

# The Exemptions

The logo for 'The Exemptions' features the word 'The' in a small, simple font above the word 'Exemptions' in a large, bold, black serif font. A stylized graphic of a hand holding a scale is integrated into the letter 'E' of 'Exemptions'.

“Leave the gun,  
take the cannoli.”

Northern District of Texas  
Bankruptcy Bench/Bar Conference  
June 16, 2022



# Bankruptcy Code and Rules

- 11 U.S.C. § 541. Property of the estate
- 11 U.S.C. § 521. Debtor's Duties
- 11 U.S.C. § 522. Exemptions
- Rule 4003. Exemptions
- Rule 1019. Conversion



# Property of the Estate 11 U.S.C. § 541

- Interests of the debtor in property **on petition date**
  - **Practice Tip:** property = land, real stuff, and virtual stuff anywhere in the world
- Interests of the debtor **AND the debtor's spouse** (*even if the spouse doesn't file*) in community property as of the petition date that is under the sole, equal, or joint management and control of the debtor; or is liable for an allowable claim against the debtor, or both the debtor and the spouse
  - **Practice Tip:** have a copy of the divorce decree for the Trustee if the debtor is recently divorced.
  - **Practice Tip:** Trustees may ask about the non-filing spouse's separate property or sole management community property
- **Windfall Rule:** Any interest in property that would have been property of the estate if it existed on the petition date and debtor becomes entitled to acquire within 180 days of petition date by:
  - bequest, devise, or inheritance;
  - as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
  - as a beneficiary of a life insurance policy or of a death benefit plan





# Debtor's Duties

11 U.S.C. § 521

- **11 U.S.C. 521(a)(3)**
  - Debtor has the duty to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties.
- **11 U.S.C. 521(e)(2)**
  - Debtor has the duty to provide not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed.



# Chapter 7 v. Chapter 13

- **Chapter 13**
  - Debtor keeps non-exempt assets but pays the value of the non-exempt property to creditors via plan
  - **Practice Tip:** talk to your client about the effect of conversion on their non-exempt property before you file the Chapter 13
- **Chapter 7**
  - Trustee liquidates non-exempt assets and distributes proceeds to creditors
  - **Practice Tip:** talk to your client about being prepared to turn assets over to the Trustee

# Texas v. Federal Exemptions

- Texas is an “opt in” state - Debtors have a choice of federal or Texas exemptions
- Most states require a debtor to use their state exemptions – this is why domicile timing is key – the debtor may be forced to use exemptions that are not advantageous



# Timing Considerations

- 730 Day Rule – § 522(b)(3)(A)
  - Debtor must be domiciled in Texas for at least 730 days pre-petition to be able to use Texas exemptions
- 180 Day Rule - § 522(b)(3)(A)
  - If the debtor hasn't been domiciled in Texas for at least 730 days, then look to where the debtor was domiciled for a majority of the 180-day period before the 730-day period (days 910 to 730 pre-petition)
- 1,215 Day Rule – § 522(p)(1)
  - Texas has an unlimited homestead exemption EXCEPT, a debtor may not exempt any amount of interest in his homestead that he acquired during the 1,215-day period pre-petition that exceeds \$189,050





# Texas Homestead Exemption

- **Texas Property Code § 41.001 and 41.002**
  - Unlimited equity (subject to § 522(p)(1)'s 1,215 Day Rule)
  - Urban: 10 acres for single debtor or family
  - Rural: 100 acres for single debtor or 200 acres for family
- **Practice Tip:** Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead – TPC 41.003





# Texas Homesteads and The Proceeds Rule

- **Texas Property Code § 41.001(c)**
  - Rule: The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.
  - Purpose: Allows Texas homestead claimants to reinvest sale proceeds into another exempt homestead (In re England, 975 F. 2d 1168 (5<sup>th</sup> Cir. 1992))



# Scenarios

## PRE-PETITION SALE

### All Chapters

- Proceeds held by debtor on petition date come into estate with 6-month limitation
- Proceeds become non-exempt property of the estate if not reinvested in new homestead within 6 months of pre-petition sale
- Proceeds are conditionally exempt subject to the reinvestment required by Texas law
- In re Zibman, 268 F.3d 298 (5th Cir. 2001)

## POST-PETITION SALE

### Chapter 7

- Based on snapshot rule, homestead itself was unconditionally exempt on the petition date
- Post-petition sale proceeds are not property of the estate
- Matter of DeBerry, 884 F.3d 526 (5th Cir. 2018); See also Matter of Hawk, 871 F.3d 287 (5th Cir. 2017) re: exempt retirement accounts

## POST-PETITION SALE

### Chapter 13

- Proceeds are exempt for 6 months
- Proceeds that are not reinvested within 6 months revert to estate
- In re Frost, 744 F.3d 384 (5th Cir. 2014)



