

Discussion on Exemptions

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I. Public Policy

- a. Debtors need the basics to live
 - i. Allows debtors to get back on their feet
 - ii. We don't want a complete burden on society
 - iii. Once claimed as exempt, creditors can no longer seize it to satisfy their judgments
 1. Only specified time to claim (or object to) exemptions

II. Definitions

- a. **Equity:** the value remaining after a secured creditor is paid in full
- b. **Property of the Estate:** (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
 - i. (A) by bequest, devise, or inheritance;
 - ii. (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
 - iii. (C) as a beneficiary of a life insurance policy or of a death benefit plan.
- c. 11 USC 522(a) definitions:
 - i. **Dependent:** includes spouse, whether or not actually dependent
 - ii. **Value:** is the fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

III. Domicile and Jurisdiction – Choice of Law

a. **Domicile**

- i. Wherever the debtor resided in the last 730 days (2yrs) prior to filing, the applicable exemptions of that state will apply.
- ii. If not in one state, look at the 180 days (6mos) prior to the 730 period to see where the debtor was for the majority of that time.
- iii. Choose Federal if residency was split between the states and if the debt was also split pretty evenly between both states
 1. Even if debtor would have been otherwise ineligible for Fed
- iv. Look at the totality of residency.
- v. *In re George*, 440 B.R. 164

b. **Jurisdiction**

- i. Must have lived w/in the filing state the 90 days prior to filing
- ii. Claim the equity, not the value.

IV. Vary State to State

- a. WI Exemptions
 - i. Used for a home that has too much equity.
- b. Federal Exemptions
 - i. States can opt out
 - ii. Default

V. Classification of Assets – Schedule B

- a. Unless there is an objection, whatever the schedules list is what will be approved.
- b. Intent to delay, hinder, or defraud creditors is key. §727(a)(2)
 - i. “Pigs get fed, hogs get slaughtered.”
 - ii. *In re Coplan*: debtors had moved to FL from WI within the year before filing, and the Court limited the normally unlimited FL homestead exemption as to them.
 - 1. The timing of the move was too coincidental and the reasons were not enough to warrant them exempting their entire home in FL.
 - iii. *In re Reed*: the 5th Cir held that the debtor who converts nonexempt assets to exempt homestead immediately before a bankruptcy, with the intent to defraud creditors, should be denied a discharge.
 - 1. (His company’s name was “Triple BS”.)
 - 2. Good faith was lacking.

c. Valuations

- i. Possibilities
 - 1. Liquidation Value
 - 2. Retail Value
 - 3. Wholesale Value
 - 4. FMV
- ii. Trustee vs. Debtor vs. Creditor opinion of the asset value
 - 1. Debtor = lower (to exempt more), Creditor/Trustee = higher (to exempt less to have more property for the estate)

d. Description

- i. Want to be as descriptive as possible.
 - 1. Helps the Trustee, less questions needed at the 341
- ii. What to list:
 - 1. Describe the asset
 - 2. List whether there is a lien against it
 - 3. Give the value and how that value was reached

e. Oddities:

- i. Each debtor in a joint case gets separate exemptions 522(m)
 1. Comes into play re: inheritances or two cars both claiming the motor vehicle exemption

- ii. How late is too late to list & exempt something?

1. Good faith
2. *In re Meyers*, 431 B.R. 823

iii. Life Insurance

1. If it has a value that the debtor can borrow against or otherwise access, that value must be scheduled.
2. [Section 522](#)(d)(11)(C) creates an exemption in the proceeds of a policy of life insurance
 - a. 1) if the debtor was dependent on the decedent at the time of death,
 - b. 2) to the extent necessary for the debtor's support and the support of the debtor's dependents. There are two evidentiary hurdles there: the funds must be traceable, and, they must be necessary for support.
 - c. NOTE: There are two evidentiary hurdles: the funds must be traceable, and they must be necessary for support.
3. From an asset perspective, it doesn't matter whose life is insured.
 - a. If the debtor is the beneficiary of anyone who dies within 180 days of the commencement of the case, the benefits come into the estate, subject to whatever exemptions are then available. [541](#)(a)(5)(C).
 - i. Example: when a family member of a debtor dies post case filing, and the life insurance proceeds are payable to debtor for funeral expenses, they will be nonexempt due to the family member not being a dependant.

iv. Inherited IRAs

1. Exempt or Not?
2. *In re Clark*

v. Land Sale Contracts

1. Are land contract payments, or the balance due on a land contract to vendor from sale of vendor's homestead property exempt under the homestead exemption?
 - a. What is necessary to create and provide a homestead?
 - i. *In re Taff*
 - ii. *In re Nelson*