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In Bankruptcy Court: Geography Matters

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Recently, Cullen and Dykman was pleased to announce the opening of its new Palm Beach Florida Office. *See Press Release* Cullen and Dykman Bridges 176 Years of Legal Tradition with New Palm Beach Office.

This new opening reminded the attorneys of Cullen and Dykman of the implications and issues which may arise when a person, or corporation, decides that they want to establish a new residency in a different state.

Partner Andrew P. Nitkewicz, and together with Partner Maureen R. Monaghan and Associate Brittany L. Froning, advised us of how establishing a new residency in Florida from New York requires careful planning and advice from sound counsel. *See* Establishing Florida Residency: A Cautionary Guide for New Yorkers.

This alert is a continuation of our series on domicile and residency, and how these two concepts are also intertwined with bankruptcy law.

In bankruptcy, domicile and residence are important concepts. They can impact where an individual or company chooses to file a case, to what exemptions an individual may be entitled and many other issues impacted by choice of forum.

The term "domicile" is not defined in the United States Bankruptcy Code. However, in other contexts and in case law, it has been defined as "the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning."[1]

What about "residence"? Unlike domicile, "[r]esidence is less inclusive. . .importing merely having an abode at a particular place which may be one of any number of such places at which one is, at least from time to time, physically present."[2]

A person can have multiple residences, but only one true domicile.

According to 28 U.S.C. § 1408, a debtor, whether a person or corporation, may file for bankruptcy in any federal district where their domicile, residence, principal place of business, or principal assets have been located for the 180 days immediately preceding the filing, or for the longest portion of that 180-day period.[3]

For a corporate debtor, "[a] corporation's domicile is generally held to be its state of incorporation."[4]
But Courts also will look to the corporation's principal place of business, which is "primarily the place whence general supervision is given. A corporation's principal place of business refers 'to the place where a corporation's officers direct, control, and coordinate the corporation's activities.'"[5]

For individuals in bankruptcy, exemption provisions are found under both federal and state law. "An individual debtor may elect to claim either (a) the federal exemptions pursuant to 11 U.S.C. § 522(b)(2), unless the state "opts out" of the federal exemptions, or (b) the applicable state exemptions pursuant to 11 U.S.C. § 522(b)(3)."[6] New York, for example, is no longer an "opt-out" state.[7]

However, state exemptions available to a debtor are not determined by where the debtor files for bankruptcy, but the debtor's domicile history.

Under 11 U.S.C. § 522(b)(3)(A), the applicable state law is determined by "the place in which the debtor's domicile has been located for the 730 days immediately preceding the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period."[8]

The purpose of this section is to "address the concern raised by the 'wandering debtor' – the debtor who changes her residence before filing for bankruptcy in order to take advantage of more favorable exemptions offered in the state she claims as her domicile as of the bankruptcy filing date."[9]

For example, in the case *In re Ward*, the Court found that an individual debtor was entitled to her homestead exemption under New York law even though she entered into a pre-petition contract to sell her home.[10] The trustee argued that there must be an intent by the debtor to permanently remain at the property in order to be entitled to the homestead exemption.[11]

The Court disagreed finding that "[n]othing in C.P.L.R. § 5206(a), even suggests that the homestead exemption is to be conditioned on an intent for long-term residency. Rather, the statute allows an exemption to any owner who resides on the property on the date of bankruptcy."[12]

The Court further explained that "bankruptcy courts in this circuit have been steadfast in holding that a debtor is entitled to the homestead exemption despite having entered into a prepetition contract of sale so long as the debtor owned and occupied the homestead on the petition date."[13]

It should be noted that the exemptions offered by a state vary from state to state. As discussed above, some states are "opt-out" states, where federal exemptions are not available to a debtor. New York is not an opt-out state, and thus an individual debtor has the choice between federal or state exemption laws.

Additionally, some state exemptions may be more favorable to a debtor in one state than in another. For example, the amount you are able to claim as your homestead exemption in one state may be higher than in another state.

As one can see, a debtor's domicile can greatly affect a bankruptcy case. However, it is important for a debtor to remember that the bankruptcy court will be critical in its analysis before it affords a debtor any advantages under the Bankruptcy Code.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and the recipient. If you have any questions

regarding the provisions discussed above, or any other aspect of bankruptcy law, please contact Michael H. Traison, Esq. (mtraison@cullenllp.com) at 312.860.4230 or Kelly McNamee, Esq. (kmcnamee@cullenllp.com) at 516.296.9166.

Footnotes

[1] *In re DeMarco*, 661 B.R. 191, 196 (Bankr. E.D.N.Y. 2024) (internal citations omitted).

[2] *In re Frame*, 120 B.R. 718, 723 (Bankr. S.D.N.Y. 1990).

[3] 28 U.S.C. § 1408.

[4] *In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008).

[5] *In re Va. Park 1, LLC*, 672 B.R. 569, 582 (Bankr. S.D.N.Y. 2025).

[6] *DeMarco*, 661 B.R. at 196.

[7] *Id.*

[8] 11 U.S.C. § 522(b)(3)(A).

[9] *DeMarco*, 661 B.R. at 196.

[10] *In re Ward*, 595 B.R. 127, 138 (Bankr. E.D.N.Y. 2018).

[11] *Id.*

[12] *Id.*

[13] *Id.*

Practices

- Bankruptcy and Creditors' Rights

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