtor in his boat hauling business did not qualify as a tool of the trade).

⁶⁹ Ga. Code Ann. § 44-13-100(a)(7) (1994) (\$500); Ky. Rev. Stat. Ann. § 427.030 (**Baldwin 1993**) (\$300); N.C. Gen. Stat. § 1C-1601(a)(5) (1993) (\$750); S.C. Code Ann. § 15-41-30(6) (1993) (\$750); Tenn. Code Ann. § 26-2-111(4) (1994) (\$750); 11 U.S.C.S. § 522(d)(6) (1994) (\$1500). See also Appendix 5.

thousand dollars worth of tools, equipment, livestock and poultry.⁷⁰ Lawyers, doctors, ministers, chiropractors, veterinarians and dentists are also entitled to a one thousand dollar exemption for library, office equipment, instruments and furnishings.⁷¹

Kentucky does not stop there. There is a motor vehicle exemption for certain mechanics or other skilled artisans primarily engaged in servicing certain essential equipment in general use,⁷² or for any minister, lawyer, doctor, veterinarian, chiropractor or dentist up to a value of twenty-five hundred dollars.⁷³ However, in *First Hardin National Bank v. Damron*⁷⁴ the court denied a claim of exemption as a *tool of the trade* for a motor vehicle the debtor claimed she needed to commute to work because she lived in a rural area. Likewise, the court denied the claim made by her husband for his automobile which he contended was used to carry tools, provide transportation to his job as a service station mechanic and to pick up and deliver car parts. The court determined that the car did not meet the standard of being "specifically adapted for use by a roving mechanic."⁷⁶ To clarify the applicable standard the court stated further that "[A] skilled tradesman has generally been allowed a tool of trade exemption for his motor vehicle if that vehicle is uniquely equipped for use in the trade or if the nature of the trade requires constant use."⁷⁶ In *In Re Bailey*⁷⁷ the court did allow a painting contractor to exempt his panel truck which he used to carry paint, tarpaulins, ladders and brushes to jobs since it had been especially adapted for such use.⁷⁸

6. Getting the Most Out of Your Hot Tub

If the doctor prescribes it, more than likely the patient can exempt it in Florida, Georgia, Kentucky, North Carolina, South Carolina, and in the federal exemption structure where there is an unlimited exemption for professionally prescribed health aids.⁷⁹ No case law has been

⁷⁰ Ky. Rev. Stat. Ann. § 427.010(1) (Baldwin 1993).

⁷¹ *Id.* at § 427.040.

⁷² Ky. Rev. Stat. Ann. § 427.030 (Michie/Bobbs-Merrill 1993).

⁷³ Ky. Rev. Stat. Ann. § 427.040 (Baldwin 1993).

⁷⁴ 5 B.R. 357 (W.D. Ky. 1980).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ 172 F. Supp. 925 (D. Neb. 1959).

⁷⁸ *Id.*

⁷⁹ Fla. Stat. ch. 222.25 (1993); Ga. Code Ann. § 44-13-100(e)(10) (1994)- Ky Rev Stat. Ann. § 427.010(1) (Baldwin 1993); N.C. Gen. Stat. § 1C-1601(a)(7) (1993)- SC Code Ann. § 15-41-30(9) (1993); Tenn. Code Ann. § 26-2-111(5) (1994)- n USC S § 522(d)(9) (1994). *See also* Appendix 6.

found in any of these jurisdictions to provide guidance as to how a court would interpret these provisions, but the language of these statutes appears to be fairly straightforward. There is no specific provision for exemption of professionally prescribed health aids in Alabama or Mississippi. Therefore, one of the general exemptions contained in the statutes of these states would have to be utilized for this type of exemption.

C. A NOTE ON TORTS

In the states of Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee, as well as the federal exemptions, a debtor may exempt to some extent compensation for injuries and/or death resulting from tortious conduct.⁸⁰ The types of compensation which are allowed in such cases can be divided into three basic categories: personal injury compensation, compensation for future earnings, and compensation for the wrongful death of a person upon whom the debtor was dependent.

