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Federal Bankruptcy Qualifications of State Homestead Exemption Laws

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FEDERAL BANKRUPTCY QUALIFICATIONS OF STATE HOMESTEAD EXEMPTION LAWS

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Lynn M. LoPucki, A General Theory of the State Remedies/Bankruptcy System, 1982 Wis. L. Rev. 311

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      1256 Hertel Avenue Associates, LLC v. Calloway, 761 F.3d 252 (2d Cir. 2014) (change of New York homestead from $10,000 to $50,000 applicable to bankruptcy avoidance of previously attached judgment lien and such avoidance does not violate the Takings Clause of the Fifth Amendment)

II. DEVELOPMENT AND DIMENSIONS OF STATE HOMESTEAD EXEMPTION LAWS

A. Rapid and Widespread Mid-Nineteenth Century Enactments
   
   Joseph W. McKnight, Protection of the Family Home from Seizure by Creditors: The Sources and Evolution of a Legal Principle, 86 Southwestern Historical Quarterly 366 (1983)


B. Substantial Variations in Scope and Operation

State Homestead Exemption Laws, 46 Yale Law Journal 1023 (1937)

Homestead Exemption Laws – A Problem and Some Deficiencies, 97 University of Pennsylvania Law Review 677 (1949)


C. Iowa’s Homestead Exemption


Appendix A: Bauer, Basic State Law Dimensions of Iowa’s “Unlimited” Homestead Exemption

III. DEVELOPMENT AND DIMENSIONS OF BANKRUPTCY LAWS

A. Nineteenth Century Federal Bankruptcy Laws

1. The Bankruptcy Act of 1800 (repealed 1803) (federal exemptions)
2. The Bankruptcy Act of 1841 (repealed 1843) (federal exemptions)
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4. The Bankruptcy Act of 1898 (repealed 1979) (state exemptions)

Hanover National Bank v. Moyses, 186 U.S. 181 (1902)

B. Nineteenth Century State Bankruptcy Laws

1. Constitutional Limitations on State Impairment of Contracts

Sturges v. Crowninshield, 17 U.S. 122 (1819)

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Ogden v. Saunders, 25 U.S. 213 (1827)
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C. Late Twentieth Century Federal Bankruptcy Law

1. The Bankruptcy Reform Act of 1978

   Commission on Bankruptcy Laws of the United States: Uniform federal exemptions

   National Conference of Bankruptcy Judges: Federal exemptions or state exemptions

   House of Representatives: Federal exemptions or state exemptions

   Senate: State exemptions

   Enactment: Federal exemptions or state exemptions, but subject to state opt-out

2. Extent and Dynamics of Opt-Out


3. Occasional Subsequent Reversals of Initial Opt-Outs

D. Early Twenty-First Century Federal Bankruptcy Law

1. National Bankruptcy Review Commission Final Report (1997)(federal exemptions with homestead determined by incorporated state law subject to $20,000 floor and $100,000 ceiling)

2. Intermediate Congressional Positions

105th Congress (1997-1998)
*House of Representatives:* One-year fraudulent conversion provision
*Senate:* $100,000 homestead limitation
*Conference:* Two-year residence and fraudulent conversion provision

106th Congress (1999-2000)
*House of Representatives:* $250,000 homestead limitation, but subject to contrary state constitutional provisions and to override by subsequent state legislation
*Senate:* $100,000 homestead limitation
*Conference:* Two-year residence requirement and $100,000 homestead limitation if acquired within two years

107th Congress (2001-2002)
*House of Representatives:* Two-year residence requirement and $100,000 homestead limitation if acquired within two years
*Senate:* $125,000 homestead limitation
*Conference:* Following Senate conferee’s proposal of a five-year residence requirement and House conferee’s proposal to reduce same to two and one-half years and to extend fraud conversion reach back period to ten years, conferees settled on residence period of forty months

*House of Representatives:* Provisions reached by 2002 conference committee

3. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)

109th Congress (2005)

IV. EARLIER INTERACTIONS AND DISCONTINUITIES BETWEEN STATE EXEMPTION LAWS AND THEIR OPERATION IN FEDERAL BANKRUPTCY PROCEEDINGS

A. Difficulties of Integrating State Exemption Laws into Federal Bankruptcy Proceedings

   *Appendix B:* Bauer, *Challenges in Translating Iowa’s “Bilateral” Preacquisition Debt Exception Into the “Multilateral” Circumstances of Bankruptcy Proceedings*

B. Other Overrides of State Exemption Law Not Subject to Opt-Out

1. Waivers (§ 522(e))

2. Lien Avoidance (§ 522(f))
C. Prior and Ongoing Debate Concerning the Appropriateness of Uniform Federal Bankruptcy Exemptions and the Importance of Giving Effect to State Exemption Laws


Leslie A. Shames, Calling a Fraud a Fraud: Why Congress Should Not Adopt a Uniform Cap on Homestead Exemptions, 16 Bankruptcy Developments Journal 191 (1999)


D. Bankruptcy Code Limitations on Disregard of State Exemption Laws

V. BAPCPA QUALIFICATIONS OF STATE HOMESTEAD EXEMPTION LAWS

A. CHOICE OF LAW

11 U.S.C. § 522(b) [as amended by BAPCPA, P.L. 109-8, § 224(a)]:

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. ...

(2) Property listed in this paragraph is property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (3)(A) of this section specifically does not so authorize.

(3) Property listed in this paragraph is...