# Texas Personal Property Exemptions

- **Personal Property – Texas Property Code § 42.001 and 42.002**
  - \$50K in value for single debtor/\$100K in value for joint debtors, includes:
    - Home furnishings, farm/ranch vehicles and equipment, tools of the trade, clothes, jewelry (up to 25% of the \$50K/\$100K limit), 2 firearms, athletic equipment, 1 motor vehicle per licensed driver, animals (see TPC § 42.002(a)(10) for limitations on amount and type, pets)
  - Exempt property not included in the \$50K/\$100K cap
    - DSO payments
    - Current wages for personal services
    - Professionally prescribed health aids
    - Burial plots
    - Bibles or other books containing sacred religious writings
- **Qualified Savings Plans - Texas Property Code § 42.0021**
- **Insurance - Texas Insurance Code § 1108.051**
  - Insurance benefits including cash value and proceeds of an insurance policy, to be provided to an insured or beneficiary



# Not Included in Texas Exemptions

- Cash, including checking and savings accounts
- Personal injury claims
- Debtor's interest in a business, joint venture, partnership, etc.
- Stocks, bonds, cryptocurrency, etc. not held in a qualified savings plan

# Federal Homestead Exemption

- Homestead – § 522(d)(1)
  - Up to \$27,900 in value for an individual debtor
  - Up to \$55,800 in value for joint debtors
  - **Practice Tip:** Check the value of the homestead before choosing an exemption scheme





# Federal Personal Property Exemptions

- **Personal Property – § 522(d)**
  - \$4,450 – motor vehicle
  - \$14,875 in aggregate/\$700 per item - household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments
  - \$1,875– jewelry
  - \$13,950 – “wildcard”
  - \$2,800 – tools of trade
  - DSO payments, various government benefits, qualified retirement funds, unmatured life insurance contracts owned by the debtor, professionally prescribed health aids
  - Debtor’s right to receive or property that is traceable to:
    - Crime victim reparations
    - Wrongful death payments\*
    - Payments under life insurance contracts insuring the life of the individual of whom the debtor was a dependent\*
    - a payment, not to exceed \$27,900 on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or
    - a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent\*

*\* to the extent reasonably necessary for support of the debtor/debtor’s dependent(s)*





# Federal Personal Property Exemptions

## Personal Bodily Injury and Loss of Future Earnings

- 522(d)(11)(D) allows the debtor to exempt the “right to receive, or property that is traceable to...a payment, not to exceed \$27,900, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent...”
- 522(d)(11)(E) allows the debtor to exempt the “right to receive, or property that is traceable to...a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.”





# Federal Personal Property Exemptions

## Section 522(d)(11)(D)—Personal Bodily Injury

- allows the debtor to exempt the “right to receive, or property that is traceable to...a payment, not to exceed **\$27,900**, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent...”
- This code section is hard to apply to real life circumstances.
- What is a personal bodily injury and what is not? An injury to the body, but what about loss of consortium?
- How in the world does one distinguish between:
  - a. A payment for the personal bodily injury – “Loss of limb”
  - b. A payment for pain and suffering - ???
  - c. Compensation for actual pecuniary loss – medical bills, attorney fees, lost wages





# Federal Personal Property Exemptions

## Section 522(d)(11)(E)—Loss of Future Earnings

- 522(d)(11)(E) allows the debtor to exempt the “right to receive, or property that is traceable to...a payment in compensation of loss of **future** earnings of the debtor or an individual of whom the debtor is or was a dependent, **to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.**”
- When does the future begin? At the time of the injury or the petition date?
  - Most courts: The future is: earnings loss for the period after the petition date.
- What is reasonably necessary for the support of the debtor and any dependents?
  - Factors: (1) present/anticipated income; (2) present/anticipated expense; (3) job skills, training, and education; (4) earning potential; and (5) other assets.





# Objections to Exemptions

- Rule 4003. Exemptions
  - A party in interest may file an objection to Schedule C within 30 days after the 341 Meeting is CONCLUDED or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.
  - Court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.
- Rule 1019(2)(B). New Filing Periods in Converted Cases
  - A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:
    - (i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or
    - (ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

**Anne Burns**

is a shareholder at Cavazos  
Hendricks Poirot, P.C.  
and a Chapter 7 Trustee for  
the Northern District of Texas,  
Dallas and Wichita Falls  
Divisions



**Laurie Dahl Rea**

is a partner at Forshey Prostek,  
LLP and a Chapter 7 Trustee for  
the Northern District of Texas,  
Fort Worth and Abilene Divisions

**Emily Wall**

is a shareholder at Cavazos  
Hendricks Poirot, P.C.  
and concentrates her practice  
on the representation of  
Chapter 7 Trustees

