

# Illinois Legal Update

Insights and Developments in the Law

Fall 2009

## *In This Issue*

**What Happens in Bankruptcy? ..... 1**

**Caregiver Bias in Employment..... 2**

**Illinois Laws Governing Motorcycles..... 2**

**Charitable Remainder Trusts.... 3**

**FDIC Insurance Update ..... 4**

## What Happens in Bankruptcy?

Losing a job. Unexpected medical bills. Death of a breadwinner. There are many reasons why a person might be forced to file for bankruptcy. Before filing, it is important to understand some basics.

### What Is Bankruptcy?

Bankruptcy is a process governed by federal law that grants

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*The two most common kinds of bankruptcy that are filed by individuals under the Bankruptcy Code are Chapter 7 and Chapter 13.*

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relief to people in financial distress through the bankruptcy courts.

### Who Can File for Bankruptcy?

All kinds of people and entities can file for bankruptcy, including individuals, corporations, and even cities. A husband and wife may file for bankruptcy together.

### Are There Different Kinds of Bankruptcy?

Yes. Although individuals can file for bankruptcy under several different parts of the Bankruptcy Code, the two most common kinds are Chapter 7 and Chapter 13. Chapter 7 bankruptcy (“liquidation” bankruptcy) involves the liquidation of some of the debtor’s assets to pay his debts. Chapter 13 bankruptcy (“debt adjustment” bankruptcy) allows a debtor to stretch out his payment obligations over time.

### What Happens When I File for Bankruptcy?

The minute a debtor files his paperwork, the “automatic stay” comes into effect. The automatic stay is imposed by federal law and forces the debtor’s creditors to come into bankruptcy court to make their claims. Unless lifted by the court, the automatic stay stops all efforts to collect debts, including foreclosures and lawsuits.

### What Happens in Chapter 7?

In Chapter 7, the debtor asks the bankruptcy court to appoint a trustee

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# Caregiver Bias in Employment

Today, it is commonplace for workers to handle both work and caregiving responsibilities for spouses and children, parents and other older family members, or relatives with disabilities. Women still are disproportionately more likely to exercise primary caregiving responsibilities but, in increasing numbers, men have also assumed the dual roles of caretaker and breadwinner.

One classic example is the pregnant woman who is let go or passed over for a promotion because the employer's decisionmaker assumes that with the baby will come a diminished commitment to the employer and a failure by the employee to meet all of the obligations of her job. Such was the case in a recent litigation in which a mother of triplets was denied a promotion because, in the employer's words to her, "you have a lot on your plate right now."

When a federal appellate court reinstated the lawsuit after its dismissal by the trial court, the employer likely came to the belated conclusion that it should concern itself only with the employer's portion of the employee's "plate."

The ADA can come into play as a vehicle for caregiver discrimination claims because the phrase "discriminate against a qualified individual on the basis of disability"

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*There has been a steady rise in claims of employment discrimination based on what is sometimes called "family responsibility discrimination."*

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Our society may be evolving toward more individuals simultaneously sharing the duties of an employee and a caregiver, but old stereotypes in the workplace sometimes die hard. The result is a steady rise in claims of employment discrimination based on what is sometimes called "family responsibility discrimination." While there is no federal law that expressly prohibits discrimination at work against caregivers, complaining employees have been able to pursue claims under other employment discrimination statutes, such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the Family and Medical Leave Act (FMLA).

The cases brought under Title VII tend to allege sex discrimination or gender stereotyping. A clas-

## Illinois Laws Governing Motorcycles

Many of us enjoy the freedom of the open road, riding a motorcycle on a clear fall day. However, before setting off on your bike, you need to know the rules of the road as they apply to motorcycles.

For the most part, motorcycles are treated the same way as all motor vehicles on the roads. This means that motorcyclists must be licensed and must obey all traffic laws, signs, and signals, just like other drivers. Motorcyclists must also carry at least the minimum insurance coverage required by law: \$20,000 for the injury or death of one person, \$40,000 for the injury or death of more than one person, and \$15,000 in property coverage.

However, motorcyclists are subject to a number of laws that govern only motorcycles. Motorcycle riders must wear eye protection, unless their bikes have windscreens. A motorcycle can carry a passenger only if there is a seat for the passenger and foot rests (unless the seat is in a side-car). Motorcyclists must always use their headlights, even in the daytime. Finally, some of the more exotic conversions (such as handlebars that extend above shoulder level and mufflers that have been modified from stock) are prohibited.

Finally, a word about helmets. Illinois remains one of the three states that does not have any mandatory helmet law; the state Senate rejected the most recent attempt to pass such a law just this year. However, wearing a helmet is just good sense, and it may save your life in the event of a crash.

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# Charitable Remainder Trusts

As the name implies, a charitable remainder trust involves the transfer of assets to a trust, with the income going to an individual or individuals (which can include the owner of the assets) and with a charity receiving the assets at the expiration of the trust period. Such a trust device benefits the individuals who are the objects of the property owner's generosity, it transfers assets to the property owner's preferred charities, and it yields tax savings for the property owner.

If the trust is created during the property owner's lifetime, there is a charitable tax deduction equal to the present value of the charity's remainder interest, and the transferred property will escape federal estate tax. If the trust is established under a will, the charitable tax deduction will remove the property from the taxable estate.

