Iowa's Homestead Exemption

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IOWA'S HOMESTEAD EXEMPTION

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I. INTRODUCTION

A. General Purpose

Iowa's homestead exemption protects a debtor's interest in his or her home by preventing certain debts from being enforced against it. "Homestead exemption is allowed, not for the financial profit, or merely as a margin of financial safety to the debtor. The exemption is for the benefit of the family, to provide wife (or husband), children, and dependents with a home. The exemption is granted, not merely out of grace to the debtor, but as a matter of public policy. ... The law allowing the exemption is to be liberally construed, and is not to be pared away by construction, so as to defeat its beneficent, sociological, and economic purpose." American Savings Bank v. Willenbrock, 209 Iowa 250, 253, 228 N.W. 295, 297 (1929).

B. Historical Background

Iowa first enacted a homestead exemption in 1849. See "An Act to exempt a homestead from forced sale," Ch. 124, 1849 Iowa Acts 152 (up to forty acres used for agricultural purposes, or up to one-fourth of an acre located within a recorded town plat, but value thereof not to exceed $500). Two years later, the 1849 enactment was displaced by the homestead exemption provisions contained in the Code of 1851. See Iowa Code §§ 1245-1266 (1851). While some adjustments have been made over the course of the intervening 138 years, most of the fundamental features of Iowa's homestead exemption have not changed appreciably since 1851. Compare id. with Iowa Code Ch. 561 (1989).

II. THE HOMESTEAD'S BASIC DIMENSIONS

A. Statutory Definition

The basic dimensions of the homestead are defined in Iowa Code §§ 561.1-.3 (1989):

(i) "The homestead must embrace the house used as a home by the owner," § 561.1;

(ii) The homestead "must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto ... ," § 561.3;
(iii) The homestead "may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead," § 561.1; and

(iv) "If [it is] within a city plat, [the homestead] must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres ...," § 561.2.

B. Use of a House as a Home

A homestead does not exist until an owner has occupied a house as his or her home, see, e.g., Christy v. Dyer, 14 Iowa 438, 440 (1863) ("[T]he homestead character does not attach to property until it is actually occupied and used ... as a home .... A mere intention to occupy, though subsequently carried out, does not make the premises the homestead until there is actual residence."). and it subsequently will cease to exist upon the owner's removal from the house with no intention of returning, see, e.g., Crail v. Jones, 206 Iowa 761, 764, 221 N.W. 467, 469 (1928) ("[T]he actual removal from a homestead with no intention to return to it as a home is an equivalent to a surrender of all claim of homestead to the premises ...."). A homestead will continue to exist following an owner's cessation of actual residence in the house, however, if the owner retains an intention to return at some later date. See, e.g., In re Estate of McClain, 220 Iowa 638, 644, 262 N.W. 666, 669 (1935) ("[O]nce the homestead character has attached, the owner may remove therefrom and the homestead character is preserved as long as he has an intention to return. ... [I]ntention to occupy in the future, while insufficient to establish a homestead originally, is sufficient to continue a homestead previously established.").

While a removing owner has the burden of establishing such intention, see, e.g., Fardal v. Satre, 200 Iowa 1109, 206 N.W. 22 (1925), that burden has been met in cases where the owner has been absent for as long as seven years, see Repenn v. Davis, 72 Iowa 548, 34 N.W. 326 (1887), or in those where the premises have been leased out to others for several years, see, e.g., In re Pope, 98 F. 722 (S.D. Iowa 1900).

Although the requirement that the homestead include "the house used as a home by the owner" presumably cannot literally be satisfied by a corporation, a neighboring state has used a "reverse pierce" of the corporate veil to allow a homestead to be claimed by a shareholder of a family farm corporation. See Cargill, Inc. v. Hedge, 375 N.W.2d 477 (Minn. 1985).

C. One Dwelling House and Other Buildings Properly Appurtenant Thereto

In some early cases where the owner's home occupied only part of a building, remaining parts of the building were deemed not to be within the homestead exemption. See, e.g., Rhodes, Pegram & Co. v. McCormack, 4 Iowa 368 (1857). Such segmentation of a single structure, however, entailed various difficulties, and Olsen v. Lohman, 234 Iowa 580, 13 N.W.2d 332 (1944) suggests that the use of part of a building for other
purposes normally will not place that part beyond the homestead exemption. Cf. In re Marriage of McMorrow, 342 N.W.2d 73, 75 n. 2 (Iowa 1983) (quoting law review article statement that "[t]he ingenuity of the court ... should be equal to the challenge of a debtor who seeks to dwell in the marble halls of an office building ...").

In addition to one dwelling house, the homestead may include both (i) "other buildings ... properly appurtenant thereto" and (ii) "a shop or other building ... actually used and occupied by the owner in the prosecution of the owner's ordinary business, and not exceeding three hundred dollars in value," Iowa Code § 561.3 (1989). While a separate duplex was not deemed appurtenant to the cottage used as a home by the owner in Kurz v. Brusch, 13 Iowa 371 (1862), a barn, a corncrib and machine shed, a feed house, and three farrowing houses were deemed appurtenant to a home on a rural forty acre homestead in In re Estate of Sueppel, 255 Iowa 974, 124 N.W.2d 154 (1963).

D. Land on Which the Home is Located

The interests in land which can be claimed as a homestead are not confined to fee simple estates. See, e.g., Stinson v. Richardson, 44 Iowa 373 (1876) (interest of vendee under contract for deed); Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919) (tenant in common); Lutz v. Ristine & Rumll, 136 Iowa 684, 112 N.W. 818 (1907) (life estate); Pelan v. DeBevard, 13 Iowa 53 (1862) (leasehold). See generally Rutledge v. Wright, 186 Iowa 777, 783, 171 N.W. 28, 30 (1919):

It is not essential to the acquisition of a homestead ... that the claimant have a perfect or complete legal title. It is essential that he have a sufficient title to justify his occupancy. Occupancy under such a title will justify a claim of homestead right ....

Where the interest owned is an undivided fraction of a parcel that exceeds the applicable area limitation, the owner's homestead seemingly is measured by the size of the fractional interest. See Livasy v. State Bank of Redfield, 185 Iowa 442, 170 N.W. 756 (1919) (injunction against sale of undivided one-fourth interest in 120 acres); Sieg v. Green, 225 F. 955 (8th Cir. 1915) (exemption of undivided one-half interest in 80 acres); cf. In re Burmester, No. 85-02282M (Bky. N.D. Iowa Aug. 30, 1988) (Judge Edmonds) (debtor's 40-acre homestead in 160-acre farm exempt as against debt incurred between debtor's initial inheritance of undivided one-half interest in farm from father and debtor's subsequent inheritance of remaining one-half interest from mother); Brown v. Vonnahme, 343 N.W.2d 445 (Iowa 1984) (40-acre homestead awarded to debtor by dissolution decree exempt as against tort judgment obtained while debtor held 80-acre parcel in joint tenancy with ex-husband). But cf. Rutledge v. Wright, 186 Iowa 777, 783, 171 N.W. 28, 31 (1919) ("If a homesteader own an undivided one-half interest in 80 acres of land, he may not assert a homestead right in the entire 80 acres, nor treat his undivided half as the equivalent of 40 acres. His homestead right will be confined to an area of 40 acres, even though his title be only an undivided half thereof.").
An express provision recognizes that a homestead may consist of an individual apartment in a cooperative apartment building, Iowa Code § 499A.18 (1989), and by implication, the same seemingly should be true of condominiums, see Iowa Code § 499B.12(1) (1989) ("[L]iens or encumbrances shall arise or be created only against the individual apartment and the ... common elements ... appurtenant to such apartment ... in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership."). One case suggests that a homestead can consist of a house alone, see Maguire v. Hanson, 105 Iowa 215, 220, 74 N.W. 776, 777 (1898), and mobile homes have been recognized as homesteads in some bankruptcy proceedings. See In re Dettman, 96 B.R. 899 (Bky. S.D. Iowa 1988) (although mobile home exempt as homestead, security interest encumbering it not avoidable under 11 U.S.C. § 522(f)(2)); Oppold, Iowa Bankruptcy 60 (1985).

E. Platting and Value

So long as it includes a house used as a home, an urban homestead of up to one-half acre or a rural homestead of up to forty acres may be platted out of any part of a larger tract of land owned by the debtor. See, e.g., Berner v. Dellinger, 206 Iowa 1382, 1383, 222 N.W. 370, 371 (1928) ("Until [the homestead] is actually platted, the right to the selection [of any part of a larger tract] as ... the homestead inheres in every square foot of the larger area.").

The homestead may be platted by the owner, or if the owner fails to do so upon written request, by the sheriff having an execution against property of the owner, or by the court. Iowa Code §§ 561.4-.6 (1989). The existence of a homestead, however, is not dependent upon a plating thereof. See, e.g., Mitchell v. West, 93 N.W.2d 380 (Iowa 1903) (unplatted homestead not subject to judgment lien); Green v. Farrar, 53 Iowa 426, 428, 5 N.W. 557, 558-59 (1880) (unplatted homestead not subject to execution).

If the value of a one-half acre urban homestead or a forty acre rural homestead is less than $500, "it may be enlarged until it reaches that amount." Iowa Code § 561.2 (1989). The relevant standard of value is a fee simple interest, however, and not such lesser ownership interest as the debtor might actually have in the land in question. Yates v. McKibben, 66 Iowa 357, 23 N.W. 752 (1885).

III. THE EXEMPTION AND ITS EXCEPTIONS

A. The Exemption

Iowa Code § 561.16 (1989) provides as follows:
The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, "household unit" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Before 1981, however, the exemption was limited to the homestead "of every family." See infra Outline § V.A.

A judgment entered on a debt which is not enforceable against a judgment debtor's homestead does not create any lien upon such homestead, and it thus can be conveyed to another free and clear of such judgments. See, e.g., Lamb v. Shays, 14 Iowa 567 (1863). Furthermore, "a conveyance of a homestead is not a fraud upon creditors as it is not subject to their claims," James v. James, 252 Iowa 326, 334, 105 N.W.2d 498, 502-03 (1960). The proceeds of a voluntary sale of a homestead, however, are subject to execution unless they are held with an intent to reinvest them in a new homestead. See Huskins, Bryson & Co. v. Hanlon, 72 Iowa 37, 33 N.W. 352 (1887); see also infra Outline § III.B.

Rents derived from the homestead while the owner is temporarily absent therefrom, see Morgan v. Rountree, 88 Iowa 249, 55 N.W. 65 (1893), or from part of the homestead not occupied by the owner, see Olsen v. Lohman, 234 Iowa 580, 13 N.W. 332 (1944), are exempt. Similarly, a condemnation award for a railroad right of way across a homestead and a judgment for damages to the homestead were held to be exempt in Kaiser v. Seaton, 62 Iowa 463, 17 N.W. 664 (1883) and Mudge v. Lanning, 68 Iowa 641, 27 N.W. 793 (1886), respectively.

If the debt being enforced by an execution sale is not enforceable against the homestead and a homestead is not platted, the sale of any part of a tract of land within which the homestead could have been located is void. See, e.g., Lutz v. Ristine & Ruml, 136 Iowa 684, 112 N.W. 818 (1907); Visek v. Doolittle, 69 Iowa 602, 29 N.W. 762 (1886); White v. Rowley, 46 Iowa 680 (1877). Moreover, if the debt being enforced by the execution sale is not enforceable against the homestead and a homestead is platted, a sheriff's deed which includes the homestead is ineffective to pass any interest in the homestead to the sale purchaser. Frum v. Kueny, 201 Iowa 327, 207 N.W. 372 (1926).

If a defendant does not assert a homestead claim prior to the entry of a judgment determining that a debt is a lien upon the defendant's homestead, such claim cannot subsequently be asserted in a later collateral proceeding. See, e.g., Francksen v. Miller, 297 N.W.2d 375 (Iowa 1980). Similarly, a debtor's failure to timely claim the surplus
proceeds of an execution sale upon a debt enforceable against the homestead may preclude the debtor from later objection to the sheriff's application of such proceeds towards debts which were not enforceable against the homestead. **Brumbaugh v. Zollinger**, 59 Iowa 384, 13 N.W. 338 (1882).