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

The effects of the essentially territorial limitations of state legislative and judicial authority are clearly evident in the choice of law rules traditionally applied when exemption issues arise in state court proceedings. See generally Sheldon R. Shapiro, Choice of Law as to Exemption of Property from Execution, 100 A.L.R.3d 1235 (1980). In contrast, however, considerably different results sometimes followed from the combined effects of the choice of applicable state law specified
by the pre-BAPCPA version of § 522(b) and the generally national force of federal bankruptcy law.¹

For example, shortly before BAPCPA’s passage the Eighth Circuit determined that Minnesota’s homestead statute could be applied to exempt a house that former Minnesota residents had acquired in Arizona shortly before filing a bankruptcy petition properly venued in Minnesota. In re Drenttel, 403 F.3d 611 (8th Cir. 2005), aff’d 302 B.R. 320 (8th Cir. BAP 2004). Later that same year, a debtor filing a Chapter 7 petition in Iowa because his failed business and resulting debts existed there was allowed to claim a homestead exemption under Wisconsin law for a residence located there where the debtor had resided in Wisconsin for the longest portion of the 180-day period that controlled both exemption choice of law and venue pre-BAPCPA. In re Stone, 329 B.R. 860 (Bankr. N.D. Iowa 2005) (Judge Kilburg).

In re Williams, 369 B.R. 470 (Bankr. W.D. Ark. 2007) provides a rather striking example of the effects of the divergence between venue and exemption choice of law effected by BAPCPA. Debtors who had lived in Iowa from August 2000 until moving to Arkansas in March 2006 had secured proper venue for the Chapter 7 petition they filed in Arkansas on July 28, 2006. BAPCPA’s exemption choice of law provision, however, required debtors to use Iowa exemptions and although the lack of any timely objection resulted in debtor’s claimed personal property exemptions being allowed, the court clearly indicated that a contrary result otherwise would have followed from the combined effects of Iowa’s opt-out provision and its restriction of personal property exemptions to

¹. In a couple of pre-BAPCPA cases, Iowa bankruptcy courts applied Iowa law to determine the exempt nature of property located in another state, In re Lambert, No. 00-0255-DH (S.D. Iowa 2000) (Judge Hill) (abandonment of jointly owned house in Illinois occupied by ex-husband and children), or applied Nebraska law to a Nebraska homestead where the application of such law was required by the former version of § 522(b), In re Treadway, No. 95-50677XS (Bankr. N.D. Iowa 1995) (Judge Edmonds). Somewhat differently, several pre-BAPCPA cases reached differing conclusions about the effects of Iowa’s incorporated homestead exemption in circumstances where debtors attempted to avoid the exception for pre-acquisition debts by invoking the carryover effects of a earlier homestead previously owned in another state. Compare In re Welch, No. A87-02433S (Bankr. N.D. Iowa 1988) (Judge Melloy) (carryover allowed) with In re Carlson, No. 98-0369S (Bankr. N.D. Iowa 1999) (Judge Melloy) (carryover not allowed) and In re Bausback, No. 02-0825-WH (Bankr. S.D. Iowa 2003) (Judge Hill) (same).
“a debtor who is a resident of this state.” In contrast, over objection the debtor’s homestead exemption claim under Iowa law was allowed based on the absence of any similar “resident of this state” limitation.²

More recently, an Iowa resident was allowed to claim a homestead exemption under Iowa law for a residence located in California that had been appraised at between $1.2 million and $1.6 million. In re Roberts, 443 B.R. 531 (Bankr. N.D. Iowa 2010) (Chief Judge Collins), aff’d 450 B.R. 159 (N.D. Iowa 2011) (Chief Judge Reade).

Reported cases have involved sometimes bewildering intersections between the exemption laws of the state specified by BAPCPA’s choice of law provision and determinations of either territorial or extraterritorial effect of those laws based on formulations seemingly framed in circumstances where anything other than territorial effect was essentially unthinkable. See Dale J. Gilsinger, Extraterritorial Application of State’s Homestead Exemption Pursuant to Bankruptcy Code § 522, 47 A.L.R. Fed. 2d 335 (2010); Kay E. Oskvig, Look to the States: How the State-Specific Interpretation Clarifies BAPCPA's § 522 Ambiguity and Protects State Exemption Laws, 99 Iowa Law Review 867 (2014).

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² Although not squarely addressed by the decision, the facts of Williams illustrate the ambiguity of “any” in the “opt-out override” contained in § 522(b)(3)’s concluding sentence (“If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).” (emphasis added)). See also In re Camp, 631 F.3d 757 (5th Cir. 2011) (debtor currently residing in opt-out state (Texas) allowed to elect federal exemptions where opt-out provision of state of prior residence (Florida) encompassed only “residents”).
B. **TIME-BASED VALUE LIMITATION**

11 U.S.C. § 522(p) [as amended by BAPCPA, P.L. 109-8, § 322(a)]:

(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate [$155,675] in value in--

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2) (A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

Early on cases divided over this provision’s applicability in circumstances where applicable law denied debtors any choice between bankruptcy and nonbankruptcy exemptions. Compare In re McNabb, 326 B.R. 785 (Bankr. D. Ariz. 2005) (Judge Haines) (because it only encompasses homesteads a debtor has claimed as exempt “as a result of electing under subsection (b)(3)(A) to exempt property under State or local law,” § 522(p) does not apply in states that do not allow debtors a choice between federal and state exemptions) with In re Kaplan, 331 B.R. 483 (Bankr. S.D. Fla. 2005) (Judge Mark) (construing § 522(p) to apply in opt-out states in light of intent clearly evident from examination of legislative history) and In re Wayrynen, 2005 WL 2756059 (Bankr. S.D. Fla.) (Judge Friedman) (§ 522(p) applicable in opt-out state because debtor “elects” law of such state by choosing to live there, but “carryover” value of homestead previously owned in same state...
not limited to one owned immediately prior to present residence). The division subsided rather quickly in favor of § 522(p)’s applicability in opt-out states, a result arguably in line with the eight-justice approach of “text, context, and purpose” apparent in Justice Alito’s opinion in Hamilton v. Lanning, 130 S.Ct. 2464 (2010) (adopting “forward-looking approach” to calculation of Chapter 13 debtors’ “projected disposable income”) and explicitly formulated as such in Justice Kagan’s opinion in Ransom v. FIA Card Services, N.A., 131 S.Ct. 716 (2011) (disallowing car-ownership cost deductions by above-median Chapter 13 debtors owning unencumbered motor vehicles).

