

# Eutsler Takes the Helm

*Association & Foundation kick off a new bar year!*

June 9th was a warm, muggy day as hundreds of members of the bench and bar, family and friends of incoming CCBA President Brenda Lee Eutsler came to the campus of Rutgers University in Camden to witness the changing of the guard. Following a lively cocktail party in the Athletic Center, guests moved to the Gordon Theatre for a moving performance by the Children's Choir of the Catholic Partnership Schools in Camden and the swearing in ceremony emceed by Sports Announcer Don Tollefson. New officers and trustees of the Association & Foundation were sworn in by the Honorable M. Allan Vogelson (retired), followed by the presidential swearing in administered by Brenda's husband Jim Herman while son Brian held the Bible.

Special thanks to Environmental Resolutions, Inc., James Herman, Esq. and The Ferrara Law Firm Co., for their sponsorship of the evening.



Newly installed Officers & Trustees (l-r) Eric Feldhake, Trustee; Carl Price, Trustee; Casey Price, First Vice President; Mike Dennin, Young Lawyer Trustee; Jenifer Fowler, Second Vice President; Ellen McDowell, Trustee; Brenda Lee Eutsler, President; Jerry Poslusny, Trustee; Gary Boguski, President-elect; Eric Fikry, Secretary; John Palitto, Trustee; and Ron Lieberman, Trustee. (not pictured, Lou Moffa, Treasurer)



Also sworn in were new Foundation President Linda Eynon, and Foundation Trustees Shayna Slater (l) and Rachael Brekke (r).



Brenda Eutsler and Emcee Don Tollefson



Outgoing President Lou Lessig receives his plaque and Past President's pin from newly installed President Brenda Eutsler.



Children's Choir of the Catholic Partnership Schools



Brenda Eutsler & State Bar President Kevin McCann



CCBA Partner In Progress Marty Abo, Claire and Judge Snyder



Russell DePersia & Patricia Tanski



Let them eat cake!



Trustees Ellen McDowell & John Palitto, Kimberly Crum



Debbie Phillips & Chuck Resnick



Partners in Progress Dennis Freedman & Joel Goodhart from BIRE Financial Services



Pamela Fisk & Winston Extavour



## Rethinking Exemption Elections Under §522

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practitioners recognize, through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress was attempting to prevent what some have characterized as debtors' opportunistic and abusive behavior in taking advantage of unrestricted homestead exemptions in certain states. H.R. Rep. No. 109-31, at 15-16 (2005). To that end, §522(o), (p) and (q) were adopted by Congress in an effort to limit what it viewed as abusive use of unlimited homestead exemptions. Section 522(p), for example, limits a debtor's homestead exemption taken under §522(b)(3)(A) to \$125,000 of any interest in property that was acquired by the debtor within 1215 (3 years, 4 months) days preceding the bankruptcy filing. The §522(o), (p) and (q) limitations, however, only apply to homestead exemptions taken pursuant to §522(b)(3)(A), and not tenants by the entirety exemptions taken pursuant to §522(b)(3)(B). The result being that debtors can shield their real and personal property, including homesteads, from the reach of creditors so long as their property is located in a jurisdiction where tenants by the entirety property is off-limits to individual creditors.

In Florida, for example, both real and personal property acquired by a married couple is afforded a rebuttable presumption of tenancy by the entireties ownership. Beal Bank, SSB v. Almand and Associates, 780 So.2d 45, 52 (Fla. 2001). Of course, to the extent there exists a joint debt of both spouses, it may be possible for a bankruptcy trustee or other creditor to reach tenancy by the entireties property to the extent of the joint debt. See Havoco of America, Ltd. v. Hill, 197 F.3d 1135, 1139 (11th Cir. 1999). This exception aside, there really seem to be very few limits, if any, as to what or in what amount a debtor may exempt property pursuant to §522(b)(3)(B) in any given state where entireties properties is recognized as fully exempt from the reach of an individual's creditors. Some have argued that permitting such an unlimited exemption is contrary to the purposes espoused by Congress in enacting certain provisions of BAPCPA—namely,

to curb abusive and opportunistic filers from taking advantage of the system (O.J. Simpson in Florida and Kenneth Lay in Texas come to mind). However, some courts have countered that "despite its complex tinkering with homestead exemption provisions in BAPCPA, including changes to §§522(o), 522(p), and 522(q), Congress determined to leave wholly intact the preexisting blanket exemption available to debtors who own property in a tenancy by the entireties form if applicable non-bankruptcy law would exempt that property from process." In re Schwarz, 362 B.r. 535, 534, n.2 (Bankr.S.D.Fla. 2007).

The potential result is that wealthy married individuals may be allowed to plan and retain multi-million dollar mansions in certain jurisdiction, while creditors may be stuck holding millions in unpaid judgment liens and unpaid claims. Put another way, so long as the debtor has chosen to forego §522(d) federal exemptions in favor of §522(b) state exemptions, and so long as the property sought to be exempted is located in a *situs* where entireties property is off limits to creditors of an individual debtor, and regardless of the debtor's residence or domicile—the debtor may be able to fully exempt his interest in entireties property. Whatever philosophical or moral debates are raised by this issue, the simple fact remains that it is for Congress to amend the statute and for attorneys to zealously represent their clients' interests in accordance with the law.

The rush to elect §522(d) exemptions in a state whose own exemptions seem so grossly abridged in comparison to the federal scheme should be decelerated in cases where the debtor may have property located in another *situs*. For those planning professionals seeking to help their clients make fully informed and prudent decisions as to where to locate both real and personal property, including joint bank accounts, homes, vehicles, etc., full consideration should be given to the state's recognition and/or treatment of a tenants by the entireties property.



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