B. **The Pre-Acquisition Debt Exception**

"The homestead may be sold to satisfy debts ... contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution." **Iowa Code** § 561.21(1) (1989). A debtor who does not direct the sheriff to such other property, however, cannot later object to a sale of the homestead on the ground that such other property was not exhausted. **Foley v. Cooper**, 43 Iowa 376 (1876). Similarly, where a judgment upon a pre-acquisition debt could not have been satisfied by a sale of the nonhomestead portion of a tract of land, a sheriff's deed was sustained despite the debtor's contention that the nonhomestead portion had not been sold before the sale of the homestead. **Smith v. De Kock**, 81 Iowa 535, 46 N.W. 1056 (1890).

An ordinary debt is "contracted" when it is incurred, and a judgment upon a debt incurred before a debtor's acquisition of a homestead is enforceable against such homestead even though such judgment is not obtained until after the homestead was acquired. See, e.g., **Bills v. Mason**, 42 Iowa 329 (1876). In **Sloan v. Waugh**, 18 Iowa 224 (1865), a debt barred by the statute of limitations before the debtor acquired a homestead was held enforceable against the homestead when such debt had been revived after the homestead's acquisition by a new promise to pay.

Because a homestead does not exist until an owner has occupied a house as his or her home, see supra Outline § II.B., debts incurred after an owner purchases land but before the owner actually occupies such land as his or her home are "debts contracted prior to [the homestead's] acquisition." See, e.g., **Elston v. Robinson**, 23 Iowa 208 (1867); **Hale v. Heaslip**, 16 Iowa 451 (1864). Similarly, a debt incurred during the debtor's occupancy of land can be enforced against an interest in the land which the debtor did not obtain until after such debt was incurred. See, e.g., **Wertz v. Merritt**, 74 Iowa 683, 39 N.W. 103 (1888) (land inherited from father subject to debts of son incurred during son's prior occupancy of land as father's tenant).

By virtue of either or both of the foregoing principles, a debtor's homestead is subject to debts incurred for its purchase. See, e.g., **Christy v. Dyer**, 14 Iowa 438, 441 (1862) ("Plaintiff was the vendor and defendant the vendee of the premises. ... Under such circumstances, it is, in our opinion, contrary to the policy of the statute, to say that this debt was so contracted after the purchase of the homestead as to render the property exempt." (emphasis in original)). But cf. In re **Krantz**, 97 B.R. 514, 531 (Bky. N.D. Iowa 1989) (right to invoke pre-acquisition debt exception waived by mortgagee's prior release of homestead from mortgage incurred to purchase farm and construct residence). The fact that the proceeds of a debt incurred after the acquisition of a homestead are applied
towards payment of either the homestead's purchase price or some other pre-acquisition obligation, however, may be insufficient to permit such debt to be enforced against the homestead. See, e.g., *Johnson County Savings Bank v. Carroll*, 109 Iowa 564, 80 N.W. 683 (1899) (purchase price); *Brauch v. Freking*, 219 Iowa 556, 258 N.W. 892 (1935) (pre-acquisition obligation).

Pre-acquisition contractual undertakings involving contingencies not materializing until after a homestead is acquired may not constitute pre-acquisition debts. See *Hunt, Hill & Betts v. Moore*, 219 Iowa 451, 258 N.W. 114 (1935) (lawyer's contingent fee under 1916 contract not enforceable against homestead acquired in 1920 where claim not recovered until 1924 nor satisfied until 1928); *Anderson v. Kyle*, 126 Iowa 666, 102 N.W. 527 (1905) (initial grantee's claim against grantor for breach of warranty of title made in 1890 not enforceable against homestead acquired by grantor in 1895 where initial grantee not held liable to subsequent grantee for title defect until 1896). But see *In re Galvin's Estate*, 238 Iowa 894, 29 N.W.2d 230 (1947) (widow's claim under 1918 antenuptial agreement allowing her $10,000 if she were to survive her husband enforceable against homestead acquired in 1919); *Smith v. Andrew*, 209 Iowa 99, 222 N.W. 587 (1929) (receiver of insolvent bank appointed on December 25, 1927 allowed to enforce claim for double liability against stockholder's homestead where bank stock received on March 17, 1926 and homestead occupied on June 20, 1927); *Merchants National Bank v. Eyre*, 107 Iowa 13, 77 N.W. 498 (1898) (daughter's liability as surety upon note of father not due until after his death held a debt contracted prior to daughter's inheritance of homestead from father).

Where a defendant committed a fraud before he acquired a homestead, a post-acquisition tort judgment against him for resulting damages was deemed entered upon a pre-acquisition "debt" because the plaintiff could have waived the tort and sued in assumpsit. See *Warner v. Cammack*, 37 Iowa 642, 644 (1873):

Wherever a party has derived a pecuniary advantage from a wrong done by him, and it is competent for the person suing thereon to waive the tort and maintain his action upon the promise implied by the law, there the obligation to pay is a debt, and this, regardless of the form of the action in which that obligation is sought to be enforced.

In other circumstances, however, torts may not constitute "debts" until such time as the tortfeasor's liability therefore has been reduced to judgment. See *id.*:

The converse of the proposition just stated must also be true, that wherever a wrong is done resulting in no pecuniary advantage to the wrong-doer, and where the action must be in tort, and sound only in damages, there the obligation to pay is not a debt until ascertained by judgment.
Because a parent's obligation to support a child is considered to have arisen upon the child's birth, a child support judgment can be enforced against a homestead acquired between the birth of the child and the entry of such judgment. In re Marriage of Armetta, 417 N.W.2d 223 (Iowa Ct. App. 1987).

Where a debtor's interest in the homestead is encumbered, the debtor can satisfy part or all of the encumbrance without subjecting the homestead to debts incurred between the debtor's acquisition of such encumbered interest and the debtor's satisfaction of such encumbrance. See, e.g., American Savings Bank of Marengo v. Willenbrock, 209 Iowa 250, 259, 228 N.W. 295, 300 (1929):

[T]he homesteader, after his right of exemption accrues, may pay for the property, may pay off liens upon it; and the fact that he does so does not bring forward the date from which his right of exemption to the tract as an entirety accrues, nor would such fact confer on the creditor the right to impose upon the homestead liability to the amount of such expenditures made after the incurring of the debt to him.

Moreover, where debts have been incurred after a homestead has been acquired, improvements to the homestead subsequently made by the debtor cannot be subject to the payment of such debts. See, e.g., Ebersole v. Moot, 112 Iowa 596, 84 N.W. 696 (1900).

Where the debtor owns one tract of land which is the debtor's homestead and a second tract of land which is not the debtor's homestead, the debtor may change his homestead from the first tract to the second and the second tract will be exempt (i) as against debts to which the first tract was exempt (ii) to the extent of the value of the first tract. See Iowa Code § 561.20 (1989); Berner v. Dellinger, 206 Iowa 1382, 222 N.W. 370 (1928); see also In re Estes, No. 87-02006W (Bky. N.D. Iowa Mar. 28, 1988) (Judge Edmonds). Such a change, however, "shall not prejudice ... liens ... created previously thereto," Iowa Code § 561.7 (1989). See Elston & Green v. Robinson, 21 Iowa 531 (1866); see also Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986). Moreover, if the first tract was mortgaged before the change, any deficiency which subsequently might ensue upon a foreclosure of the mortgage will be enforceable against the second tract. See In re Erickson, No. 87-02428S (Bky. N.D. Iowa June 10, 1988) (Judge Edmonds).

The debtor also can sell his present homestead and acquire a new homestead with the resulting proceeds, and the new homestead will be exempt (i) as against debts to which the old homestead was exempt (ii) to the extent of the value of the old homestead. See Iowa Code § 561.20 (1989); see also In re Estes, No. 87-02006W (Bky. N.D. Iowa Mar. 28, 1988) (Judge Edmonds). The purchaser of the old homestead takes it free of any judgments against the debtor upon debts which were not enforceable against the old homestead, see supra Outline § III.A., and so long as the debtor holds the proceeds with
an intention to reinvest them in a new homestead, the proceeds of the sale of the old homestead are exempt for a reasonable period of time thereafter, see, e.g., Richards v. Orr, 118 Iowa 724, 92 N.W. 655 (1902).

Any surplus of proceeds from the sale of an old homestead remaining after the purchase of a new homestead, however, will be subject to the claims of the owner's creditors. See Webster, Button & Call v. Saunders, 8 Iowa 579 (1858); cf. Millsap v. Faulkes, 236 Iowa 848, 20 N.W. 2d 40 (1945). Also, if the new homestead is acquired and occupied before the old homestead is sold, the proceeds from the sale of the old homestead will not be exempt even though they otherwise would be applied towards payment of a mortgage on the new homestead. See In re Husted, No. 87-01413-S (Bky. N.D. Iowa Jan. 25, 1988) (Judge Edmonds).

For purposes of determining the extent to which the new homestead is exempt, the value of the old homestead is ascertained without regard to the existence of any encumbrances thereon. See American Savings Bank of Marengo v. Willenbrook, 209 Iowa 250, 228 N.W. 295 (1929). If the value of the new homestead exceeds the value of the old homestead, the new homestead is to that extent subject to debts incurred between the dates the old and new homesteads were acquired. Id. Interim creditors, however, may be prevented from proceeding against the new homestead if the excess value is fully encumbered by senior liens. Id.: cf., e.g., Laidley v. Aiken, 80 Iowa 112, 45 N.W. 384 (1890) (purchase money mortgages entitled to priority over liens of earlier judgments).

C. The Waiver Exception

"The homestead may be sold to satisfy debts ... created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt," Iowa Code § 561.21(2) (1989).

The requirement that a waiver be in a contract by "persons having the power to convey" necessitates the concurrence of a married debtor's spouse. See infra Outline § IV.A. The express stipulation requirement must also be met, see Rutt v. Howell, 50 Iowa 535, 537 (1879) (express stipulation requirement not met by confession of judgment providing that "execution may issue ... against any property belonging to ... defendants, homestead included"), and an effective waiver alone does not give the creditor a lien on the homestead, see First National Bank v. Phillips, 203 Iowa 372, 212 N.W. 678 (1927). Moreover, since March 1, 1985, homestead waivers also have been subject to the restrictions of 16 C.F.R. § 444.2(a)(2):

In connection with the extension of credit to consumers in or affecting commerce, ...it is an unfair act or practice ... for a lender or retail installment seller directly or indirectly to take or receive from a consumer an obligation that ...
[c]onstitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real ... property held, owned, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

In circumstances where a confidential relationship has been shown to exist between a creditor and a debtor, a homestead exemption waiver may not be enforced if the creditor does not establish by clear and convincing evidence that the debtor was aware of the legal effects of the waiver. See Peoples Bank & Trust Co. v. LaLa, 392 N.W.2d 179 (Iowa Ct. App. 1986) (mortgage on residential homestead executed by wife of business debtor held invalid because wife not advised by mortgagee of effects thereof); Farmers Savings Bank v. Kruse, 432 N.W.2d 166 (Iowa Ct. App. 1988) (unpublished opinion invalidating deed of trust on previously unencumbered 62-acre farm obtained by creditor to secure series of preexisting debts); Raccoon Valley State Bank v. Darrell Peters Motor Sales, Inc, No. 88-630 (Iowa Ct. App. February 23, 1989) (mortgagee's undue influence precludes foreclosure of mortgage on residential homestead obtained as additional security for preexisting business loan). Moreover, since May 30, 1986, the validity of a waiver affecting agricultural land has been conditioned on the presence of a prescribed written statement informing the debtor of the consequences of waiving the homestead exemption. See infra Outline § V.C.

Iowa cases involving mortgages of the homestead have been somewhat inconsistent as to whether such mortgages constitute waivers subject to the requirements of Iowa Code § 561.21(2) or merely conveyances or encumbrances subject only to the requirements of Iowa Code § 561.13 (1989) ("A conveyance or encumbrance of ... the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument ... and the instrument ... sets out the legal description of the homestead.")