Circuit and bankruptcy appellate panel interpretations of § 522(p)(1) subsequently have considered the appropriateness of “title” versus “interest” approaches. Under the title approach, the section’s value limitation is inapplicable to ownership interests acquired outside the 3 1/3 year period notwithstanding the occurrence of other legally relevant circumstances (e.g., occupation or declaration) within such period. In re Greene, 583 F.3d 614 (9th Cir. 2009) (initial occupation as a residence). See also In re Aroesty, 385 B.R. 1 (1st Cir. BAP 2008) (§ 522(p) encompasses transfer of title from trust within 1,215 day period even though beneficial ownership existed prior to such period); In re Khan, 375 B.R. 5 (1st. Cir. BAP 2007) (suggestion of same outcome where issue not reached because raised for first time on appeal).

In contrast, under the interest approach the value limitation applies where events occurring during the 3 1/3 year period either satisfy a non-ownership element of the exemption (e.g., occupation or declaration) or increase the value of the ownership interest through “active” efforts (e.g., construction of improvements or reduction of mortgage indebtedness). In re Fehmel, 372 Fed. Appx. 507 (5th Cir. 2010) (down payment, improvements, and mortgage payments). Even under the interest approach, however, the value limitation may not apply in situations where the homestead interest was “passively” acquired through inheritance or where the increase in its value was the
“passive” result of market appreciation. In re Rogers, 513 F.3d 212 (5th Cir. 2008).

Based on the combined effects of Texas community property law and homestead exemption law, two Fifth Circuit cases have indicated that § 363 authorizes the sale of the interests of both a debtor titleholder and a non-debtor non-titleholder in circumstances where the debtor titleholder’s exemption is subject to § 522(p)’s time-based value limitation and that such section’s provision for allocation of an appropriate portion of the proceeds of such a sale obviates any Fifth Amendment Takings claim by the non-debtor non-titleholder. In re Odes Ho Kim, 748 F.3d 647 (5th Cir. 2014); In re Thaw, 769 F.3d 366 (5th Cir. 2014).

In accordance with the provisions of § 522(m), the amount specified by § 522(p) may effectively be doubled in the circumstances of joint ownership by married debtors in a joint case. In re Nestlen, 441 B.R. 135 (10th Cir. BAP 2010). Also, § 522(p)’s limitation of the permissible amount of a homestead exemption does not allow post-petition attachment of a judgment lien to value in excess of that amount where such excess value previously had been protected against the attachment of any such lien by the effect of an unlimited state exemption. In re McCombs, 659 F.3d 503 (5th Cir. 2011).

C. **DOMESTIC SUPPORT OBLIGATIONS**

11 U.S.C. § 522(c) [*as amended by BAPCPA, P.L. 109-8, § 216(1)*]:

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except--

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;  

(2) a debt secured by a lien that is--

(A) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and  

(B) not void under section 506(d) of this title;  

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or  

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

This change seemingly was intended to reverse the effect of *In re Davis*, 170 F.3d 475 (5th Cir.) (*en banc*), *cert. denied*, 528 U.S. 822 (1999), and early on it was suggested that it might result in denials of claims of exemption and sales by trustees of otherwise exempt property with proceeds applied to the satisfaction of domestic support obligations. Dennis G. Bezanson & Gary B. Rudolph, *The “Super-Priority of a “Domestic Support Obligation” (“DSO”): The Trustee as Liquidator of Exempt Property for the Benefit of DSO Claimants, and Other DSO Issues*, 22 Journal of National Association of Bankruptcy Trustees 24 (2006). Bankruptcy courts, however, generally have
rejected both possibilities and limited the provision to a right persons owed domestic support obligations may pursue on their own by appropriate proceedings in either nonbankruptcy or bankruptcy courts. See In re Queszada, 368 B.R. 44 (Bankr. S.D. Fla. 2007). See also In re Vandeventer, 368 B.R. 50 (Bankr. C.D. Ill. 2007); In re Ruppell, 368 B.R. 42 (Bankr. D. Ore. 2007); In re Covington, 368 B.R. 38 (Bankr. E.D. Cal. 2006). Accord In re Westmeyer, 2010 WL2103571 (Bankr. N.D. Iowa 2010) (Judge Kilburg).
D. CLAIM-BASED VALUE LIMITATION

11 U.S.C. § 522(q) [as amended by BAPCPA, P.L. 109-8, § 322(a)]:

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate [$155,675] if—

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

Although this section has been construed to encompass nonwillful instances of criminal negligence, In re Larson, 513 F.3d 325 (1st Cir. 2008), the generally applicable carry-through “immunization” effect of § 522(c) (“property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case ... ”) is sufficient to prevent the enforcement of a nondischargeable pre-petition debt against the proceeds of a sale of a residence previously allowed as exempt homestead in an earlier bankruptcy proceeding. In re Cunningham, 513 F.3d 318 (1st Cir. 2008). In rather similar circumstances where the bankruptcy court had
deferred initial consideration of the issue to the district court, however, the same circuit affirmed a
determination that the proceeds of a sale of residence exempted as a homestead in a prior bankruptcy
proceeding were reachable by the United States through a garnishment issued to enforce a restitution
order of more than $300,000 for mail fraud imposed upon the debtor pursuant to the Mandatory