With respect to personal injury compensation Georgia, Kentucky and Tennessee each allow up to seventy-five hundred dollars.⁸¹ Mississippi provides for as much as ten thousand dollars.⁸² The newly amended federal exemption structure now allows up to fifteen thousand dollars for such compensation.⁸³ But both North Carolina and South Carolina outdo them all allowing one hundred percent of such compensation.⁸⁴ In all of these states, and in the federal exemption structure, with the exception of Mississippi, North Carolina and South Carolina, such compensation is allowed not only for the debtor's own personal injury, but also for the personal injury of some-

⁸⁰ Ga. Code Ann. §§ 44-13-100(II)(B), (C), (D) & (E) (1994); Ky. Rev. Stat. Ann. §§ 304.39-260, 427.150(2)(b),(c) & (d) (Baldwin 1993); Miss. Code Ann. § 85-3-17 (1993); N.C. Gen. Stat. § 1C-1601(a)(8) (1993); S.C. Code Ann. § 15-41-30(11)(B) (Law. Co-op. 1993); Tenn. Code Ann. § 26-2-111(2)(B), (C)-(3) (1994); 11 U.S.C.S. §§ 522(d)(II)(B), (D) & (E) (1994). *See also* Appendix 7.

⁸¹ *See* Ga. Code Ann. § 44-13-100(II)(D) (1994); Ky. Rev. Stat. Ann. § 427.150(2)(c) (Baldwin 1993); Tenn. Code Ann. § 26-2-111H2KB) (1994). Excluded from these exemptions are amounts received for pain, suffering or compensation for pecuniary loss.

⁸² Miss. Code Ann. § 85-3-17 (1993).

⁸³ 11 U.S.C.S. § 522(d)(II)(D) (1994).

⁸⁴ N.C. Gen. Stat. § 1C-1601(aX8) (1993) (excluding compensation for legal, health or funeral expenses); S.C. Code Ann. § 15-41-30(11)(B) (Law. Co-op. 1993) (including compensation for bodily injury of another individual of whom debtor was or is a dependent).

one upon whom the debtor was dependent.⁸⁵ In addition, Georgia, Kentucky, Tennessee and the federal exemption structure allow the debtor to exempt compensation received for loss of future earnings up to an amount reasonably necessary.⁸⁶

Georgia, Kentucky and the federal exemption structure, in allowing compensation for wrongful death, also apply the *amount reasonably necessary* statutory standard to compensation received for the wrongful death of a person upon whom debtor was dependent.⁸⁷ Tennessee also allows compensation for wrongful death, but applies a ten thousand dollar limitation to such compensation.⁸⁸ In addition, Tennessee has an aggregate limitation on compensation received for personal injury and wrongful death of fifteen thousand dollars,⁸⁹ whereas both North Carolina and South Carolina allow one hundred percent of compensation for the wrongful death of a person upon whom debtor was a dependent.⁹⁰

D. DEUCES AREN'T THE ONLY WILD CARD

Affectionately referred to in bankruptcy parlance as the *wild card* exemption, the states of Georgia and Kentucky and the federal exemption structure contain provisions which allow a debtor to take an exemption in *any property*, or, as Kentucky's statute specifically provides, in "real or personal, tangible or intangible" property.⁹¹ Georgia limits the amount of this exemption to four hundred dollars.⁹² The federal exemptions now allow up to eight hundred dollars.⁹³ In Kentucky, the allowance is more generous at one thousand dollars.⁹⁴

⁸⁵ GA. CODE ANN. § 44-13-100(l)(D) (1994); KY. REV. STAT. ANN. § 427.150(2)(c) (Baldwin 1993); MISS. CODE ANN. § 85-3-17 (1993); TENN. CODE ANN. § 26-2-111(r)(9)(R) (1994); 11 U.S.C.S. § 522(d)(l)(D) (1994).

⁸⁶ GA. CODE ANN. § 44-13-100(U)(KE) (1994); KY. REV. STAT. ANN. § 427.150(2)(H) (Baldwin 1993); TENN. CODE ANN. § 26-2-111(3) (1994); 11 U.S.C.S. § 522(11)(E) (1994).

⁸⁷ GA. CODE ANN. § 44-13-100(l)(B) (1994); KY. REV. STAT. ANN. § 427.150(2)(a) (Baldwin 1993); 11 U.S.C.S. § 522(11)(B) (1994).

⁸⁸ TENN. CODE ANN. § 26-2-111(2X0) (1994).

⁸⁹ TENN. CODE ANN. § 26-2-111(2) (1994) (including any award that may have been received under a crime victim's reparation law).