Thus, one line of cases has held that an express stipulation of homestead liability is not needed if the mortgage contains a legal description of the homestead. See, e.g., Babcock v. Hoey, 11 Iowa 375 (1860) (mortgage lacking express stipulation that homestead liable for mortgage debt is a conveyance enforceable against homestead pursuant to predecessor of § 561.13); Hawkeye Bank & Trust Co. v. Michel, 373 N.W.2d 127 (Iowa 1985) (deed of trust containing legal description of homestead property, but lacking any specific mention of such property's character as grantors' homestead, held enforceable on authority of Reynolds v. Morse, 52 Iowa 155, 2 N.W. 1070 (1879), which in turn involves holding to like effect that, inter alia, rests upon the authority of Babcock v. Hoey); Treynor State Bank v. Duchman, 388 N.W.2d 677 (Iowa Ct. App. 1986) (unpublished opinion citing Babcock v. Hoey as authority allowing foreclosure of assignment of real estate contract on homestead where assignment contained legal description of property constituting assignors' homestead, but no specific language referring to such property as assignors' homestead).
A somewhat parallel line of cases, however, takes the further step of excusing the absence of an express stipulation of homestead liability if the mortgage merely contains a legal description of a larger tract of land within which the homestead is located. See, e.g., Waterman v. Baldwin, 68 Iowa 255, 261-62, 26 N.W. 435, 438 (1886) ("It is not essential, under [the predecessor of § 561.21(2)], that the homestead should be specially described as such, or that the conveyance should in express terms contain a stipulation that the mortgage was conveyed or should be sold. It is sufficient that the piece or parcel of land constituting the homestead is included in the conveyance or mortgage containing the usual provisions. Babcock v. Hoey, 11 Iowa, 375."); Ackley State Bank v. Van Hove, 429 N.W.2d 777 (Iowa 1988) (unpublished per curiam opinion allowing enforcement of security assignment of vendee's interest in real estate contract encompassing 120 acres despite absence of language waiving homestead exemption or separate legal description of homestead portion: "When a description includes land occupied as a homestead and the contract expressly provides that the entire tract is liable for the underlying debt, this is a sufficient compliance with Iowa Code section 561.21(2). It makes no difference that the land description also includes other, nonhomestead land. See Waterman v. Baldwin, 68 Iowa 255, 26 N.W. 435 (1886.).") Cf. Iowa Code § 561.13 (1989):

A conveyance or encumbrance of ... the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or like instrument ... and the instrument ... sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer.

In contrast, a separate line of cases holds that mortgages encompassing both homestead and nonhomestead property are subject to § 561.21(2)'s requirement concerning the prior exhaustion of the nonhomestead property. See, e.g., Lay v. Gibbons, 14 Iowa 377 (1862) (where mortgage encompasses both non-homestead and homestead property, predecessor of § 561.21(2) requires that former be exhausted before recourse to latter); Hall Roberts' Son, Inc. v. Plaht, 253 Iowa 862, 114 N.W.2d 548 (1962) (same requirement imposed by § 561.21(2)). An appeal presently pending before the Iowa Supreme Court concerns the applicability of the exhaustion requirement to the foreclosure of a farm mortgage encompassing the entire acreage other than the fraction of an acre on which the house and outbuildings are located. See Aetna Life Ins. Co. v. Wuchter, No. 88-1158.

The "other property pledged by the same contract for the payment of the debt" which must be exhausted before a debt can be enforced against the homestead on the basis of a waiver does not include property which the debtor previously has conveyed to others. See Dilger v. Palmer, 60 Iowa 117, 10 N.W. 763, 14 N.W. 134 (1881). The mere
fact that the value of the other property may be less than the senior interest of an unpaid contract vendor, however, does not excuse a mortgagee from the necessity of foreclosing its junior lien on such property before recourse can be had to the debtor's homestead property. See Henry County Savings Bank v. Jennings, 432 N.W.2d 166 (Iowa Ct. App. 1988) (unpublished opinion).

A further consequence of the exhaustion requirement is that it may affect the point in time at which a receiver can be appointed to take possession of a homestead pursuant to a mortgage pledge of rents and profits. If the mortgage encompasses both homestead and nonhomestead property, a receiver for the homestead portion normally cannot be obtained until a deficiency has occurred at the foreclosure sale. See Sheakley v. Mechler, 199 Iowa 1390, 203 N.W. 929 (1925). If the mortgage does not encompass any property other than the homestead, however, a receiver can be obtained in advance of the sale upon a showing that the value of the security is less than the amount of the mortgage debt. See Wellman Savings Bank v. Roth, 432 N.W.2d 697 (Iowa Ct. App. 1988).

The procedure by which the exhaustion requirement must be implemented at the sale foreclosing a mortgage encompassing both homestead and nonhomestead property was specified in Prudential Life Ins. Co. v. Westfall, 219 Iowa 1119, 1130, 260 N.W. 344, 349 (1935):

[T]he proper procedure to be followed in the sale of real estate under special execution in the foreclosure of mortgages covering real estate, which includes a homestead, should be [1] that the property other than the homestead shall first be offered in tracts of forty acres or less, and if no bids are received, or if the bids received when so offered in the aggregate are insufficient to pay the mortgage debt, interest and costs, [2] the entire tract other than the homestead shall then be offered en masse, and when so offered, if no bid is received, or if the bid received is insufficient to satisfy the total amount of the debt, interest, and costs, then [3] the homestead tract shall be offered separately, and, if the aggregate of the bids received for the property other than the homestead and the homestead property, when thus offered separately, is equal to, or greater than, the full amount of the judgment debt, interest and costs, the property other than the homestead and the homestead property shall be sold separately, but, if said aggregate of bids, when offered separately, is not equal to or greater than the total amount of the debt, interest and costs, then [4] the entire property shall be offered en masse.
and if it is thus ascertained that a greater amount can be realized for said mortgaged premises when so offered as a whole, then the entire tract, including the homestead, shall be sold en masse.

Shortly after Westfall was decided, a legalizing act validated all previously conducted execution sales involving departures from the above prescribed procedure. See Ch. 251, 1937 Iowa Acts 480, currently codified as Iowa Code § 588.2 (1989):

All execution sales of real estate heretofore had in which the execution officer has failed to serve notice upon the titleholders in possession to select their homestead, or has defectively served such notice or, having served such notice, has, upon the failure of the defendants to select a homestead, neglected to plat the same or has defectively platted the same, or where said execution officer in such sales has offered the property en masse without first offering the same in the least legal subdivisions, or where said officer has failed to offer property, including the homestead, first separately in least subdivisions exclusive of homestead, then offering all property en masse, exclusive of the homestead, then offering the homestead separately, then offering all of the property for sale, en masse, be and the same are hereby legalized and declared to be legal and valid in all particulars as if all of the provisions of the law had been in all respects strictly and fully complied with at the time of said acts or said sales.

Cases decided prior to Westfall upheld sheriff's deeds where the homestead had not been platted but the land had been offered for sale in parcels before being sold en masse, see, e.g., Brumbaugh v. Shoemaker, 51 Iowa 148, 50 N.W. 493 (1879), but had set aside sheriff's deeds where the homestead had not been platted and the land had been sold en masse without previously offering it for sale in parcels, see Owens v. Hart, 62 Iowa 620, 17 N.W. 898 (1883). See generally Arnold v. Murphy, 199 Iowa 934, 938-39, 203 N.W. 387, 389-90 (1925). Moreover, in a recent case where the district court erroneously had concluded that a single person could not claim a homestead, the Supreme Court vacated a sheriff's sale to allow a platting of the homestead and a sale complying with the exhaustion requirement. Welsh v. Citizens National Bank, 420 N.W.2d 473 (Iowa 1988).

Subsequently, however, both the Supreme Court and the Court of Appeals have refused to set aside foreclosure sales in circumstances involving "substantial compliance" with the homestead platting and exhaustion requirements. See First National Bank v.
Diers, 430 N.W.2d 412 (Iowa 1988) (land offered in parcels with parcel containing homestead being offered last pursuant to plan of division submitted by debtors); Federal Land Bank v. Heeren, No. 87-1508 (Iowa Ct. App. Apr. 25, 1989) (land offered in parcels and parcel containing homestead sold separately pursuant to plan of division submitted by debtors). Moreover, in three recent cases in which there seemingly had not been any compliance with the homestead platting and exhaustion requirements, the Court of Appeals ruled that sale avoidance is optional and not mandatory, and should be denied in circumstances where it appears that the mortgage debt could not have been satisfied by a sale of only the nonhomestead portion or by separate sales of the nonhomestead portion and the homestead. Dahlof v. Federal Land Bank, No. 88-661 (Iowa Ct. App. Apr. 25, 1989); Equitable Life Assurance Soc. v. Anderson, No. 88-813 (Iowa Ct. App. Feb. 23, 1989); Chapman v. Raccoon Valley State Bank, No. 88-711 (Iowa Ct. App. Feb. 23, 1989).

For other recent decisions involving closely related issues, see Federal Land Bank v. Tiffany, No. 87-1150 (Iowa Ct. App. Feb. 23, 1989) (statutory provision that sale "may be set aside" if written notice of sale not served upon debtor in "actual occupation and possession" is discretionary, and sale properly upheld where debtors had actual notice of sale and had not been injured by absence of written notice); Fausnaugh v. Oster, 423 N.W.2d 908 (Iowa Ct. App. 1988) (unpublished opinion holding that creditor cannot use en masse sale as basis for setting aside sheriff's sale at which creditor improvidently purchased land for full amount of debt); Brenton State Bank of Jefferson v. Tiffany, 400 N.W.2d 576 (Iowa 1987) (in rem foreclosure judgment improperly set aside upon motion of creditor where judgment provided for shortened redemption period not applicable to mortgage because it encompassed more than ten acres).

D. Special Dimensions of the Homestead in Marital and Post-Marital Settings

In marital settings, the homestead has a quality of indivisibility which may alter the effects which otherwise might follow from the exemption's exceptions. Thus, in a situation where both husband and wife had executed a homestead exemption waiver, a creditor of the husband was not allowed to sell the husband's interest in the jointly-owned homestead because the sale of the husband's interest would be an impermissible interference with the wife's interest. See Merchants Mutual Bonding Co. v. Underberg, 291 N.W.2d 19 (Iowa 1980); see also Decorah State Bank v. Zidlicky, 426 N.W.2d 388 (Iowa 1988) (husband's interest in homestead not subject to foreclosure under jointly executed purchase mortgage containing future advances clause where later business-related promissory note referring back to mortgage was not authorized or signed by wife). Somewhat differently, where a mechanic's lien upon a homestead owned by the husband alone had been foreclosed in an action to which the wife had not been joined as a party, the holder of a resulting sheriff's deed to the homestead could not obtain possession thereof in a subsequent forcible entry and detainer action brought against the husband alone because the wife's interest in the homestead had not previously been adjudicated to be subject to the mechanic's lien. See Francksen v. Miller, 297 N.W.2d 375 (Iowa 1980). Query whether this indivisibleness effectively insulates homesteads
jointly owned by married persons from any pre-acquisition debts for which they only are liable individually?

The "special declaration[s] of statute to the contrary" which override the homestead's exemption from judicial sale include the provisions for dissolutions of marriage under which decrees may provide that family support obligations will be liens upon property awarded to the obligor. See *Kobriger v. Winter*, 263 N.W.2d 892 (Iowa 1978). More generally, some cases suggest that family support obligations can be enforced against a homestead either because such obligations are not "debts" within the meaning of exemption statutes, see, e.g., *Malone v. Moore*, 212 Iowa 58, 236 N.W. 100 (1931); *In re Guardianship of Bagnall*, 238 Iowa 905, 29 N.W.2d 597 (1947), or because "the public policy underlying [the enforcement of family support obligations] rises higher than our policy to 'jealously [guard]' homestead rights," *In re Marriage of McMorrow*, 342 N.W.2d 73, 76 (Iowa 1983). Based on these principles and others, it generally has been held that homestead liens securing family support obligations cannot be avoided under the provisions of 11 U.S.C. § 522(f)(1). See, e.g., *Boyd v. Robinson*, 741 F.2d 1112 (8th Cir. 1984); *In re Adams*, 29 B.R. 452 (Bky. N.D. Iowa 1982).

In a dissolution action, the court may order a sale of the homestead and direct application of the proceeds towards the satisfaction of debts which would otherwise not be enforceable against the homestead. *In re Marriage of Tierney*, 263 N.W.2d 533 (Iowa 1978). Moreover, the mere ordering of a sale of the homestead in a dissolution proceeding may render the sale proceeds subject to the claims of creditors which might not otherwise be enforceable against the homestead. *See id.*, at 535 ("Once sale is ordered, nothing in the homestead laws purports to control judicial disposition of the proceeds. The proceeds would be subject to the claims of creditors in the hands of the parties."); *Davis v. Yerkey*, 423 N.W.2d 908 (Iowa Ct. App. 1988) (unpublished opinion allowing judgment creditor of wife to garnish proceeds in hands of wife's dissolution attorney where court had ordered sale of homestead and division of proceeds between husband and wife); *In re Morrison*, No. 88-608-C H (Bky. S.D. Iowa Jan. 9, 1989) (Judge Hill) (debtor's interest in homestead not exempt once sale has been ordered by dissolution decree). A dissolution decree which awards the homestead entirely to one of the parties, however, does not render the homestead subject to claims not otherwise enforceable against it. *See Brown v. Vonnahme*, 343 N.W.2d 445, 451 (Iowa 1984).