In some instances, post-petition homestead sales have provided a basis for successful
objections to claimed exemptions in sale proceeds where a debtor has not reinvested them in new
homestead within a specific period of time prescribed by state law. Compare In re Jacobson, 676
F.3d 1193 (9th Cir. 2012) (exemption lost because of debtor’s failure to reinvest proceeds of post-
petition judicial sale of homestead into new homestead within specific time period required by state
law) with In re Morgan, 481 Fed Appx. 183 (5th Cir. 2012) (same where exemption not claimed
until after post-petition consensual sale of homestead and thus only in the proceeds thereof). But
see Braunger v. Karrer, 563 N.W.2d 1 (Iowa 1997) (§ 522(c)(1) protects proceeds of homestead
from execution upon nondischargeable pre-acquisition debt so long as same held with requisite
intent to use in purchase of new homestead).
E. **FRAUDULENT TRANSFORMATIONS**

11 U.S.C. § 522(o) [*as amended by BAPCPA, P.L. 109-8, § 308*]:

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in--

1. real or personal property that the debtor or a dependent of the debtor uses as a residence;
2. a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
3. a burial plot for the debtor or a dependent of the debtor; or
4. real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

The “title” versus “interest” issue a number of courts have addressed in § 522(p) cases generally has not arisen in § 522(o) cases because the phrasing of the section more clearly encompasses increases in the value of a debtor’s interest in a homestead within the specified ten-year period notwithstanding an acquisition of title before then. *In re Willcut*, 472 B.R. 88 (10th Cir. BAP 2012).

Pre-BAPCPA, the Eighth Circuit significantly limited the ability to rest the denial of a discharge on simple conversions of non-exempt assets into an exempt homestead. *In re Johnson*, 880 F.2d 78 (8th Cir. 1989). See Appendix B § VI. Although such reasoning left open the possibility of avoiding such transfers under state law, *In re Sholdan*, 217 F.3d 1006 (8th Cir. 2000) (Minnesota law), it also had been viewed as perhaps separately qualifying a creditor’s ability to raise objections to homesteads claimed as exempt by debtors in bankruptcy proceedings, *In re Rizzuti*, No. 97-05572-CH (Bankr. S.D. Iowa 1999) (Judge Hill) (use of proceeds of non-exempt property to reduce encumbrances on existing homesteads).
In *In re Addison*, 540 F.3d 805 (8th Cir. 2008), a panel of three circuit judges (Smith, Bye, and Colloton) unanimously reversed as clearly erroneous factual findings of fraudulent intent by Bankruptcy Judge Kressel previously affirmed by a unanimous decision of the Eighth Circuit Bankruptcy Appellate Panel (see *In re Addison*, 368 B.R. 791 (8th Cir. BAP 2007) (Judges Federman, Schermer, and Venters)). Before turning to a comprehensive review of prior cases, the circuit panel dismissed the trustee’s assertion that § 522(o) involved any change in relevant substantive standards:

We reject the Trustee's position that § 522(o) provides a new standard for determining what type of evidence establishes a debtor's "intent to hinder, delay, or defraud" a creditor when the debtor converts nonexempt assets into his homestead. Rather, in our view, § 522(o) merely establishes a 10-year look-back period, from the date of the bankruptcy filing, from which such evidence may be considered.

540 F.3d 805, 812 n.7. In overturning both state and federal grounds advanced in support of an objection to the exemption and an accompanying issue-preclusion based discharge denial resting upon an $11,500 payment in reduction of homestead mortgage, the circuit panel emphasized the exacting nature of both the necessary elements and requisite proof required by circuit case law:

In the instant case, the bankruptcy court found sufficient evidence to establish that Addison acted with the intent to hinder, delay, and defraud a creditor. However, Addison took less aggressive actions than those present in *Sholdan*--wherein we concluded that the facts did not support a finding of intent to hinder or delay. Applying our precedent, we conclude that the record here does not support the reduction of Addison's homestead exemption based on an intent to hinder or delay. *Id.*

....

The bankruptcy court's underlying factual findings are themselves not clearly erroneous; however, they do not identify any “extrinsic evidence of fraud.” In the absence of extrinsic evidence of fraud, we find clear error in the bankruptcy court's ultimate determination of intent to defraud.

....

Here, only the fact that Addison had been sued or threatened with suit prior to making the mortgage payment was extrinsic to the fact of conversion--all of the other facts cited relate to a debtor's simple conversion of nonexempt property to
exempt property on the eve of bankruptcy, which we have long held to be permissible. If these facts alone constitute extrinsic evidence of intent to defraud Hanson and Johnson would have reached that same result. See Hanson, 848 F.2d at 867-68 (rejecting argument that extrinsic evidence established debtor's intent to defraud where debtors, after defaulting on bank loans and talking to bankruptcy counsel, converted approximately $20,000 into life insurance policies a couple of weeks prior to filing and prepaid an additional $11,033 on their homestead mortgage two days before filing); Johnson, 880 F.2d at 79 (“agree[ing] that there is no fraud as to [debtor's] homestead exemption,” where debtor, in contemplation of filing bankruptcy, talked to bankruptcy attorney and paid off $175,000 in debts against his home after creditors obtained judgments against him). Moreover, the bankruptcy court's finding that Addison converted his nonexempt property to exempt property with the intent “to keep value away from creditors” does not provide extrinsic evidence of fraud as such an intent is not automatically impermissible. Hanson, 848 F.2d at 868; Tveten, 848 F.2d at 873-74.

