



## NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS

Member of the Month: July 2008

**Richard Nemeth**  
Cleveland, Ohio



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Our July 2008 Member of the Month, **Richard H. Nemeth**, is principal of Nemeth & Associates Co., LPA, a Cleveland law firm engaged in the practice of bankruptcy law, consumer law, real estate law, and business litigation. Richard – known to friends and family as Hal – came to the practice of bankruptcy law by accident due to the oil market crash in the late 1980's. Prior to forming Nemeth & Associates, Richard was vice-president and general counsel of Royal Petroleum Properties, Inc., a Cleveland-based corporate syndicator of oil and gas limited partnerships, where he managed the legal department and the real estate holdings of the corporate parent and 65 affiliated limited partnerships. When the bottom fell out of the oil and gas market and many firms – including Royal – sought bankruptcy protection, Richard transitioned into bankruptcy law. In the 20+ years since, Richard has represented thousands of Ohio consumers, as well as many business debtors, in bankruptcy proceedings and more recently has successfully represented a number of borrowers in lawsuits against abusive collectors and mortgage lenders and servicers.

Richard serves as NACBA's State Chair for the Northern District of Ohio. In that capacity, he initiated last year an effort to change the exemption laws in Ohio, which had not been updated since enacted in 1979. To give context, Ohio's exemptions laws – with a \$5,000 homestead exemption and a \$400 cash allowance – placed Ohio at or near the bottom nationally. "Both houses of the legislature have not been consumer-friendly. For example, Ohio is one of only two states which for years did not regulate mortgage brokers. There had been several unsuccessful attempts over the years to increase the exemptions. Being able to do so now was definitely a long-shot."

Richard put together a group of NACBA members in Cleveland that was in the process of drafting proposed changes to the exemption statute when he learned of a parallel effort by a group of legal services attorneys in Columbus, who were not as familiar with the bankruptcy aspects of the exemption statute as with the consumer law applications. Richard compiled comparative bankruptcy statistics, showing not only the comparative exemption statutes by state, but also, that the states with the most generous exemptions had the lowest rates of bankruptcy and that the states with the most draconian exemptions had the highest bankruptcy rates. This demonstrated that Ohio's punitive exemption statute resulted in higher rates of bankruptcy recidivism and left Ohioans so destitute that they were at risk of ending up on public assistance at the conclusion of a bankruptcy – a concept that played well to a largely conservative legislature.

The two groups joined forces and the proposal was brought to a leading Republican member of the Ohio Senate, Bill Seitz. Interestingly, Senator Seitz had recently been angered by the unwillingness of the mortgage lending industry in Ohio to work with the Ohio Governor's Foreclosure Prevention Task Force, claiming that they wanted a federal – rather than a state – solution to the Ohio foreclosure crisis. Figuring the adoption of the federal exemptions would be an *excellent* way to offer them a federal approach, Senator Seitz became an impassioned advocate of a change in the exemption laws. The effort brought together supporters from many corners of the State. Richard contacted former bankruptcy judges Thomas Waldron, a former chief judge on the bankruptcy court in Dayton, and William Brown, former member of the Sixth Circuit BAP and author of the Bankruptcy Exemption Manual, both of whom submitted written testimony in support of the bill. Richard was the lead-off witness before the Senate committee; fellow NACBA member Les Thompson from Dayton also testified. The bill passed the Senate unanimously. The path through the Ohio House was not as smooth, however, as a leading member of the House Judiciary Committee – a creditor's attorney from Cincinnati – did everything he could to derail the legislation despite overwhelming bipartisan support in both houses of the legislature. Richard was also a key

witness before the House Judiciary Committee, providing rebuttals to arguments raised against the bill. "There was a lot of behind-the-scenes maneuvering and responding to issues as they came up. It was basically my full-time job during the period when hearings were being held to feed statistics, data points, and arguments to legislators and their staff."

The final bill as reported out of the House Judiciary Committee proposed a codification of the federal exemptions (except the wildcard spillover). Richard was successful in having added to the bill two other provisions: exemption of the child tax credit and private disability insurance. NACBA member Mark Knevel also worked tirelessly on the effort and was instrumental in getting the Earned Income Credit exempted.

"It was very touch-and-go at the end, with the House actually being dismissed for summer recess without a floor vote and the bill looking like it was dead. Using the resources available through NACBA, such as email lists of Ohio NACBA members and the listserv, we were able to quickly get the word out to members about the tenuous situation and asked them to jump in, contact their state representatives, and sound the call to others to put pressure on the House Speaker to move the bill through committee and to the floor for a vote." NACBA member April Charney sent out an appeal on the NACA Mortgage Listserv, and their members jumped into action as well. Because of the overwhelming volume of calls, emails, and faxes to the Speaker's office, he actually reconvened the House for a one-day session to vote on the bill. It passed the Ohio House as amended, was concurred in by the Senate, and was sent to Governor Strickland for signature. The new Ohio exemptions become effective September 30, 2008.

Richard's published post-2005 reform legislation cases include: *In re Moon* (in repeat Chapter 13 filings, the stay expires only with regard to property of the debtor, not property of the estate); *In re Crews* (debtors may take ownership allowance for vehicles under means test even if they are not making a loan or lease payment), and *In re Macklin* (910 day vehicles may be crammed down if in addition to financing the purchase price the loan covered negative equity, gap insurance or other items).

In addition to his heavy caseload, Richard was deeply involved in NACBA's efforts to try to get Congress to pass bankruptcy reform legislation earlier this year that would have allowed mortgage cramdowns of subprime loans in Chapter 13. In response to a call by Maureen Thompson to identify clients who would benefit from the proposed mortgage modification legislation, Richard was able to send two clients, who were about to lose their home in suburban Cleveland due to the reset of their ARM, to Washington for a press appearance in support of the legislation. In February of this year he was interviewed for a segment on National Public Radio's "Marketplace" relating to the foreclosure crisis in Ohio and how the cramdown legislation would help and for a similar story on Cleveland's local public radio affiliate. Richard also traveled to Washington in February for NACBA's annual Capitol Hill Meeting to lobby Senators and Congressmen for passage of the bill, and was subsequently invited by Ohio Senator Sherrod Brown to participate in a press conference for the Ohio media to drum up support for it.

Richard received his B.A. from Case Western Reserve University in 1978 and, after ski bumming in Colorado for four years, went back to school and got a J.D. from Cleveland-Marshall College of Law in 1984. He is a member of the American Bar Association, the Ohio Bar Association, the Cleveland Metropolitan Bar Association, and the National Association of Consumer Advocates. He is a frequent speaker at CLEs on Chapter 13 issues and will be speaking at NACBA's upcoming Fall Workshop in Hilton Head.

Source: [www.nacba.org](http://www.nacba.org)

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