Where one spouse has been awarded occupancy of the homestead until some later event, the other spouse cannot claim a homestead exemption in the right to receive part of the proceeds of the eventual sale. *See In re Pearson*, No. 88-778-C H (Bky. S.D. Iowa Dec. 29, 1988) (Judge Hill); *In re Attrill*, No. X88-0100S (Bky. N.D. Iowa June 5, 1989) (Judge Edmonds). In the interim, however, the occupying spouse's interest in the homestead may prevent creditors of the absent spouse from obtaining any judgment lien on the absent spouse's interest, see *Attrill*, and the interest of the occupying spouse also may affect the means which the absent spouse's bankruptcy trustee can use to dispose of the absent spouse's interest, see *Pearson; Attrill*; see also 11 U.S.C. § 363(h). Proceeds received by a spouse who remains in possession of the homestead until the sale seemingly will be exempt if they will be used to purchase a new homestead, see *supra*
Outline § III.B., but in such circumstances, or where both spouses use their portion of the proceeds to purchase new individual homesteads, it is unclear how the value of the old and new homesteads should be calculated for purposes of applying the carryover provisions of Iowa Code § 561.20 (1989).

E. Other Exceptions

"The homestead may be sold to satisfy debts ... incurred for work done or material furnished exclusively for the improvement of the homestead," Iowa Code § 561.21(3) (1989). Thus, a debt for materials used in improving the homestead may be enforced against the homestead notwithstanding the fact that the creditor's right to enforce such debt as a mechanic's lien has been lost by the running of the statute of limitations for the enforcement of such liens. See Moffit v. Denniston & Partridge Co., 229 Iowa 570, 294 N.W. 731 (1940). A bank loaning funds used to pay for an improvement to the homestead, however, does not have a debt which can be enforced against the homestead pursuant to this exception. See In re Keane, 7 B.R. 844 (Bky. N.D. Iowa 1980).

"The homestead of every person is exempt from judicial sale [only] where there is no special declaration of statute to the contrary," Iowa Code § 561.16 (1989). Such special declarations have been found to exist, inter alia, in cases involving taxation of the costs of boundary line litigation, Chandler v. Hopson, 188 Iowa 281, 175 N.W. 62 (1919), old age assistance liens, In re Ragan's Estate, 237 Iowa 619, 23 N.W.2d 521 (1946), and dissolution decrees, see supra Outline § III.D.

Equitable liens have been imposed on homesteads where fraudulently obtained or misappropriated funds have been used to pay off mortgages upon the wrongdoer's homestead, see Cox v. Waudby, 433 N.W.2d 716 (Iowa 1988); McGaffee v. McGaffee, 244 Iowa 879, 58 N.W.2d 357 (1953); In re Munsell's Guardianship, 239 Iowa 307, 31 N.W.2d 360 (1948), or where the homestead was purchased with the proceeds of property which a dissolution decree had directed be applied towards the payment of marital debts, see In re Graham, 28 B.R. 928 (Bky. N.D. Iowa 1983).

State homestead exemption laws do not afford any protection against federal tax liabilities, see, e.g., United States v. Pilla, 711 F.2d 94 (8th Cir. 1983), and the homestead rights of a nondelinquent spouse may be honored only by receipt of an appropriate portion of the proceeds of a sale of the homestead property, see United States v. Rodgers, 461 U.S. 677 (1983); United States v. Bachman, 584 F. Supp. 1002 (S.D. Iowa 1984). Effective July 1, 1989, however, a taxpayer's principal residence may be levied against only if "a district director or assistant district director personally approves [in writing] the levy of such property, or ...the Secretary finds that the collection of the tax is in jeopardy," 26 U.S.C.A. § 6334(a)(13) & (e) (Supp. 1989).
IV. CONVEYANCES AND DISPOSITIONS ON DEATH

A. Conveyances

Iowa Code § 561.13 (1989) provides as follows:

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, and the instrument of power of attorney sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead and inchoate dower rights in the homestead specifically relinquishes homestead rights in an instrument, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

Although the requirement that an owner's spouse join in a conveyance or encumbrance of the homestead has been held not to apply to transfers of certain limited interests which do not interfere substantially with the use and enjoyment of the homestead, see Stokes v. Maxson, 113 Iowa 122, 84 N.W. 949 (1901) (access easement); Harkness v. Burton, 39 Iowa 101 (1874) (license for removal of minerals); Chicago & South-Western R.R. Co. v. Swinney, 38 Iowa 182 (1874) (railroad right of way), it has been held applicable to a lessee's assignment of an unexpired lease, Pelan v. DeBevard, 13 Iowa 53 (1862), to a lessee's agreement to early termination of a leasehold, see Wright v. Flatterich, 225 Iowa 750, 281 N.W. 221 (1938) and to a vendee's acknowledgement of the validity of a forfeiture of a land contract, Lessell v. Goodman, 97 Iowa 681, 66 N.W. 917 (1896). When a wife had joined in a mortgage upon the homestead, however, her husband's individual written admission of the otherwise time-barred mortgage note was sufficient to revive such note so as to permit a subsequent enforcement of the mortgage against the homestead. Mahon v. Cooley, 36 Iowa 479 (1873).
B. Dispositions on Death

For a description of the complexities of the homestead exemption where a homestead has passed into the hands of a deceased owner's spouse or issue, see I Kurtz on Iowa Estates 267-86 (1981); Note, "Descent" of the Homestead Exemption, 39 Iowa L. Rev. 473 (1954).

V. RECENT LEGISLATIVE DEVELOPMENTS

A. Single Persons

Prior to July 1, 1981, Iowa Code § 561.16 read as follows:

The homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such right shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party.

(Emphasis added.) In 1981, as part of an enactment in which Iowa precluded recourse to the federal bankruptcy exemptions established by 11 U.S.C. § 522(d) and modified the personal property exemptions contained in Iowa Code Ch. 627, § 561.16 was changed to provide that "[t]he homestead of every person is exempt from judicial sale, where there is no special declaration of statute to the contrary ... ." (emphasis added). See Ch. 182, § 1, 1981 Iowa Acts 582, 582-83.

In 1987, minor aspects of the phrasings of §§ 561.4, .5, and .16 were altered to clarify their application to situations involving the homesteads of single persons. See Ch. 116, 1987 Iowa Acts 158. In a recent decision affirming the applicability of the 1981 change to single persons, the Iowa Supreme Court summarily rejected a creditor's contention that the change encompassed only unmarried, cohabiting persons. Welsh v. Citizens National Bank, 420 N.W.2d 473 (Iowa 1988).

The 1981 enactment did not expressly address whether the changes it made in Iowa exemption law were applicable to debts incurred prior to July 1, 1981, and such issue apparently has not been the subject of any reported judicial decision. Cf. In re Marriage of McMorrow, 342 N.W.2d 73 (Iowa 1983) (1981 change in § 561.16 assumed sub silentio to be applicable to single person where homestead occupied after debt had been incurred in 1979). The issue presumably will not arise in circumstances where a debt incurred prior to July 1, 1981 predated a single debtor's purchase and occupation of a homestead because such debt could be enforced against such homestead pursuant to §
561.21(1)'s exception for pre-acquisition debts (subject, however, to such exception's requirement of a prior exhaustion of the debtor's other non-exempt property). See supra Outline § III.B.

In circumstances where a single person purchased and occupied a homestead before incurring a debt prior to July 1, 1981, however, a determination that such a debt is subject to the exemption from judicial sale made available to single persons on and after that date might be challenged as an impairment of contract. Compare, e.g., In re LaFortune, 652 F.2d 842 (9th Cir. 1981) (holding unconstitutional elimination of requirement conditioning homestead exemption on prior filing of claim thereto); In re Chavarren, 2 B.R. 215 (Bky. D. Idaho 1980) (holding unconstitutional increase of homestead exemption from $10,000 to $25,000) with In re Johnson, 69 B.R. 988 (Bky. D. Minn. 1987) (upholding constitutionality of expansion of homestead exemption from 80 acres to 160 acres); In re Barnhart, 47 B.R. 277 (Bky. N.D. Tex. 1985) (upholding constitutionality of change of urban homestead exemption, inter alia, from $10,000 to one acre); Neel v. First Federal Savings & Loan Ass'n of Great Falls, 675 P.2d 96 (Mont. 1984) (upholding constitutionality of increase of homestead exemption from $20,000 to $40,000); Ingebretsen v. McNamer, 187 Cal. Rptr. 529 (1st Dist. Ct. App. 1982) (upholding constitutionality of increase of homestead exemption from $20,000 to $40,000); Macumber v. Shafer, 96 Wash. 2d 568, 637 P.2d 645 (1981) (upholding constitutionality of increase of homestead exemption from $10,000 to $20,000); In re Ageton, 6 B.R. 727 (Bky. D. Ariz. 1980) (upholding constitutionality of increase of homestead exemption from $15,000 to $20,000); In re Zahn, 605 F.2d 323 (7th Cir. 1979) (upholding constitutionality of increase of homestead exemption from $10,000 to $25,000); Wilkinson v. Carpenter, 277 Or. 557, 561 P.2d 607 (1977) (upholding constitutionality of increase of homestead exemption from $7,500 to $12,000); Cochran v. Cutler, 39 Ill. App. 3d 602, 350 N.E.2d 59 (1976) (upholding constitutionality of increase of homestead exemption from $5,000 to $10,000).

Conceivably, all debts incurred before July 1, 1981 could be deemed to be within § 561.21(1)'s exception for "debts ... contracted prior to [the] acquisition" of a single person's homestead on the ground that any property purchased and occupied before then by a single person was not such person's homestead until that date. While such a construction might be supported by older cases holding that debts could be enforced against a homestead after it had ceased to be the homestead of a "family" by virtue of the departure of all dependents of the owner, see, e.g., Fullerton v. Sherrill, 114 Iowa 511, 87 N.W. 419 (1901), it might be countered by § 561.1's definition of the homestead as "embrac[ing] the house used as a home by the owner." Curiously, no pre-1981 case has been discovered involving § 561.21(1)'s exception for pre-acquisition debts in circumstances where a single person's purchase and occupation of a homestead was followed first by the incurring of a debt and then by a marriage.

Query whether the quality of indivisibleness which prevents the sale of the interest of only one spouse when a homestead is jointly owned by married persons (see supra Outline § III.D.) is applicable to a homestead jointly owned by single persons?
B. Demand for Levy

In 1982, Iowa Code § 624.23(2) was enacted by Ch. 1002, § 1, 1982 Iowa Acts 2:

Judgment liens described in [Iowa Code § 624.23(1)] shall not remain a lien upon real estate of the defendant, platted as a homestead pursuant to section 561.4, unless execution is levied within thirty days of the time the defendant or the defendant's agent has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived therefrom as to the real estate platted as a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure. A copy of the written demand and proof of service thereof shall be filed in the office of the county recorder of the county where the real estate platted as a homestead is located.

By its terms, Chapter 1002 applies to all judgments of record on January 1, 1983 and to all judgments entered on or after such date. Id., §§ 2-3.

The purposes and effects of § 624.23(2) are discussed in the comment to Title Standard 6.7:

Although under Iowa Code §§ 561.21 and 624.23 only a very limited class of judgments are liens against the homestead, judgment debtors were unable to convey marketable title to otherwise exempt homestead real estate without a declaratory judgment or quiet title action to establish that a judgment of record was not a lien. Iowa Code § 624.23(2) now provides an inexpensive and simple procedure for identifying an exempt homestead of record and establishing that judgments upon which execution has not been levied within 30 days from the date of service of proper written demand do not constitute liens upon such exempt homestead.
It should be noted that the 1982 amendments to Iowa Code § 624.23 do not change existing case law as to what judgments may in fact be liens under Iowa Code § 561.21. Unless a judgment arises out of a claim as described in Iowa Code § 561.21, the judgment is not a lien on the homestead. Presumably judgment creditors whose interest is not described in Iowa Code § 561.21 will not levy execution when notice is served under Iowa Code § 624.23 because a wrongful levy would arguably subject the creditor to a claim by the judgment debtor.