... [W]e conclude that the bankruptcy court clearly erred in finding that Addison converted nonexempt property into his homestead with the intent to hinder, delay, or defraud a creditor. On the record before us, there is no extrinsic evidence of intent to hinder, delay, or defraud a creditor sufficient to uphold that finding. The evidence only suggests that Addison was converting nonexempt assets to exempt assets to place some (but not all or substantially all) of those assets beyond the reach of creditors--something our precedent permits.

540 F.3d 805, 813-816 (emphasis in original). The Eighth Circuit Bankruptcy Appellate Panel subsequently followed Addison in affirming a bankruptcy court’s rejection of an objection exemption based on $140,000 payment in reduction of homestead mortgage by Arkansas debtors. In re Wilmoth, 397 B.R. 915 (8th Cir. BAP 2008). Thereafter, both the Eighth Circuit Bankruptcy Appellate Panel and then Eighth Circuit Court of Appeals upheld a homestead exemption under North Dakota law of a bank account containing commingled proceeds of both an exempt homestead and non-exempt personal property. In re Danduran, 438 B.R. 658 (8th Cir. BAP 2010); In re Danduran, 657 F.3d 749 (8th Cir. 2011). See also In re Cippola, 476 Fed. Appx. 301 (5th Cir. 2012) (requiring redetermination of § 522(o) limitation of homestead exemption where bankruptcy court’s finding of fraud based on inappropriate assumption that attorney debtor was aware of the significant difference between the homestead exemptions of Missouri and Texas); In re Cippola, 541 Fed.
Appx. 473 (5th Cir. 2013). (affirming bankruptcy court sustaining of trustee’s § 522(o) objection to acquisition of Texas homestead acquired eight years earlier in circumstances sufficient to sustain finding of requisite intent to defraud creditors).

On a related front, the ability to avoid gratuitous transfers of exempt property not subject to avoidance under state law was expanded by a separate change to lengthen the pre-petition period during which such transfers can be challenged under § 548 from one year to two years. 11 U.S.C. § 548(a)(1), P.L. 109-8, § 1402(1). See In re Lumbar, 457 B.R. 748 ((8th Cir. BAP 2011) (allegedly exempt nature of homestead property transferred by debtor within two years of bankruptcy presents not obstacle to trustee’s avoidance of transfer under § 548(a)(1)(b)).

The efficacy of such transfers still can be separately challenged under state law, In re Bargfrede, 117 F.3d 1078 (8th Cir. 1997) (per curiam) (gratuitous transfer of proceeds of exempt homestead), and under § 522(g), any consensual transfers avoided as either fraudulent or preferential cannot subsequently be claimed as exempt by the debtor, In re Arzt, 252 B.R. 138 (8th Cir. BAP 2000). But see In re Hill, 562 F.3d 29 (1st Cir. 2009) (§ 522(g) does not countermand debtor’s homestead exemption where fraudulently transferred residential property was voluntarily reconveyed to the debtor prior to the petition in response to a creditor’s efforts).

Appendix A*

BASIC STATE LAW DIMENSIONS OF IOWA'S "UNLIMITED" HOMESTEAD EXEMPTION

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 164 years, most of the fundamental features of Iowa's homestead exemption have not changed appreciably since 1851. Compare id. with Iowa Code Ch. 561 (2015).

II. THE HOMESTEAD'S BASIC DIMENSIONS

A. Statutory Definition

The basic dimensions of the homestead are defined in Iowa Code §§ 561.1-.3 (2013):

(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

* Based upon Patrick B. Bauer, "Iowa's Homestead Exemption" (Nineteenth Annual Advanced Bankruptcy Procedures Seminar, Cedar Rapids, Iowa 1989).
"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 hom[e]stead 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.")

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 (2013). 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 & Rumil, 136 Iowa 684, 112 N.W. 818 (1907) (life estate); Pelan v. DeBeyard, 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 . . . .

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 existence of a homestead, however, is not dependent upon a platting 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).

III. THE EXEMPTION AND THE EXCEPTION FOR PRE-ACQUISITION DEBTS

A The Basic Exemption

Iowa Code § 561.16 (2013) 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.

Until 1981, the exemption was limited to the homestead "of every family" (emphasis added). That year an enactment which 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 also changed § 561.16 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.

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).
B. Existence and Operation of the Exception for Pre-Acquisition Debts

"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) (2013). 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 § 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 (2013); Berner v. Dellinger, 206 Iowa 1382, 222 N.W. 370 (1928). Such a change, however, "shall not prejudice ... liens ... created previously thereto," Iowa Code § 561.7 (2013). 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.

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 (2013). 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 § 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).

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. Willenbrock, 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. Aikin, 80 Iowa 112, 45 N.W. 384 (1890) (purchase money mortgages entitled to priority over liens of earlier judgments).
Appendix B

CHALLENGES IN TRANSLATING IOWA'S "BILATERAL" PRE-ACQUISITION DEBT EXCEPTION INTO THE "MULTILATERAL" CIRCUMSTANCES OF BANKRUPTCY PROCEEDINGS

I. 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

* Based upon Patrick B. Bauer, “Iowa’s Homestead Exemption: Three Decades of Bankruptcy Court Application and Development” (Fortieth Annual Barbara A. Everly Advanced Procedures Bankruptcy Seminar, Cedar Rapids, Iowa 2010).
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)); 11 U.S.C. § 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.