⁹⁰ N.C. GEN. STAT. § 1C-1601(a)(8) (1993) (excluding compensation for legal health or funeral expenses); S.C. CODE ANN. § 15-41-30(11)(B) (Law Co-op 1993).

⁹¹ GA. CODE ANN. § 44-13-100(a)(6) (1994); KY. REV. STAT. § 427.160 (Michie/Bobbs Merrill 1993); 11 U.S.C.S. § 522(d)(5) (1994).

⁹² GA. CODE ANN. § 44-13-100(a)(6) (1994).

⁹³ 11 U.S.C.S. § 522(d)(5) (1994).

⁹⁴ Ky. Rev. Stat. § 427.160 (Michie/Bobbs-Merrill 1993).

In addition, Georgia, North Carolina, South Carolina and the federal exemptions allow a debtor to use as a wild card various portions of the homestead exemption which have not been claimed for a homestead.⁹⁵ In Georgia the debtor may use all of the unused homestead exemption.⁹⁶ The federal exemptions allow up to seventy-five hundred dollars of the unused homestead.⁹⁷ North Carolina limits the usage of the unused homestead exemption to thirty-five hundred dollars,⁹⁸ while South Carolina allows only up to one thousand dollars.⁹⁹ Further, in South Carolina the one thousand dollars unused homestead exemption can only be taken in cash or liquid assets, and is only available to an individual who does not claim a homestead exemption.¹⁰⁰

E. THERE'S MORE!

There is a potpourri of additional state exemptions in each of these states and in the federal exemption structure which covers such assets as alimony, support and separate maintenance,¹⁰¹ crime victim reparation awards,¹⁰² entireties property,¹⁰³ insurance benefits,¹⁰⁴ partnership property,¹⁰⁵ pension and retirement benefits,¹⁰⁶ public assis-

⁹⁵ GA. CODE ANN. § 44-13-100(a)(6) (1994); N.C. GEN. STAT. § 1C-1601(aX2) (1993); S.C. CODE ANN. § 15-41-30(5) (Law. Co-op. 1993); 11 U.S.C.S. § 522(d)(5) (1994). See also Appendix 3.

⁹⁶ GA. CODE ANN. § 44-13-100(a)(6) (1994).

⁹⁷ 11 U.S.C.S. § 522(d)(5) (1994).

⁹⁸ N.C. GEN. STAT. § 1C-1601(a)(2) (1993).

⁹⁹ S.C. CODE ANN. § 15-41-30(5) (Law. Co-op. 1993).

¹⁰⁰ *Id.*

¹⁰¹ *E.g.*, Fla. Stat. ch. 222.201 (1993); GA. CODE ANN. § 44-13-100(2)(D) (1994); S.C. CODE ANN. § 15-41-30(10)(D) (Law. Co-op. 1993).

¹⁰² *E.g.*, Ala. Code § 15-23-15 (1994); Fla. Stat. ch. 960.14 (1993); GA. CODE ANN. § 44-13-100(l)(A) (1994); TENN. CODE ANN. § 26-2-111(2)(A) (1994); 11 U.S.C.S. § 522(d)(l)(A) (1994).

¹⁰³ *E.g.*, 11 U.S.C.S. § 522(b)(2)(B) (1994).

¹⁰⁴ *E.g.*, S.C. CODE ANN. §§ 15-41-30(7),(8),(HXc) & 38-63-40 (Law. Co-op. 1993); N.C. CONST. art. X, § 2; N.C. GEN. STAT. §§ 1C-1601(a)(6) (1993); TENN. CODE ANN. § 26-2-110 (1994); 11 U.S.C.S. §§ 522(d)(7),(8) & (11)(C) (1994).

¹⁰⁵ *E.g.*, Ala. Code §§ 6-10-9 & 10-8-72 (1994); N.C. GEN. STAT. § 59-55 (1993); S.C. CODE ANN. § 33-41-720 (Law. Co-op. 1993).