C. **Waiver Disclosure Requirement**

*Iowa Code* § 561.22 (1989) presently reads as follows:

If a homestead exemption waiver is contained in a written contract affecting agricultural land as defined in section 172C.1, or dwellings, buildings, or other appurtenances located on the land, the contract must contain a statement in substantially the following form, in boldface type of a minimum size of ten points, and be signed and dated by the person waiving the exemption at the time of the execution of the contract: "I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

(Emphasis added.)

In the form in which it first was enacted in 1986, § 561.22 did not contain the emphasized language restricting its scope of application to contracts affecting agricultural land. See Ch. 1214, § 8, 1986 Iowa Acts 323, 324. In 1987, however, the emphasized language was added and a separate provision made the resulting change in the scope of § 561.22 retroactive to May 29, 1986. See Ch. 67, 1987 Iowa Acts 82.

Presumably, contracts affecting agricultural land more often may involve obligations for purposes other than the purchase of the borrower's homestead (e.g., a mortgage on a 160-acre "home place" that includes a 40-acre exempt homestead may
involve an obligation incurred for the purpose of acquiring an additional 80 acres), but such contracts certainly are not unknown in nonagricultural settings (e.g., small business loan secured by mortgage on principal's residence). Arguably, the utility of mandating disclosure of the consequences of a waiver of the homestead exemption is as substantial in nonagricultural settings as it is in agricultural settings. In any event, the effectiveness of waivers in contracts affecting nonagricultural land remain challengeable in circumstances where a confidential relationship exist between the creditor and the debtor. See supra Outline § III.C.

Because a written contract containing a homestead exemption waiver "must contain" the required statement, and because such statement "must ... be signed and dated ... at the time of the execution of the contract," it would seem that the consequences of an omission of the required statement from a contract affecting agricultural land executed on or after May 30, 1986 cannot be avoided by any contemporaneous or subsequent execution of a separate document containing the required statement, nor by any subsequent amendment or other alteration of the original contract.

Absent the existence of any intervening interests in the property, it might be possible to avoid the consequences of an omission of the required statement from the original contract by the execution of a substitute contract which does contain the required statement. However, if the debtor will not execute a substitute contract, or if a substitute contract cannot be used because intervening interests do exist, it may be necessary to determine whether the contract might be within § 561.21(1)'s separate exception for pre-acquisition debts, see supra Outline § III.B., or might be enforceable apart from the waiver exception of § 561.21(2) as a conveyance or encumbrance subject only to the requirements of § 561.13, see supra Outline § III.C.

Future advances made after May 30, 1986 that are secured by a mortgage executed before then may be enforced against the homestead even though the earlier mortgage and the later promissory notes do not contain a § 561.22 waiver. See In re Morris, No. L88-00597C (Bky. N.D. Iowa Jan. 19, 1989) (Judge Melloy).

D. Fair Market Value Redemption of Agricultural Homesteads

Prior to 1986, a mortgagor's homestead redemption rights were limited to those provided by the interaction of Iowa's previously existing homestead and statutory redemption schemes. Pursuant to Iowa Code §§ 628.3 & .13 (1989), a mortgagor could redeem land within one year of the foreclosure sale by paying the sale purchaser an amount consisting, inter alia, of the sale price and interest thereon at the contract rate from the date of the sale to the date of the redemption. Furthermore, pursuant to Iowa Code § 628.23 (1989), "when the property [had] been sold in parcels, any distinct portion [could] be redeemed by itself." The homestead, however, only could be sold after the exhaustion of "all other property pledged by the same contract for the payment of the debt," Iowa Code § 561.21(2) (1989), and even then was to sold separately from the nonhomestead property unless such separate sale would not satisfy the mortgage debt
and would result in proceeds which were less than those which would result if the homestead and the nonhomestead property were sold together. See supra Outline § III.C. Accordingly, if the homestead were sold separately, it could be redeemed separately for its sale price, but if the homestead was sold together with the nonhomestead property, the homestead could be retained only if the mortgagor could redeem the entire parcel for the aggregate sale price.

In 1986, the General Assembly enacted a pair of bills which contained a number of agricultural credit relief measures. See Ch. 1214, 1986 Iowa Acts 323 (legal assistance to farmers, waivers of homestead exemption, ownership of land by nonresident aliens, right to cure agricultural mortgage defaults, agricultural mortgage receiverships, and farmer-creditor mediation); Ch. 1216, 1986 Iowa Acts 330 (fair market value redemption of agricultural homesteads, delay in enforcement of Farm Credit System deficiency judgments, increase of personal property exemptions, eligibility of small businesses for mortgage foreclosure continuances, and extension of governor's declaration of economic emergency). The right to redeem an agricultural homestead for its fair market value established by the latter enactment provided as follows:

**NEW SECTION. 654.16 SEPARATE REDEMPTION OF HOMESTEAD.**

If a foreclosure sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the foreclosure. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If the homestead is not sold separately, but rather is sold in conjunction with the nonhomestead property in order to satisfy the judgment, the court shall determine the fair market value of the homestead. The court may consult with the county appraisers appointed pursuant to section 450.24 to determine the fair market value of the homestead. The mortgagor may redeem the homestead separately by tendering the fair market value of the homestead pursuant to chapter 628.

Thus, in situations where previously existing sale procedures did not result in a separate sale of the homestead, a designated agricultural homestead could be redeemed separately for its fair market value within one year of the sale. This new right, however, was applicable only in actions filed on or after the underlying enactment's effective date of June 1, 1986. See First National Bank in Fairfield v. Diers, 430 N.W.2d 412 (Iowa 1988); Ch. 1216, § 13, 1986 Iowa Acts 330, 333; Op. Att'y Gen. 11-2-67 (law deemed of immediate importance and published takes effect the next day after its last publication in at least two newspapers).

In 1987, § 654.16 was amended to read as follows:

If a foreclosure sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the foreclosure. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If the designated homestead is sold at a foreclosure sale in order to satisfy the judgment, the court shall determine the fair market value of the designated homestead. The court may consult with the county appraisers appointed pursuant to section 450.24, or with one or more independent appraisers, to determine the fair market value of the designated homestead.

The mortgagor may redeem the designated homestead by tendering the fair market value, as determined pursuant to this section, of the designated homestead at any time within two years from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628. However, this paragraph shall not apply to a member institution which has purchased a designated homestead at a foreclosure sale.

The mortgagor may redeem the designated homestead from a member institution, which has purchased the designated homestead at a foreclosure sale, by tendering the fair market value of the designated homestead within one year from
the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628.

If the member institution which has purchased the designated homestead at a foreclosure sale is not a state bank as defined in section 524.103, the following shall apply:

1. At the time the sheriff's deed is issued, the institution shall notify the mortgagor of the mortgagor's right of first refusal. A copy of this unnumbered paragraph and subsections 1 through 5 and titled "Notice of Right of First Refusal" is sufficient notice.

2. If within one year after a sheriff's deed is issued to the institution, the institution proposes to sell or otherwise dispose of the designated homestead, in a transaction other than a public auction, the institution shall first offer the mortgagor the opportunity to repurchase the designated homestead on the same terms the institution proposes to sell or dispose of the designated homestead. If the institution seeks to sell or otherwise dispose of the designated homestead by public auction within one year after a sheriff's deed is issued to the institution, the mortgagor must be given sixty days' notice of all of the following:

   a. The date, time, place, and procedures of the auction sale.

   b. Any minimum terms or limitations imposed upon the auction.

3. The institution is not required to offer the mortgagor financing for the purchase of the homestead.

4. The mortgagor has ten business days after being given notice of the terms of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the homestead by submitting a binding offer to the institution on the same terms as the proposed sale or other disposition, with closing to occur within thirty days.
after the offer unless otherwise agreed by the
institution. After the expiration of either the period
for offer or the period for closing, without
submission of an offer or a closing occurring, the
institution may sell or otherwise dispose of the
designated homestead to any other person on the
terms upon which it was offered to the mortgagor.

5. Notice of the mortgagor's right of first refusal, a
proposed sale, auction, or other disposition, or the
submission of a binding offer by the mortgagor, is
considered given on the date the notice or offer is
personally served on the other party or on the date
the notice or offer is mailed to the other party's last
known address by registered or certified mail,
return receipt requested. The right of first refusal
provided in this section is not assignable, but may
be exercised by the mortgagor's successor in
interest, receiver, personal representative, executor,
or heir only in case of bankruptcy, receivership, or
death of the mortgagor.

As used in this section, "member institution" means
any lending institution that is a member of the
federal deposit insurance corporation, the federal
savings and loan insurance corporation, the national
credit union administration, or an affiliate of such
institution.


This amended version of § 654.16 differed from the 1986 enactment in three
major respects. First, while the 1986 enactment only was applicable "[i]f the homestead
is not sold separately," the 1987 amended version was applicable "[i]f the ... homestead is
sold" (i.e., regardless of whether the agricultural homestead is sold separately or as part
of a larger tract of mortgaged land). Second, while the 1986 enactment entailed a one-
year redemption period, the 1987 amended version entailed a two-year redemption period
if the homestead was purchased by anyone other than a "member institution," and a one-
year redemption period for member institution sale purchasers followed by a one-year
right of first refusal applicable to all member institution sale purchasers other than state
banks (since 1985, all agricultural land purchased by state banks has been subject to a
five-year right of first refusal, see Iowa Code § 524.910(2) (1989)). Last, while the 1986
enactment was applicable only in actions filed on or after its effective date of June 1,
1986, the 1987 amended version was applicable to "all foreclosure sales of agricultural
land held on or after [June 4, 1987], and to foreclosure sales of agricultural land held
within one year before [June 4, 1987] if the holder of the sheriff's certificate of sale is a
mortgagee who has not sold or otherwise disposed of the agricultural land and whose mortgage was enforced by the foreclosure sale." See Ch. 142, §§ 28-29, 1987 Iowa Acts 196, 201-02.

In Federal Land Bank of Omaha v. Arnold, 426 N.W.2d 153 (Iowa 1988), a multi-faceted challenge to the constitutionality of the 1987 amended version of § 654.16 resulted in two holdings. First, the court held that the enactment's distinction between the redemption periods applicable to member institutions and other sale purchasers violated the equal protection clauses of the United States and Iowa constitutions. Id., at 156-58. However, "[i]n keeping with [its] obligation to preserve as much of the statute as possible within constitutional constraints," the court declared unconstitutional "only that portion of [the 1987 enactment] which discriminates between member and non-member institutions and impermissibly grants to member institutions a shorter, one-year redemption period." Id., at 157-58. Second, upon determining that "the retroactive application of [the 1987 enactment] unreasonably impairs the integrity of [a] judgment secured by [a] foreclosure decree" under which a sale had been held prior to the effective date of the 1987 enactment, the court held that the "retroactive ... application [of the 1987 enactment] unconstitutionally violates the contract clause of the United States Constitution." Id., at 161.

Although Arnold involved a sale held before the effective date of the 1987 enactment, the court's opinion includes the following discussion of the constitutional permissibility of the enactment's application to sales held on or after its effective date:

[A] scheme such as that embodied in the Act before us, which enables a debtor to redeem at fair market value, would meet [the constitutional standard of the federal contract clause] if applied prospectively. That is, had the fair market value been established prior to sheriff's sale, [the mortgagee] could have adjusted its bid on the designated homestead parcels to reflect their fair market value at time of sale, securing its deficiency judgment on the remaining acreage. But being subjected to the retroactive application of new redemption terms after sheriff's sale, [the mortgagee] stands the risk of losing a substantial portion of its judgment. See Iowa Code § 628.3 ("Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold.")

We are persuaded that the ... retroactive application of ... the Act unreasonably impairs the integrity of the judgment secured by the mortgage foreclosure decree. At best, only prospective application of the statute's terms will comport...
with the constitutional standard of "reasonable conditions" established for contract clause challenges.