II. Shifting Effects of the Exception for Pre-Acquisition Debts

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 Appendix A, § 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. Tegeler, 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 (Bankr. S.D. Iowa 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 (Bankr. N.D. Iowa 1985) (Judge Thinnes). 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 significantly 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 (Bankr. 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 (Bankr. 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. Objections to homestead exemptions are limited in amount to the pre-acquisition debts remaining after the exhaustion of all other property of the debt subject to execution. In re Thompson, No. 95-32455XF (Bankr. N.D. Iowa 1996) (Judge Edmonds). This functional deference to state law’s prescription of the exception’s extent, however, does not carry over to distributions of resulting recoveries which are made in accordance with generally applicable provisions which do not include any distinctions based on whether particular debts were contracted before or after the debtor’s acquisition of a homestead. In re Nehl, No. 97-60192-W (Bankr. N.D. Iowa 1997) (Judge Kilburg); In re Wulff, No. 95-41790XM (Bankr. N.D. Iowa 1998) (Judge Edmonds). See also In re Walters, 675 F.3d 1142, 1145-1147 (8th Cir. 2012) (no factual foundation for debtor’s contention that requirement of exhaustion of other non-exempt property would be sufficient to create any residual homestead exemption).

A renewed challenge to the effects in bankruptcy proceedings of the pre-acquisition debt exception was initiated shortly after the First Circuit’s decision in In re Weinstein, 164 F.3d 677 (1st Cir. 1999) (Massachusetts exception for pre-acquisition debts preempted by contrary implications of federal bankruptcy law). The rejection of this challenge in In re Norkus, 256 B.R. 298 (Bankr. S.D. Iowa 2000) (Judge Jackwig), however, left in place the case law consensus which generally has prevailed since Wooten and Ellingson were decided by Judge Hansen in 1986.1

Issues about the operation of the pre-acquisition debt exception have been presented both in cases involving the existence of liens of debts reduced to judgment (a circumstance which could readily arise in the absence of a bankruptcy proceeding) and in cases involving the ability of such debts to eventually become liens where they have not yet been reduced to judgment (which in the absence of a bankruptcy proceeding conceivably might only arise in the context of a fraudulent conveyance). Issues addressed included such things as the time when a homestead is deemed to have been first occupied, In re Brown, No. 97-01623S (Bankr. N.D. Iowa 1997) (Judge Edmonds); In re O’Brien, No. L88-01436W (N.D. Iowa 1989) (Judge Mello); In re Keener, 2015 WL 998881

1. But cf. In re Moore, 495 B.R. 1 (8th Cir. BAP 2013) (affirming avoidance of lien of judgment within pre-acquisition debt exception to Missouri homestead exemption).

III. Pre-acquisition Debts in Circumstances Involving “Carryover” Exemptions

The operation of the pre-acquisition debt exception is complicated by the provision which limits its application in situations the debts were contracted subsequent to the acquisition of an earlier homestead unless (and then only to the extent that) the later homestead is of greater value:

Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.


A carryover exemption has been recognized in circumstances where the debtor moved between two previously owned properties. In re Hogrefe, No. 92-41695XM (Bankr. N.D. Iowa 1993) (Judge Edmonds). Such a shift may not be allowed, however, where it would adversely affect an existing lien. Chariton Feed & Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986); In re Springer, No. 92-1239-C H (Bankr. S.D. Iowa 1993) (Judge Hill).

Carryover exemptions have been rejected in cases where the properties were separate from each other and not merely components of a larger single parcel, In re Allen, 301 B.R. 55 (Bankr. S.D. Iowa 2003) (Judge Jackwig); In re Shirley, 472 B.R. 19 (8th Cir. BAP 2012), or where the debtor established an interim residence at property owned by someone else, In re O’Brien, No. L88-01436W (Bankr. N.D. Iowa 1989) (Judge Melloy); In re Conley, No. 87-02006W (Bankr. N.D. Iowa 1996) (Judge Kilburg); In re Tibbe, No. 99-02072S (Bankr. N.D. Iowa 2000) (Judge Edmonds). Courts have reached differing conclusions about whether a carryover exemption can be obtained in circumstances where the prior homestead was located in another state. Compare In re Welch, No. A87-02433S (Bankr. N.D. Iowa 1988) (Judge Melloy) (yes), with In re Carlson, No. 98-0369S (Bankr. N.D. Iowa 1999) (Judge Melloy) (no) and In re Bausback, No. 02-0825-WH (Bankr. S.D. Iowa 2003) (Judge Hill) (same).
The exemption’s extension to a later homestead necessarily includes an essentially derivative protection of the proceeds of a sale of the earlier homestead, In re Tigges, No. L88-00894D (Bankr. N.D. Iowa 1988) (Judge Melloy); In re Scheer, No. 96-50422XS (Bankr. N.D. Iowa 1996) (Judge Edmonds); In re Westmeyer, 2010 WL2103571 (Bankr. N.D. Iowa 2010) (Judge Kilburg); In re Dittmer, 2011 WL 652759 (Bankr. S.D. Iowa 2011) (Judge Shodeen), but this protection may be lost if there has been an abandonment of the earlier homestead prior to its sale, In re Husted, No. 87-01413-S (Bankr. N.D. Iowa 1988) (Judge Edmonds), or in the absence or upon cessation of an intent to apply the proceeds towards the acquisition of a new homestead, In re Ersepke, 1993 WL 767975 (Bankr. N.D. Iowa 1993) (Judge Edmonds). Cf. In re Danduran, 438 B.R. 658 (8th Cir. BAP 2010); In re Danduran, 657 F.3d 749 (8th Cir. 2011) (upholding homestead exemption under North Dakota law of a bank account containing commingled proceeds of both an exempt homestead and non-exempt personal property).