There can be other, not-so-obvious benefits. Where appreciated assets are transferred, especially where the assets have a low cost basis and there is a likelihood that the property owner would have sold the assets at some point had he not transferred them to the trust, the property owner avoids a capital gains tax that would be imposed upon an outright sale. If the trust sells the assets, it will have no capital gains tax liability because the trust is a tax-exempt entity.

If the property owner has established the trust in his lifetime, the fact that the trust can sell the property tax-free maximizes the income

base for the income beneficiary, which can be the property owner himself. Moreover, if the trust is a charitable remainder unitrust (CRUT), under which the income is measured as a percentage (no less than 5% of the value of the trust property in a given year), the trust serves as a hedge against inflation for the income beneficiary because, as the trust property appreciates in value, the income paid out increases. This is not true under the other type of charitable remainder trust, the charitable remainder annuity trust (CRAT), under which a fixed amount of income is paid out each year.

A CRUT can be used as a retirement plan. Although a CRUT usually pays a percentage of the trust's annual value, it can provide that income distributions may not exceed the amount of income actually earned by the CRUT in a given year. Any shortfall in income can then be made up when there is sufficient income. During the property owner's preretirement years, the CRUT can be invested in growth stocks, thus producing little or no income. Upon retirement, those assets can be sold, with the proceeds invested in income-producing assets that will yield the agreed-upon income percentage, plus a "make-up" portion to compensate for the earlier shortfalls. Thus, income distributions from a CRUT can be minimized during the preretirement years and then can be maximized for the retirement years.

It is important to remember that a charitable remainder trust must meet a series of technical requirements and therefore should be drafted only by an experienced professional.

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## Caregiver Bias

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ity" in the statute includes "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association."

The FMLA may be the existing federal statute that by its terms most directly addresses caregiver rights in employment, but it affords employees more restricted protection than do Title VII and the ADA. The FMLA provides that covered employers (private-sector employers with at least 50 employees in a 75-mile radius) must provide up to 12 weeks of unpaid medical leave during a 12-month period to eligible employees (those who have worked for the employer for at least 12 months or 1,250 hours) for childbirth and newborn care, adoption or foster-care placement, care for immediate family members with a serious health condition, or to handle the employee's own serious health condition.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Illinois law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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## **Bankruptcy**

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to sell his nonexempt property to pay his creditors. If there are no objections after this property is sold, the court issues the debtor a “discharge.” The discharge provides that the debtor does not have to repay most of the unsecured debts he owes, and the debtor receives a “fresh start.” However, recent changes to the Bankruptcy Code make Chapter 7 more difficult to qualify for, and may mean that a debtor has to pursue a Chapter 13.

### **What About Secured Debts?**

Most debtors also have secured debts—debts whose payment is secured by property. Common examples of secured debts are mortgages and car notes. Although a bankruptcy court can sometimes reduce a secured debt, if the debtor wants to keep the property securing the debt he must agree to pay the debt, and he must continue to pay the creditor.

### **What Property Is Exempt?**

Under federal law, some property cannot be sold, no matter how much is owed. Exempt property includes the “stuff” of daily life, such as clothing, basic furniture, household items, pets, etc. Specific examples of exempt property include \$20,200 of equity in a home, \$3,225 of equity in a car, \$2,025 of tools or equipment used for a job, and \$1,075 of personal property of any kind, including cash and jewelry. There are also other exemptions.

### **Are Any Debts Not Affected by Bankruptcy?**

Yes, there are several kinds of debts that are difficult or impossible

to discharge through bankruptcy, including alimony, child support, taxes, criminal fines, student loans, debts obtained by fraud, and debts that the debtor fails to disclose. These debts will usually not be discharged by the bankruptcy court.

### **How Is Chapter 13 Different?**

Instead of asking the trustee to liquidate property, the debtor in a Chapter 13 case proposes a “plan” to repay all or a portion of his debts over a period of three to five years. Because of this long-term commitment, Chapter 13 debtors must

have a steady income. The advantage of Chapter 13 is that it allows a debtor to do things that Chapter 7 does not, such as protect the equity in the debtor’s home. Also, some debts that cannot be discharged under Chapter 7 may be discharged on the successful completion of a Chapter 13 plan.

Every case is different and this article covers only the basics of bankruptcy law. If you have questions regarding bankruptcy, you should consult with a bankruptcy specialist to help you through the process and on to a new, debt-free start.

## **FDIC Insurance Update**

In October 2008, Congress increased the basic limit on federal deposit insurance coverage from \$100,000 to \$250,000. The limit is scheduled to return to \$100,000 on January 1, 2014.

The temporary limit now in effect has not changed the fact that a customer has various means by which to effectively raise the applicable limit for the customer’s collection of deposits at any one institution. The basic limit applies separately to different ownership categories. A single account in one name is insured up to \$250,000; a joint account for two or more people is insured up to the same limit, per owner; certain retirement accounts, such as IRAs, are covered up to the limit; and deposits meant to pass on to named beneficiaries upon the death of the owner can be protected up to \$250,000 for each named beneficiary. This last category of deposits is a revocable trust account.

There also are other recent changes that favor depositors in insured institutions. For example, it used to be that the only beneficiaries under a revocable trust account who qualified for additional deposit insurance coverage were the account owner’s spouse, child, grandchild, parent, or sibling. Now, an account owner can name almost any beneficiary, such as a more distant relative, a friend, or a charitable organization, and each beneficiary will still benefit from the additional coverage.