426 N.W.2d at 160-61.

Shortly after Arnold was decided, a constitutional challenge to the 1987 enactment's application to a sale held after its effective date was deferred pending a determination of the designated homestead's fair market value. See Federal Land Bank of Omaha v. Engelken, No. C 85-2062 (N.D. Iowa Aug. 25, 1988) (Judge Hansen). In that case, the mortgagee asserted that such application would violate various constitutional provisions because (i) the redemption period would be two years instead of one year, (ii) the determination of fair market value was not made before the sale, and (iii) the redemption price would not include interest from the date of sale. Alternatively, the mortgagee contended that the fair market value of the designated homestead was the amount bid at the sale with interest from the date thereof.

Notwithstanding the existence of certain similarities, the normal scheme of statutory redemption established by Iowa Code Ch. 628 and agricultural homestead fair market value redemption under Iowa Code § 654.16 (1989) seemingly afford mortgagors separate and distinct rights which may be exercised in the alternative (or perhaps even cumulatively). Furthermore, because of the differences between it and normal statutory redemption, agricultural homestead fair market value redemption may interact with other aspects of Iowa mortgage foreclosure law in different ways (e.g., to avoid the possibility that a homestead redeemed under Iowa Code § 654.16 (1989) might not be shielded from the judgment lien of any deficiency judgment by Iowa Code § 628.3 (1989), a mortgagor might hold off exercising his or her right of fair market value redemption until after expiration of the two-year statute of limitations for deficiency judgments established by Iowa Code § 615.1 (1989)). Recently, however, the Iowa Supreme Court ruled that the provision of Iowa Code § 628.4 (1989) which terminates ordinary redemption rights upon the filing of a bankruptcy petition between decree and sale (see First National Bank v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987)) also terminates agricultural homestead fair market value redemption rights. See Hawkeye Bank & Trust v. Milburn, 437 N.W.2d 919 (Iowa 1989).

A number of other questions remain to be determined concerning the operation of agricultural homestead fair market value redemption:

1. The Homestead and Its Designation

While it is not expressly linked to Iowa Code Ch. 561, the agricultural homestead which is the subject of Iowa Code § 654.16 (1989) involves many of the same elements (e.g., a maximum of forty acres containing the residence of the mortgagor). Thus, fair market value redemption seemingly will not be available where the homestead has been abandoned by the mortgagor (cf., e.g., Crail v. Jones, 206 Iowa 761, 764, 221 N.W. 467, 469 (1928)), but query the result in situations where an absent mortgagor harbors an intention to return at some later
date (cf., e.g., In re Estate of McClain, 220 Iowa 638, 644, 262 N.W. 666, 669 (1935)) or where the mortgage encompasses the entire acreage other than the fraction of an acre on which the residence is located (cf. Aetna Life Ins. Co. v. Wuchter, No. 88-1158 (Iowa Sup. Ct. (appeal pending)))? Similarly, fair market value redemption presumably is not available if the mortgagor is a family farm corporation (but see Cargill, Inc. v. Hedge, 375 N.W.2d 477 (Minn. 1985) (shareholders of family farm corporation allowed to claim homestead exemption through use of a "reverse pierce" of the corporate entity)).

The homestead is to be designated by the mortgagor "by a date set by the court but not later than ten days before the sale." Query if this condition can be satisfied by a prior platting of the homestead either by the mortgagor pursuant to Iowa Code § 561.4 (1989) or by the sheriff pursuant to Iowa Code § 561.5 (1989)?

2. Timing of Fair Market Value Determination

If the homestead is sold, "the court shall determine [its] fair market value." Conceivably, the court might do this on its own motion, but if it does not, may the mortgagor or the sale purchaser be deemed to have waived some right they otherwise might have by failing to move for such a determination immediately following the sale? Furthermore, is fair market value to be determined as of the sale, as of the date a determination was requested by a moving party, as of the date of the court's determination, or as of some other date? See Metropolitan Life Insurance Co. v. Ahrenholz, Equity No. 28000 (Crawford County Dist. Ct. May 27, 1988), 3 Iowa Agricultural Law Reporter No. 3, at 5 (Oct. 1988) (fair market value is to be determined as of date of sale; same determined to be equal to sale bid where mortgagee testified that its bid was based on its assessment of the homestead's fair market value).

3. Senior Liens and Taxes

If the homestead is sold subject to one or more senior liens (e.g., at a sale foreclosing only a second mortgage), does "the fair market value of the designated homestead" refer to (i) the value of the land without any encumbrances or (ii) the value of the land without any encumbrances less the amount of encumbrances senior to the mortgage being enforced by the sale? See Federal Land Bank of Omaha v. Sleister, Equity No. 70-177 (Guthrie County Dist. Ct. June 1, 1988), 3 Iowa Agricultural Law Reporter No. 3, at 5 (Oct. 1988) (fair market value of homestead does not include any adjustment for liens). Similarly, if the homestead is sold at a sale foreclosing a first mortgage, should the determination of the value of the land included any reduction for overdue real estate taxes. Cf. Metropolitan Life Insurance Co. v. Ahrenholz, Equity No. 28000 (Crawford County Dist. Ct. May 27, 1988), 3 Iowa Agricultural Law Reporter No. 3, at 5 (Oct. 1988) (mortgagors denied credit for real estate taxes paid in anticipation of redemption because "if it was the defendants' intention to redeem,
they would have to pay these taxes to the treasurer or to the mortgagee if the mortgagee had advanced these taxes.

4. **Interest**

Although the mortgagor can redeem the homestead for its fair market value at any time within two years of the sale, must such a redemption include any interest, and if so, how much and from when (e.g., from date of the sale or from date of the court's determination of fair market value)? See *Arnold*, 426 N.W.2d 153, 161:

[W]e agree with [the mortgagee] that the amendments, though incorporating the redemption provisions of Iowa Code chapter 628, are silent with respect to the assessment of interest. Under section 628.13, a title holder would ordinarily redeem by tendering to the clerk of court the amount of the sheriff's certificate of sale "with interest at contract rate on the certificate of sale from its date." Under the amendment, which allows the redemption amount to be changed to fair market value at some unspecified time after sale but before expiration of the redemption period, it appears that any interest accruing on the bid amount would be lost to the mortgagee or other successful bidder.

But cf. *Metropolitan Life Insurance Co. v. Ahrenholz*, Equity No. 28000 (Crawford County Dist. Ct. May 27, 1988) (redemption price includes interest at contract rate from date of sale); *Federal Land Bank of Omaha v. Sleister*, Equity No. 70-177 (Guthrie County Dist. Ct. June 1, 1988), 3 Iowa Agricultural Law Reporter No. 3, at 5 (Oct. 1988) (redemption price includes interest at contract rate from date of sale plus any protective advancements pursuant to Iowa Code §§ 629.1-.2 (1989)).

5. **Possession**

If a receiver has not been appointed, is the mortgagor entitled to retain possession of the homestead during the second year of the two-year fair market value redemption period? If a receiver has been appointed, is the receivership to be continued into the second year, and if so, would any net proceeds of the receivership be paid to the foreclosing mortgagee or to the sale purchaser in circumstances where the two are not the same person.

6. **Right of First Refusal**

The holding in *Arnold* that subjects member institutions to a two-year fair market value redemption period seeming leaves fully intact the portion of §
654.16 that subjects member institutions other than state banks to a right of first refusal during the year following the issuance of the sheriff's deed.

Although some modest guidance may inhere in the direction that agricultural homestead fair market redemption is to be made "pursuant to the procedures set forth in chapter 628," the substantial nature of these and other questions presumably will occasion requests for judicial determinations under the procedure for resolving redemption disputes provided by Iowa Code § 628.21 (1989), or in the form of petitions for supplemental declaratory relief under Iowa R. Civ. P. 266.

VI. THE HOMESTEAD AND BANKRUPTCY

A. Introduction

The use of state exemption law in bankruptcy proceedings is complicated by the fact that state exemptions generally have been formulated and applied in settings which in some important respects are quite different from the circumstances normally present in bankruptcy. Outside of bankruptcy, exemptions usually are invoked in an essentially bilateral context where the issue is whether a specific creditor can reach a particular asset, and where any unsatisfied portion of the creditor's claim will remain enforceable against other assets the debtor subsequently might acquire. In contrast, the essentially multilateral nature of bankruptcy normally involves a focus on the collective interests of groups of creditors, and the bankruptcy discharge usually insulates not only subsequently acquired assets but also the proceeds of any later disposition of a presently owned asset that pre-petition creditors currently cannot reach in its present form. See Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 681 (1960); Comment, Bankruptcy Exemptions: Critique and Suggestions, 68 Yale L.J. 1459, 1508 (1959).

These differences have led some to embrace the conclusion that bankruptcy might function best with a nationally uniform "pure value" exemption (e.g., assets of any kind having a total value of no more than a specified dollar amount). See Countryman, supra, at 746-47; Comment, supra, at 1507-09. Others, however, have argued that state exemption laws represent deliberate balancings of the conflicting needs of credit promotion and debtor protection, and that such policy determinations should be respected by bankruptcy law. See Kennedy, Limitation of Exemptions in Bankruptcy, 45 Iowa L. Rev. 445, 449-51 (1960). A further argument for bankruptcy's incorporation of state exemption law is the need to avoid the incentives for voluntary debtor petitions or involuntary creditor petitions which might result from material disparities between the exemptions available within and outside of bankruptcy. Id. at 452.
The push and pull between these concerns can be seen in the statutory development of bankruptcy exemptions. The Bankruptcy Acts of 1800 and 1841 relied exclusively on a set of uniform federal exemptions, and the Bankruptcy Act of 1867 used a combination of uniform federal and incorporated state exemptions. See ch. 19, § 5, 2 Stat. 19, 23 (1800); ch. 9, § 3, 5 Stat. 440, 442 (1841); ch. 176, § 14, 14 Stat. 517, 522-23 (1867). The Bankruptcy Act of 1898, however, did not include any uniform federal exemptions and deferred fully to the exemptions established by state law. See ch. 541, § 6, 30 Stat. 544, 548 (1898). Most recently, the evolution of the current Bankruptcy Code included, in chronological order, (i) an initial bankruptcy commission proposal involving exclusive federal exemptions, (ii) a House bill affording debtors a choice between federal and state exemptions, (iii) a Senate bill restricting debtors to state exemptions, and (iv) the finally enacted compromise effort allowing debtors to choose between federal and state exemptions unless and until the choice has been eliminated by state legislative action. See H.R. Doc. No. 93-137, 93rd Cong., 1st Sess., pt. 2 (1973) (§ 4-503); H.R. 8200, 95th Cong., 1st Sess. (1977) (§ 522(b)); S. 2266, 95th Cong., 2d Sess. (1978) (§ 522(b)). The fact that the vast majority of states have exercised the "opt-out" option is suggestive of the powerful nature of the pressures in favor of bankruptcy's utilization of state law exemptions.

B. The Effects of the Pre-Acquisition Debt Exception

Although Iowa seemingly adheres to "the general rule that the conversion of nonexempt property into exempt property does not, of itself, invest the creditor with any right to follow the exempt property," American Savings Bank v. Willenbrock, 209 Iowa 250, 259, 228 N.W. 295, 299-300 (1929), outside of bankruptcy the consequences for homesteads are quite limited because pre-acquisition debts are enforceable against the homestead after the exhaustion of other nonexempt property, see supra Outline § III.B. The implementation of the pre-acquisition debt exception in bankruptcy, however, has proven over the years to be a matter of continuing substantive and procedural difficulty.

The initial incorporation of state exemption laws in the Bankruptcy Act of 1867 presented problems when it became apparent that it included the relatively absolute prohibition of retroactive effectiveness which state exemption laws then were held to under the Contract Clause. Accordingly, in 1873 Congress amended the Act to provide that exemptions were to "be valid against debts contracted before the adoption and passage of [state exemption laws], as well as those contracted after the same, and against liens by judgment or decree of any state court." When this amendment subsequently was invoked in a bankruptcy proceeding involving an Iowa homestead, it was held to insulate the homestead from the claims of creditors holding pre-acquisition debts. See Darling v. Berry, 13 F. 659 (C.C.D. Iowa 1882).

Shortly after the enactment of the Bankruptcy Act of 1898, the United States Supreme Court set forth a procedure for honoring the rights of creditors holding claims which were enforceable under state law against otherwise exempt property. Because "generally" exempt property did not pass into the bankruptcy estate, the Court held that
bankruptcy courts lacked jurisdiction to apply exempt property towards the claim of a creditor holding a waiver of exemptions which was valid and enforceable under state law. In recognition of the "equity" of the creditor who had obtained the waiver, however, the Supreme Court indicated that the discharge of the creditor's debt should be withheld temporarily to allow the creditor an opportunity to reach the otherwise exempt property in a state court proceeding. See Lockwood v. Exchange Bank, 190 U.S. 294 (1903).