¹⁰⁶ *E.g.*, Fla. Stat. ch. 121.131, & 222.21 (1993); MISS. CODE ANN. §§ 21-29-257, 21-29-307, 25-11-129, 25-11-201, 25-11-319, 25-11-419, 25-13-31, 25-14-5 & 71-1-43 (1993).

tance,¹⁰⁷ unemployment compensation,¹⁰⁸ veterans' benefits,¹⁰⁹ workers' compensation,¹¹⁰ and payments on account of disability, illness, and social security.¹¹¹ In addition, there are a variety of additional exemptions found in federal law other than those found in the Code.¹¹²

IV. IS THE GRASS REALLY GREENER?

It is doubtful in most cases that persons experiencing a bankruptcy proceeding feel any more blessed than their neighbors in spite of being able to take advantage of a more generous set of exemption laws. To look at a state's laws in a vacuum to determine which state's provisions outshine another may result in a rewardless exercise in glorification, since a state's laws are no better than the benefits gained by the citizens it serves. At the risk of accomplishing no worthy goal, this article has attempted to afford an opportunity for a comparison of the bankruptcy exemption laws of the states within this model, in order to gain a perspective as to some of the similarities as well as the distinctions among the various structures. As has been demonstrated, there are significant parallels as well as prominent differences in the laws of these states which are situated within the same region of the country.

It is certainly true that Florida's *grass looks pretty green* in regard to the potential monetary value of the exemptions available to its citizenry with the unlimited nature of its homestead exemption. Yet, what benefit is this provision to one who has no homestead to exempt? Florida has no specific exemption for clothing, household goods, or tools of the trade. The one thousand dollar exemption in any personal property "has existed in the State of Florida for over one hundred years, [and] provides little protection to an individual's

¹⁰⁷*E.g.*, Ala. Code §§ 38-4-8 & 38-5-5 (1994); Fla. Stat. ch. 222.201 (1993) NC Gen. Stat. §§ 111-118 (1993); 11 U.S.C.S. § 522(d)(10)(A) (1994).

¹⁰⁸*E.g.*, Ga. Code Ann. § 44-13-100(2)(A) (1994); Ky. Rev. Stat. Ann § 341.470 (Baldwin 1994); Miss. Code Ann. § 71-5-539; 11 U.S.C.S. § 522(10)(A) (1994)

¹⁰⁹*E.g.*, Ala. Code § 31-7-2 (1994); Fla. Stat. chs. 222.201 & 744.626 (1993)- 11 U.S.C.S. § 522(d)(10)(B) (1994).

¹¹⁰*E.g.*, Ala. Code § 25-5-86 (1994); Ga. Code Ann. § 34-9-84 (1994); S.C. Code Ann § 42-9-360 (Law. Co-op. 1993); 11 U.S.C.S. § 522(d)(10)(C) (1994).

¹¹¹*E.g.*, 11 U.S.C.S. §§ 522(d)(10)(A) & (C) (1994).

¹¹²*See generally* 7 Collier on Bankruptcy 817-39 (Lawrence P. King ed., 15th ed 1985) (providing a listing of additional federal exemptions). As stated earlier no effort will be made to analyze these provisions. However, a sampling has been set forth for easy reference.

assets when one considers the value of one thousand dollars today as compared with the value of one thousand dollars in 1868, the year that this exemption was created.¹¹³ Even with the recently added exemptions for a motor vehicle and professional health aids, Florida falls short in the area of personal property exemptions. On the other hand, the potential for abuse obviously exists since, as pointed out *ab initio*, a person of means could pour all of his nonexempt assets into a Florida homestead, pay off all of the liens and be *home free*.¹¹⁴

Mississippi might be categorized as a first runner-up. This state also lacks many of the types of personal exemptions other states have. However, like Florida, Mississippi exhibits benevolence with regard to its homestead exemption, far surpassing all of the other model jurisdictions. The other jurisdictions in the model appear to conform to each other to a great degree, although Kentucky does stand out with its motor vehicle and tools of the trade exemptions.

But after all is said and done, how do the debtors fair? Does the granting of more or less favorable exemption structures have an impact upon the numbers of persons filing bankruptcy? An empirical study published in the American Bankruptcy Law Journal notes that "[T]he decision to file a voluntary bankruptcy petition is a highly complex one It may well be that ... debtors choosing bankruptcy will choose it regardless of the exemption level that comes with the choice of bankruptcy."¹¹⁵ In any event, before deciding to move, check with the Florida legislature, as well as the Florida voters, as there is presently a movement afoot to amend Florida's homestead exemption, spurred on by the public outcry from the *60 Minutes* broadcast first referenced. With the recent doubling in the monetary value of the exemptions in the federal structure, perhaps the other states in this model will see the need to adjust to the changes in the economic climate by legislating increases in their exemption structures as well.