One series of three cases involves the distinction between the continuation of an existing homestead and the acquisition of a new one received successive attention in a series of three opinions. In re Takes, No. 04-04020 (Bankr. N.D. Iowa 2005) (Judge Kilburg), rev’d 334 B.R. 642 (N.D. Iowa 2005) (Judge Reade), aff’d 478 F.3d 902 (8th Cir. 2007). Debtors’ 1994 entry into a life-long lease for a unit in a complex of “independent living” town homes involved a substantial “entrance fee” of $110,000 seemingly paid in kind through personal endorsement of a mortgage and various services in conjunction with the development of the project. Five years later the debtors personally guaranteed another note and five years after that purchased the town home for an amount that included both the entrance fee’s accumulated value ($125,773) and an additional amount ($51,527) derived from other sources. The circumstances of a life-long lease, the “equity” equivalence of the sizable entrance fee (refundable upon releasing to the extent of the entrance fee payable by a successor tenant), and the “maturation” effect entailed in the conversion of a life-long lease into a fee interest led Judge Kilburg to view the circumstances as a continuation of a single homestead that had been enhanced in value through satisfaction of the remaining portion of the purchase price with funds obtained elsewhere. In contrast, Judges Reade and Loken viewed the debtors’ shift over to a fee ownership interest as constituting the acquisition of a new homestead, but then recognized a carryover exemption in the new fee homestead based on the value (in the form of the appreciated amount of the entrance fee) of the debtor’s prior homestead interest in the leasehold.

A substantial line of cases holds that the value of the old homestead may be carried over to a new homestead even though the acquisition of the new homestead has not involved the use of any proceeds of the old homestead. In re Husted, No. 87-01413-S (Bankr. N.D. Iowa 1988) (Judge Edmonds); In re Estes, (Bankr. N.D. Iowa 1988) (Judge Edmonds); In re Whyle, (Bankr. N.D. Iowa 1996) (Judge Edmonds); In re Litwiller, 2002 WL 1446780 (Bankr. N.D. Iowa 2002) (Judge Edmonds); In re White, 293 B.R. 1 (Bankr. N.D. Iowa 2003) (Judge Kilburg); In re Meyer, 392 B.R. 416 (Bankr. N.D. Iowa 2007) (Judge Kilburg). In a case involving other complicating circumstances, however, debtors’ carryover exemption was limited to the amount of proceeds actually realized from their disposition of the prior homestead, In re Hayes, 1996 WL 1038496 (Bankr. N.D. Iowa 1996) (Judge Kilburg), and the principle subsequently was applied in a later case in which similarly complicating circumstances were not obviously present, In re Russow, 357 B.R. 133 (Bankr. N.D. Iowa 2007) (Judge Kilburg). Moreover, more recently an absence of any use of the proceeds of a claimed prior homestead was deemed fatal a claim of exemption in a new
homestead as against debts predating occupation of the new homestead. In re Walters, 2010 WL 3909230 (Bankr. S.D. Iowa 2010) (Judge Shodeen), aff’d 450 B.R. 109 (8th Cir. BAP 2011), aff’d 675 F.3d 1142 ((8th Cir. 2012).

Whether the new homestead will be subject to a debt that could have been enforced against the old homestead may depend on the particular exception that would have permitted such enforcement. Thus, a new homestead may be liable for debts contracted prior to the acquisition of the old homestead, In re Versluis, No. 94-61420KW (Bankr. N.D. Iowa 1995) (Judge Kilburg), or those incurred for improvements to the old homestead, In re Streeper, 158 B.R. 7832 (Bankr. N.D. Iowa 1993) (Judge Edmonds). Opposing results have been reached, however, concerning the new homestead’s liability for the unpaid balance of a debt enforceable against the old homestead only because of the existence of a mortgage. Compare In re Erickson, No. X87-02428S (Bankr. N.D. Iowa 1988) (Judge Edmonds) (liable) with In re White, 293 B.R. 1 (Bankr. N.D. Iowa 2003) (Judge Kilburg) (not liable).

IV. The Effects of Homestead “Indivisibility”

The effects of pre-acquisition debts and carryover exemptions in bankruptcy proceedings involved interactions between longstanding state law elements and changed elements of bankruptcy law caused by differences between the 1898 Act and the 1979 Code. The different resulting effects of pre-acquisition debts, however, were in turn significantly qualified by the advent of new state law principles about the “indivisible” nature of the homestead exemption in circumstances involving property owned jointly or commonly by married persons.

The Iowa Supreme Court first recognized the concept in a case involving a waiver, Merchants Mutual Bonding Co. v. Underberg, 291 N.W.2d 19 (Iowa 1980), but shortly thereafter noted its implications in the circumstances of a mechanics lien, Francksen v. Miller, 297 N.W.2d 375 (Iowa 1980). The concept subsequently was applied in a situation involving a mortgage, Decorah State Bank v. Zidlicky, 426 N.W.2d 388 (Iowa 1988) and thereafter with significantly widened effect in a case involving a pre-existing family support obligation, Baratta v. Polk County Health Services, 588 N.W.2d 107 (Iowa 1999).

After initial application in a joint case involving a jointly owned home and pre-acquisition debts owed only by one spouse, In re Butler, No. 86-2252-C (Bankr. S.D. Iowa 1987) (Judge Jackwig), the concept was extended to circumstances where the home was jointly owned but a filing by only one spouse involved no evidence of any debts owed by the other spouse, In re Tyree, 116 B.R. 682 (Bankr. S.D. Iowa 1990) (Judge Hill). Later cases involved debts incurred for homestead improvements, In re Streeper, 158 B.R. 7832 (Bankr. N.D. Iowa 1993) (Judge Edmonds), and circumstances where each spouse individually owed pre-acquisition debts without any of such debts being owed jointly, In re Breiner, No. 96-50355XS (Bankr. N.D. Iowa 1996) (Judge Edmonds).