The Lockwood approach was utilized in a number of Iowa bankruptcy proceedings involving homesteads and pre-acquisition debts. See, e.g., Ingram v. Wilson, 125 F. 913 (8th Cir. 1903); Duffy v. Tegler, 19 F.2d 305 (8th Cir. 1927). If a pre-acquisition debt had been reduced to judgment before bankruptcy, the resulting judgment lien could be enforced against a homestead even after a discharge had been granted. Cf. Schwanz v. Farmers' Co-op. Co., 204 Iowa 1273, 214 N.W. 491 (1927). Once a discharge had been granted, however, a pre-acquisition debt which had not been reduced to judgment would no longer be enforceable against the homestead. See Drees v. Armstrong, 180 Iowa 29, 161 N.W. 40 (1917).

In 1932, however, the Iowa Supreme Court ruled that a pre-acquisition creditor could not obtain a lien upon a debtor's homestead through equitable proceedings prosecuted during a stay of the debtor's discharge because the creditor's claim against the homestead was deemed to be inconsistent with the bankruptcy court's determination that the property was exempt. See Bracewell v. Hughes, 214 Iowa 241, 242 N.W. 66 (1932). Although the breadth of Bracewell's holding was somewhat unclear, it subsequently was determined to have freed Iowa homesteads from the claims of pre-acquisition creditors where bankruptcy proceedings had been commenced before such claims had been reduced to judgment. See Harris v. Hoffman, 379 F.2d 413 (8th Cir. 1967).

The enactment of the Bankruptcy Code presented a new set of procedural and substantive issues about the integration of Iowa's homestead exemption in bankruptcy proceedings. By including exempt property in the estate, § 541(a)(1) eliminated the jurisdictional limitation which had barred bankruptcy courts from directly adjudicating exceptions to exemptions and had channeled the determination of all such issues into the state courts. The incorporation of state exemption law in § 522(b)(2)(A) obviously left open the possibility that exceptions to state exemptions might have to be recognized and reflected in bankruptcy proceedings, but the waivers which seemingly provided the bulk of the exceptions handled under the Lockwood procedure were expressly invalidated by § 522(e). The possibility of further qualifications of exceptions to state exemptions were presented by § 522(c)'s specification of the post-bankruptcy status of property exempted from the estate and by both the judicial lien and security interest avoidance provisions of § 522(f). The import of the various provisions of § 522, however, is complicated by the fact that subsections (c), (e), and (f) remained largely the same as the content of subsection (b) shifted from exclusively federal exemptions through a choice between federal and state exemptions and a scheme of exclusively state exemptions to the enacted version involving a choice between federal and state exemptions which can be eliminated by state legislation restricting debtors to the exemptions established by state law.
Initially, the bankruptcy judges in both Iowa districts concluded that the freedom from unsecured pre-acquisition debts produced by Harris v. Hoffman could be augmented by using § 522(f)(1) to avoid the liens of any judgments obtained upon pre-acquisition debts prior to the commencement of the bankruptcy proceeding. See In re Mosher, No. 86-491-C (Bky. S.D. Iowa July 3, 1986) (Judge Stageman), remanded for determination of existence and extent of other nonexempt assets, 79 B.R. 840 (S.D. Iowa 1987), settled by parties before further proceedings (see 84 B.R. 576 n.2); In re Ziesman, No. 83-03017 (Bky. N.D. Iowa May 31, 1985) (Judge Thines). Subsequently, however, the case law in both districts swung back to a position in which the effect of the homestead as against pre-acquisition debts is even less than that available under Harris v. Hoffman.

The shift occurred first in the Northern District, with District Judge David R. Hansen's rulings that a homestead could not be claimed as exempt as against a pre-acquisition debt in In re Wooten, 82 B.R. 84 (N.D. Iowa 1986) and In re Ellingson, 82 B.R. 88 (N.D. Iowa 1986). Although the cases involved pre-acquisition debts which had not yet become liens on the homestead, Judge Hansen expressly indicated that § 522(f)(1) could not be used to avoid any lien which might attach to a homestead upon the entry of a judgment upon pre-acquisition debt either before or after the filing of bankruptcy.

In the Southern District of Iowa, Bankruptcy Judge Lee M. Jackwig initially also used a case involving a pre-acquisition debt which was not yet a lien upon the homestead to hold that a homestead could not be claimed as exempt as against such a debt and that any lien which might attach to a homestead upon the entry of a judgment upon a pre-acquisition debt either before or after the filing of bankruptcy could not be avoided under § 522(f)(1). See In re Nehring, 84 B.R. 571 (Bky. S.D. Iowa 1988). In that same case, however, Judge Jackwig went on to indicate that "[a]s a general rule and absent blatant abuse of the statutory framework, this court will not grant relief from the stay to an antecedent claimholder for the purpose of reducing the debt to judgment." Id., at 578.

Subsequently, in In re Schuldt, 91 B.R. 501 (Bky. S.D. Iowa 1988), Judge Jackwig sustained a trustee's objection to a homestead exemption on behalf of all holders of pre-acquisition debts, and stated that the homestead would be "subject to liquidation and distribution in accordance with sections 704(1) and 726 ... to the extent the antecedent debts are not satisfied after the other property of the debtors subject to execution is exhausted," id., at 503. Presumably, the suggested procedure consists of a two-step liquidation process in which nonexempt property other than the homestead first is applied towards satisfaction of both post-acquisition and pre-acquisition debts, followed by an application of the homestead towards satisfaction of the remaining balance of all pre-acquisition debts. But see England v. Sanderson, 236 F.2d 641 (9th Cir. 1956) (through an apparent combination of Constance v. Harvey and Moore v. Bay, trustee allowed (i) to obtain portion of homestead not exempt as to creditors holding claims pre-dating non-retroactive increase in dollar limitation seemingly without regard to the amount of the claims actually held by such creditors, and (ii) to distribute such portion among all creditors without regard to whether their claims arose before or after the date of the exemption increase). Query, whether a two-step distribution scheme can
be prevented by a debtor who does not claim the homestead as exempt, and if so, whether
the debtor properly can use the possible leverage such option might provide to persuade
pre-acquisition creditors to forego some portion of their claims against the homestead?

In a bankruptcy proceeding involving an unsecured creditor having a claim
enforceable against the homestead under state law solely by reason of a waiver which
was not accompanied by any lien, the state law exception presumably will have to yield
to the contrary treatment seemingly required by the express terms of § 522(e).  Cf.
Dominion Bank of the Cumberlands v. Nuckolls, 780 F.2d 408 (4th Cir. 1985) (security
interest on restaurant equipment avoided under § 522(f)(2) despite waiver of state
homestead exemption).  Although no comparably express bankruptcy policy
countermands the effects of the pre-acquisition debt exception, the current approach to
the implementation of the exception in bankruptcy settings rests largely on state cases
decided under the Bankruptcy Act where the intersection between the Act and Iowa's
homestead exemption was determined almost entirely in state court proceedings.  Under
the Bankruptcy Code, however, state courts will have no occasion to address the
intersection between the Code and the exemption absent a certification of the question
under Iowa Code Ch. 684A (1989) or some resurrection of the Lockwood procedure of
staying the discharge and lifting the stay to allow the issue to resolved in a state court
proceeding.

Although the policies behind the exemption schemes of other states obviously
may differ from those entailed in Iowa's homestead exemption, it is worth noting that
other bankruptcy courts have had to wrestle with the integration of exceptions to
otherwise exempt property.  See, e.g., In re Ondras, 846 F.2d 33 (7th Cir. 1988) (two-step
liquidation procedure appropriate to accommodate claim of tort victim where Indiana law
limits exemptions to contract debts); In re Cooley, 72 B.R. 54 (N.D. Ala. 1987)
(overruling objection to exemption based on exception for tort obligations); In re
Godfrey, 93 B.R. 451 (Bky. E.D. Va. 1988) (sustaining objection to exemption based on
exception for rent obligations); In re Oberlies, 94 B.R. 916 (Bky. E.D. Mich. 1988) (two-
step liquidation procedure appropriate to accommodate claims of joint creditors against
property held in tenancy by entirety).

Similarly, while they involve distinguishable concerns, some parallels exist
between the effects of categorical limitations such as Iowa's exception for pre-acquisition
debts and the effects of state laws which seek to define exemptions in ways aimed at
restricting the security interest avoidance powers debtors otherwise might be able to
exercise under § 522(f)(2).  Compare, e.g., In re Bland, 793 F.2d 1172 (11th Cir. 1986)
(en banc) (state cannot define exemptions to eliminate lien avoidance); In re Taylor, 73
B.R. 149 (B.A.P. 9th Cir. 1987) (same) with In re Pine, 717 F.2d 281 (6th Cir. 1983)
(state can define exemptions to eliminate lien avoidance); In re McManus, 681 F.2d 353
(5th Cir. 1982) (same).
C. The Effects of Satisfying Encumbrances or Improving the Homestead

The current treatment of the pre-acquisition debt exception in bankruptcy proceedings involving Iowa homesteads arguably does not directly implicate the issues raised in situations where a debtor devotes otherwise nonexempt funds to the satisfaction of encumbrances or the construction of physical improvements to the homestead. See supra Outline § III.B. Such conduct, however, might be challenged (i) as a fraudulent conveyance which can be avoided under 11 U.S.C. § 548, (ii) as a basis for the denial of a discharge under 11 U.S.C. § 727, or (iii) as grounds for qualifying or denying the exemption itself pursuant to (a) incorporated state law or (b) limiting principles derived from the general structure and content of the Bankruptcy Code.

A noteworthy aspect of the judicial treatment of cases involving challenges to the conversion of nonexempt assets into exempt assets is the frustrating absence of meaningful theoretical principles which might demark some bright line between permissible and impermissible conduct. This circumstance certainly is not new, compare, e.g., Forsberg v. Security State Bank, 15 F.2d 499 (8th Cir.) (reversing denial of discharge based on farmer’s trading of nonexempt cattle for exempt hogs) with Kangas v. Robie, 264 F.2d 92 (8th Cir. 1920) (affirming denial of exemption where merchant channeled $13,000 into homestead), and has changed little with the passage of time, compare, e.g., Hanson v. First National Bank in Brookings, 848 F.2d 866 (8th Cir. 1988) (overruling objection to exemptions under South Dakota law where debtor had used proceeds of sales of nonexempt property to purchase $19,955 in exempt life insurance policies and to prepay $11,033 on homestead mortgage) with Norwest Bank Nebraska, N.A. v. Tveten, 848 F.2d 871 (8th Cir. 1988) (affirming denial of Chapter 7 discharge to debtor physician who sold almost all nonexempt property in seventeen separate transactions and used proceeds to purchase approximately $700,000 in exempt life insurance policies and annuities) [but cf. In re Tveten, 97 B.R. 541 (Bky. D. Minn. 1989) (same debtor entitled to Chapter 11 discharge)], and In re Trost, No. 188-00703W (Bky. N.D. Iowa Mar. 31, 1988) (Judge Melloy) (allowing exemption for $25,000 of life insurance purchased by widow while indebted to bank for $38,000 in real estate investment loans incurred by deceased husband) with In re Krantz, 97 B.R. 514 (Bky. N.D. Iowa 1988) (denying exemption for more than $525,000 of life insurance purchased by farmer while indebted to federal land bank for $1.5 million farm purchase loan).

The distinctions being drawn in these cases perhaps have been explained most colorfully in In re Zouhar, 10 B.R. 154, 157 (Bky. D.N.M. 1981) (while indebted to wife under property settlement, debtor anesthesiologist pledged stock in professional corporation as security for loan used to purchase exempt annuity which eventually would repay loan in full):

The difference, which seems initially to be one merely of degree, at some point as yet unspecified becomes a difference in kind which requires a different result. This same principle was succinctly stated by Judge Logan in Dolese v. United States of
America, 605 F.2d 1146, 1154 (10th Cir. 1979), "There is a principal of too much; phrased colloquially, when a pig becomes a hog, it gets slaughtered." That principle fully applies here. While a bankrupt is entitled to adjust his affairs so that some planning of one's exemptions under bankruptcy is permitted, a wholesale sheltering of assets which would otherwise go to creditors is not permissible.