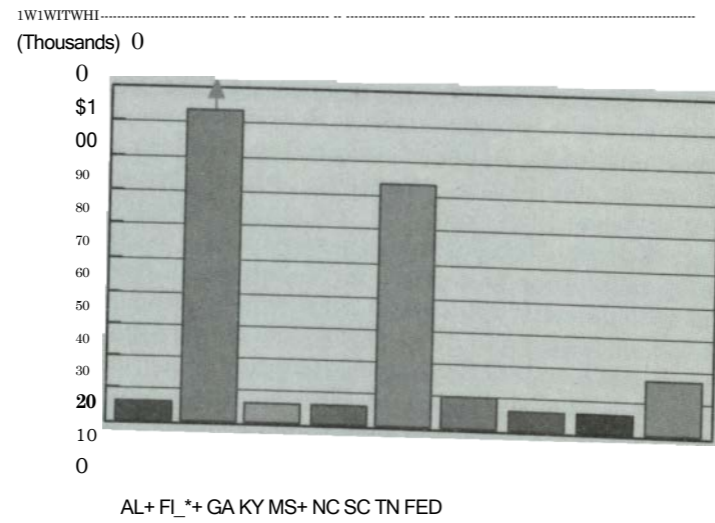
¹¹³Williamson & Butterfield, *supra* note 33, at 462.

¹¹⁴*But see generally* Lloyd D. Caldwell, Jr., Note, *The Debtor and Conversion of Nonexempt Assets to Exempt Assets on the Eve of Bankruptcy: Astute Bankruptcy Estate Planning or Fraud?*, 18 Cap. U. L. Rev. 567 (1989) (debtor may be subjected to various sections of the U.S. Bankruptcy Code and state fraudulent conveyance laws which allow a trustee to avoid certain pre-petition transfers as fraudulent).

¹¹⁵William J. Woodward, Jr. & Richard S. Woodward, *Exemptions As An Incentive To Voluntary Bankruptcy: An Empirical Study*, 57 Am. Bankr. L.J. 53, 66-67 (1983).

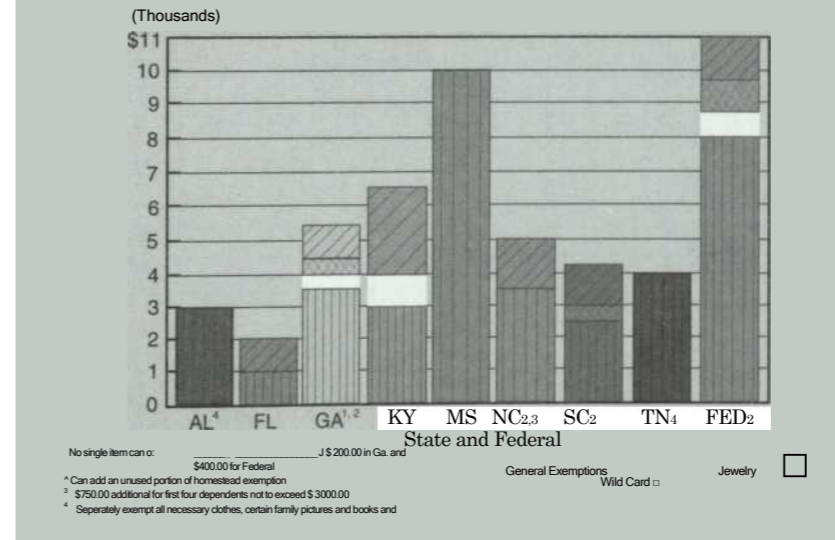
Appendix 1

Homestead Exemptions



Appendix 2

Personal Property



Appendix 3

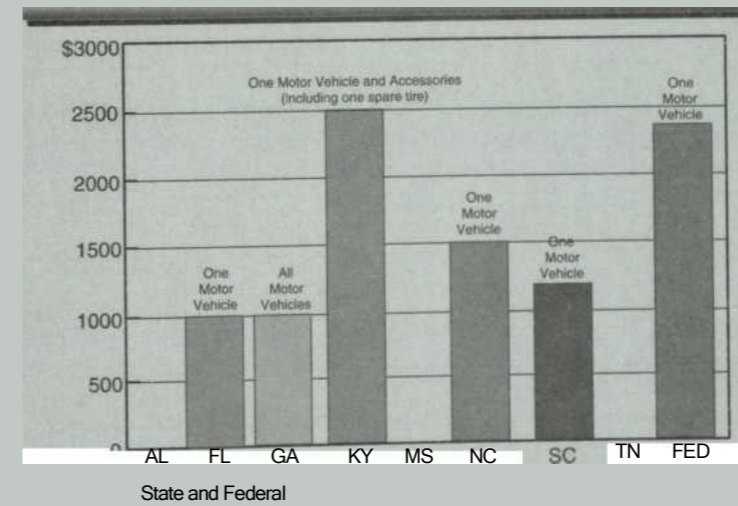
Personal Property Exemptions

| Exemptions | AL | FL | GA | KY | MS | NC | SC | TN | Federal |
|---|---------|---------|----------|---------|----------|---------|----------------|---------|----------|
| Wild Card | | | \$400 | \$1,000 | | | | | \$800 |
| Unused Homestead | | | \$5,000 | | | \$3,500 | \$1,000 cash o | | \$7500 |
| Any Personal Property (Generally) | \$3,000 | \$1,000 | | | | | | \$4,000 | |
| Tangible Personal Property | | | \$3,500 | \$3,000 | | \$3,500 | \$2,500 | | \$8,000 |
| Necessary wearing apparel, certain family pictures and books | ALL | | | | | | | ALL | |
| for wearing apparel | | | | | | | | ALL | |
| Jewelry | | | \$500 | | | | \$500 | | \$1000 |
| Motor Vehicles | | \$1,000 | \$1,000 | \$2,500 | | \$1,500 | \$1,200 | | \$2400 |
| Total | \$3,000 | \$2,000 | \$10,400 | \$6,500 | \$10,000 | \$8,500 | \$5,200 | \$4,000 | \$19,750 |

J No single item can exceed \$200.00 in Ga. and \$400.00 for Federal * Includes money and funds in a bank
In addition, \$750.00 per dependent up to \$3000.00 Total does not include "ALL" categories

Appendix 4

Motor Vehicle Exemptions

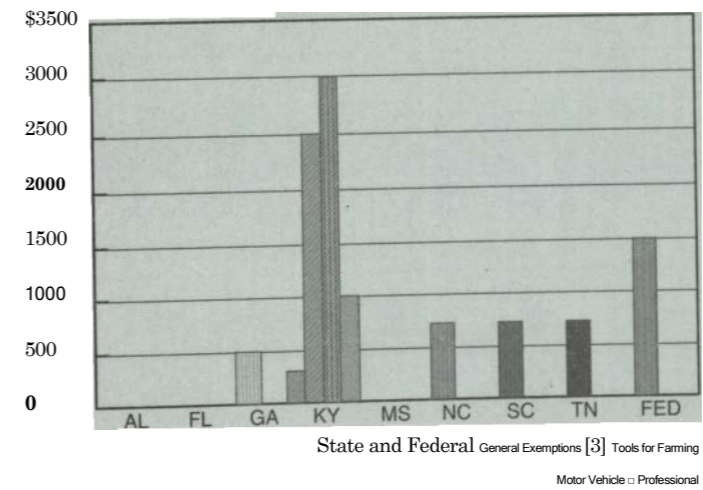


Appendix 5

PROFESSIONAL HEALTH AIDS

| State | Percentage Exempted |
|---------|---------------------|
| AL | 0% |
| FL | 100% |
| GA | 100% |
| KY | 100% |
| MS | 0% |
| NC | 100% |
| SC | 100% |
| TN | 100% |
| | |
| FEDERAL | 100% |

Appendix 6

Tools of Trade

Appendix 7

Personal Injury & Wrongful Death

| CATEGORY: | AL | FL | GA | KY | MS | ² NC | SC | TN | Federal |
|--------------------------------|----|----|-----------------------------|-----------------------------|----------|--------------------|------|-----------------------------|-----------------------------|
| Personal Injury | | | \$7,500 ¹ | \$7,500 ¹ | \$10,000 | 100% | 100% | \$7,500 ¹ | \$15,000 ¹ |
| Future Earnings | | | Amount reasonably necessary | Amount reasonably necessary | | | | Amount reasonably necessary | Amount reasonably necessary |
| ³ Wrongful Death | | | Amount reasonably necessary | Amount reasonably necessary | | 100% | 100% | \$10,000 | Amount Reasonably necessary |

¹ Does not include pain and suffering or compensation for pecuniary loss
² Does not include compensation for legal, health, or funeral expense
³ Of person debtor was dependent upon