A somewhat more jurisprudential observation about the comparable uncertainties existing in the cases involving the priority of future advances in mortgage settings suggests that greater clarity may not be possible or desirable:

[T]he conceptually nonsensical distinction between "obligatory" and "voluntary" has had the result (which is not in the least nonsensical) of preserving (or creating) a wide area of judicial discretion. There are few, if any, future advance clauses which an astute judge cannot, at will, classify on one side or the other of the line between obligatory and voluntary. When he has picked his label, he has also picked his priority rule. The distinction amounts to an absence of rule; the judges are invited to pick and choose, case by case, ad hoc or ad hominem. This is a recurrent phenomenon in a common law system when the arguments for or against a given position balance each other exactly. There is much to be said for giving the mortgagee an absolute priority. There is much to be said for allowing other creditors a chance at the assets (or the debtor's equity in the assets). There is much to be said for allowing other creditors a chance at the assets. Only a very wise or a very foolish man would be willing to state, categorically, where truth lies and to propose a rule for application in all possible situations. There is, then, much to be said for having no rule at all, or only a make-believe rule, and for letting the judges decide: judges are not necessarily wiser than other people, but they are paid to decide things.

In such circumstances, it hardly is possible to offer any certainties about the likely outcome of cases in which nonexempt funds have been used to satisfying encumbrances upon or to make improvements to an Iowa homestead. One important circumstance, of course, is the absence or presence of culpable conduct separate and apart from the enhancement of the homestead. See, e.g., McCormick v. Security State Bank, 822 F.2d 806 (8th Cir. 1987) (discharge denied where debtor who was both airline pilot and lawyer lied to creditor about inability to pay debt while engaged in transfer of approximately $60,000 into exempt homestead). Another presumably is the amount of funds involved in the enhancement. See, e.g., In re Ellingson, 63 B.R. 271 (Bky. N.D. Iowa 1986) (Judge Melloy) (use of $51,899.13 to pay down balance owing on contract for deed for debtors' homestead not a fraudulent conveyance under 11 U.S.C. § 727(a)(2)). In many cases, the debtor's acquisition of an interest in the homestead before incurring the debts subject to the exemption may provide some meaningful assurance that the homestead was acquired at least in part because of its functional usefulness as a dwelling, and not solely as a means for sheltering assets from creditors. Cf, e.g., In re Eden, 96 B.R. 895 (Bky. N.D. Iowa 1988) (wearing apparel exemption encompasses jewelry actually worn and used by debtor, but not jewelry held primarily for investment or resale purposes).

D. Other Bankruptcy Issues

In a manner analogous to § 522(e)'s possible qualification of a bare waiver of the homestead exemption, § 522(b)(2)(A) may overcome the limitations the Iowa exemption otherwise might entail in situations involving either a current homestead located in some other state or the acquisition of a current homestead in Iowa using funds obtained from the sale of a previous homestead in another state. Under traditional choice of law principles, exemption laws normally would lack any extraterritorial effect. Pursuant to § 522(b)(2)(A), however, it would seem that a debtor to whom Iowa law applies could use that law to assert an exemption in a homestead located in another state. Cf In re Madia, No. 86-00453S (Bky. N.D. Iowa 1987) (Judge Melloy) (debtor residing in Nebraska at time petition filed entitled to claim exemptions specified by Iowa law where debtor resided in Iowa for greater portion of 180-day pre-petition period). Perhaps more importantly, the choice of law dimension of § 522(b)(2)(A) also may override Iowa cases which do not allow any exemption to be carried over from a previous homestead in another state. See Dalton v. Webb, 83 Iowa 478, 50 N.W. 58 (1891); Rogers v. Raisor, 60 Iowa 355, 14 N.W. 317 (1882); cf. In re Welch, No. A87-02433S (Bky. N.D. Iowa 1988) (Judge Melloy) (debtors owning land in Nebraska and Iowa allowed to change homestead from former to latter and to use value of former as basis for exemption of latter from interim debt).

In cases involving fully encumbered homesteads, the debtor may wish to avoid liens or portions of liens that exceed the value of the homestead. Although methods for achieving this result exist in Chapters 11 and 12, the only method for achieving it in Chapter 7 (and perhaps in Chapter 13 as well, cf., e.g., In re Harris, 94 B.R. 832 (D.N.J. 1989) (§ 1332(b)(2)'s prohibition of modification of "claim secured only by a security..."
While § 506(d) lien avoidance is available in the Northern District, see In re Cleveringa, 52 B.R. 56 (Bky. N.D. Iowa 1985), aff'd No. C85-4215 (N.D. Iowa Feb. 12, 1987); In re Pelzer, No. 87-01395F (Bky. N.D. Iowa Sept. 23 1988) (Judge Edmonds), it has been rejected in the Southern District in cases involving abandoned property, see In re Hoyt, 93 B.R. 540 (Bky. S.D. Iowa 1988); In re Flanery, No. 83-228-C H (Bky. S.D. Iowa Dec. 23, 1988) (Judge Hill). Regardless of the rule applicable to abandoned property, the availability of lien avoidance under § 506(d) in case involving a homestead seemingly derives direct support from the language of § 522(c)(2)(a)(ii) ("[P]roperty exempted under this section is not liable during or after the case for any debt of the debtor that arose ... before the commencement of the case, except ... a debt secured by a lien that is ... not void under section 506(d)"). Compare generally In re Lindsey, 823 F.2d 189 (7th Cir. 1987) (rejecting § 506(d) lien avoidance of undersecured second mortgage lien on farm) with In re Folendore, 862 F.2d 1537 (11th Cir. 1989) (recognizing § 506(d) lien avoidance of unsecured third mortgage on real estate and personal property).

Another issue which might arise in a bankruptcy proceeding involving a homestead is the loss of redemption rights under Iowa Code Ch. 628 & § 654.16 (1989) produced by Iowa Code § 628.4 (1989) if the bankruptcy petition is filed after a judgment has been entered but before a sale has been held. See Hawkeye Bank & Trust Co. v. Milburn, No. 87-1759 437 N.W.2d 919 (Iowa 1989); Metropolitan Life Ins. Co. v. DeKlotz, 437 N.W.2d 925 (Iowa 1989); First National Bank v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987). Although a loss of redemption rights can be avoided if the filing occurs either before the judgment or after the sale, the former sometimes is not an alternative, and the latter may be of limited use to the debtor. See, e.g., Johnson v. First National Bank of Montevideo, 719 F.2d 270 (8th Cir. 1983) (apart from possible extension of no more than 60 days afforded by § 108(b), bankruptcy filing does not affect the running of state law redemption period); Justice v. Valley National Bank, 849 F.2d 1078 (8th Cir. 1988) (once sale has been held, Chapter 12 plan cannot cram down or stretch out redemption price required by state law); In re DeMers, 853 F.2d 605 (8th Cir. 1988) (once sale has been held, Chapter 11 plan cannot cram down or stretch out redemption price required by state law). Furthermore, although the issue undoubtedly arises most frequently in settings involving mortgage foreclosures, the language of § 628.4 seemingly encompasses ordinary money judgments, and thus there may be situations where redemption rights have been lost as to one creditor but not another.

Because the Iowa Supreme Court has squarely rejected contentions that the operation of § 628.4 is contrary to provisions of the Bankruptcy Code, a debtor wishing to advance this argument must do so in bankruptcy court. It should be noted that language which seems expressly to countermand any forfeiture of redemption rights based solely on the filing of bankruptcy exists both in § 541 ("[A]n interest of the debtor in property becomes property of the estate ... notwithstanding any provision in ... applicable nonbankruptcy law ... that is conditioned on ... the commencement of a case under this title ... and that effects ... a forfeiture, modification, or termination of the
debtor's interest in property ....") and in § 363(l) ("[A] trustee may ... sell ... property under ... this section ... notwithstanding any provision in ... applicable law that is conditioned on ... the commencement of a case under this title ... and that effects ... a forfeiture, modification, or termination of the debtor's interest in such property."), but not in either § 522 or § 554. Query if a debtor may arrange to obtain property by sale under § 363 as an alternative to obtaining it by exemption under § 522 or by abandonment under § 544 to avoid the possible problems posed by the absence of nonforfeiture language from the latter two sections?
IOWA'S HOMESTEAD EXEMPTION
Patrick B. Bauer
July 27, 1989

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ADDENDA

§ III.B. - The Pre-Acquisition Debt Exception

[insert on p. 8 following ¶ 3]

In some circumstances, a homestead also may be exempt from pre-acquisition debts if it was purchased with exempt property other than the proceeds of a prior homestead. See Cook v. Allee, 119 Iowa 226, 93 N.W. 93 (1903) (homestead purchased with insurance proceeds exempt from debts incurred before debtor's receipt of proceeds where proceeds were themselves exempt from debts incurred before their receipt); accord Booth v. Martin, 158 Iowa 434, 139 N.W. 888 (1913). But see In re Olthoff, No. X89-00652F (Bky. N.D. Iowa July 6, 1989) (Judge Edmonds) (homestead subject to pre-acquisition debts even though homestead purchased with proceeds of exempt worker's compensation award); In re Frantum, No. 87-1711-C (Bky. S.D. Iowa Mar. 31, 1988) (Judge Jackwig) (homestead not exempt from pre-acquisition debts where homestead purchased with funds obtained by surrendering exempt insurance policy).

§ V.C. - Waiver Disclosure Requirement

[insert on p. 20 after ¶ 1]

In 1989, § 561.22 was amended by the addition of the following sentence:

A principal or deputy state, county, or city officer shall not be required to waive the officer's homestead exemption in order to be bonded as required pursuant to chapter 64.

§ VI.C. - The Effects of Satisfying Encumbrances or Improving the Homestead

In re Smeby, No. X88-00159M (Bky. N.D. Iowa June 22, 1989) (Judge Edmonds) (allowing exemption for almost $130,000 of life insurance where debtors retained unencumbered nonexempt property worth approximately $125,000)

In re Rodemeyer, 99 B.R. 416 (Bky. N.D. Iowa 1989) (denying life insurance exemption to extent policy purchased with funds derived from debtor's conversion of creditor's collateral)

In a recent decision, the Eighth Circuit ruled that a discharge cannot properly be denied based solely on the debtor's channelling of nonexempt assets into an exempt homestead where such conduct is permitted by state law. See In re Johnson, No. 88-5296 (8th Cir. July 13, 1989):

We read Tveten and Hanson to reaffirm the rule that conduct sufficient to defeat discharge requires indicia of fraud beyond mere use of the exemptions. Under Tveten, Hanson, and the cases they discuss, extrinsic evidence can be composed of: further conduct intentionally designed to materially mislead or deceive creditors about the debtor's position; conveyances for less than fair value; or, the continued retention, benefit or use of property allegedly conveyed together with evidence that the conveyance was for inadequate consideration. In addition, Tveten establishes that where an exemption, other than a homestead exemption, is not limited in amount, the amount of property converted into exempt forms and the form taken may be considered in determining whether fraudulent intent exists.

... Each state's selection and structuring of their exemptions reflects judgments about particular state interests. Variations in the law are sanctioned by Congress' choice to allow the states to fix their own exemptions. In deciding whether to invade a prerogative bestowed on the states by Congress, we must first consider the importance of the claimed exemption in furthering state objectives.
We have recognized that no exemption is more central to the legitimate aims of state lawmakers than a homestead exemption. ...

We hold that Tveten does not apply to homestead exemptions absent traditional extrinsic evidence of fraud unrelated to the amount of money involved. In addition, we remind the lower courts that there is nothing fraudulent per se about making even significant use of other legal exemptions. Ultimately, fixed dollar limits on the use of exemptions must be set by legislatures. Tveten and Hanson sanction an exceptional use of judicial discretion. In light of the dangers that judges will inadvertently fix inconsistent or arbitrary limits on the statutory exemptions, we must err in favor of the debtor. The power sanctioned in Tveten should be reserved for exceptional cases and had no application to homestead exemptions.

(Emphasis added.)

§ VI.D. - Other Bankruptcy Issues

Compare In re Larson, 99 B.R. 1 (Bky. D. Alaska 1989) (§ 506(d) cannot be used to avoid undersecured lien on abandoned apartment building, although contrary result perhaps possible with respect to exempt property) with In re Shrum, 98 B.R. 995 (Bky. W.D. Okla. 1989) (en banc) (§ 506(d) cannot be used to avoid undersecured liens on either abandoned or exempt property).