* Accord In re McGrath, No. X91-01410F (Bankr. N.D. Iowa 1993) (Judge Edmonds); In re Bausback, No. 02-0825-WH (Bankr. S.D. Iowa 2003) (Judge Hill).
Some of the outer boundaries of the principle of indivisibility have been explored in a case where the homestead was owned solely by one spouse and a lien had (or had not) attached to it because a judgment upon the pre-acquisition debts had (or had not) been entered against such spouse before the date of the marriage. In re Knodel, No. 97-01814-C (Bankr. N.D. Iowa 1997) (Judge Kilburg) (stated date of judgment before date of marriage), aff'd Appeal No. 98-0012 (N.D. Iowa 1998) (Judge Melloy) (stated date of judgment after date of marriage). The principle has been recognized in another case, however, where joint ownership of the homestead involved a gift of a half interest from one spouse to the other and a marriage which did not occur until after the homestead had been acquired. In re Opel, No. 98-01862-C, (Bankr. N.D. Iowa 1998) (Judge Kilburg). Although the latter case included a suggestion that it might have come out differently if the owners of the homestead had not subsequently married, indivisibility has been applied to prevent the attachment of a judgment as a lien to the husband’s interest where his own individual exemption had been terminated by his removal from the house upon separation because the wife’s continued occupancy of the house resulted in an ongoing continuation of her individual exemption, In re Powers, 286 B.R. 726 (Bankr. N.D. Iowa 2002) (Judge Kilburg).3

V. Lien Avoidance

Efforts to avoid judicial liens on homesteads have necessarily always presented issues about the existence and effects of exceptions to the exemption. An initial pair of cases essentially made lien avoidance pretty much a null set by determining that there was nothing to avoid where the underlying debt was not within any exception because a judgment upon such a debt did not result in the attachment of any lien, In re Keane, 7 B.R. 844 (Bankr. N.D. Iowa 1980) (Judge Thinnes),4 and conversely, that where the exception for dissolution decrees was sufficient to allow a lien to attach to the homestead, the lien could not be avoided because it caused no impairment of the exemption, In re Adams, 29 B.R. 452 (Bankr. N.D. Iowa 1982) (Judge Thinnes).5

3. See also In re Attrill, No. X88-01008 (N.D. Iowa 1989) (Judge Edmonds) (judgments did not attach as liens upon debtor’s abandonment of jointly owned house because of homestead exemption of ex-wife who remained in possession of the house); cf. In re Rizzuti, No. 97-05572-CH (Bankr. S.D. Iowa 1999) (Judge Hill) (debtor’s ability to claim carryover exemption not defeated by interim transfer of ownership of former homestead to non-spouse co-owner required by lender as condition of favorable refinancing); In re Reyerson, 2006 WL 1452805 (Bankr. N.D. Iowa 2006) (Judge Edmonds) (indivisibility separate ground for non-attachment of any of a judgment against husband entered after entry of divorce decree transferring husband’s interest to wife notwithstanding husband’s failure to execute independently required quitclaim deed); In re Larson, 2011 WL 4621556 (S.D. Iowa 2011) (Judge Jackwig) (indivisibility applicable to spouses occupying homestead as beneficiaries of self-settled revocable trusts).


5. Accord In re Parman, No. 94-10592KC (Bankr. N.D. Iowa 1994) (Judge Kilburg); In re Mease, No. 97-10048-C (Bankr. N.D. Iowa 1999) (Judge Kilburg). But see In re Steigerwald, No. 02-00061-H (Bankr. S.D. Iowa 2003) (Judge Hill) (although they “do not attach to exempt homestead property[,] ... judgment liens do provide a cloud on the title of real property ... and create headaches for title examiners and parties attempting to sell their homes. Accordingly, the court will grant [the debtor’s] motion to avoid [the creditor’s] lien.”); In re Westmeyer, 2010 WL2103571 (Bankr. N.D. Iowa 2010) (Judge Kilburg) (avoiding lien of judgment on post-acquisition debt); In re Nunnally, 2011 WL 1215837 (Bankr. N.D. Iowa 2011)(Judge Kilburg) (same). Northern District Local Rule 4003-2 helpfully addresses this circumstance with the suggestion that “[a] debtor moving to avoid a judicial lien against his or her homestead may join
Lien avoidance was available during a brief period when homestead exemptions were deemed to be impaired by the liens of judgments entered upon pre-acquisition debts, see supra § II., but generally ended with the turn to the view that the exemption was subject to objection to the extent of such debts, id. Efforts to avoid liens within exceptions to the exemption were renewed following the U.S. Supreme Court’s decision in Owen v. Owen, 500 U.S. 291 (1991), but such efforts were unsuccessful. In re Reinders, 138 B.R. 937 (Bankr. N.D. Iowa 1992) (Judge Edmonds); In re Meseraull, No. 94-11048KC (Bankr. N.D. Iowa 1994) (Judge Kilburg), aff’d, (N.D. Iowa 1995) (Judge McManus), aff’d 1996 WL 185736 (8th Cir. 1996) (per curiam).6 A somewhat divergent line of analysis was recently used in a Bankruptcy Appellate Panel decision by Judge Kressel, but it may be distinguishable both formally and functionally as reflecting particularities of Missouri’s rather modest dollar-limited homestead exemption. In re Moore, 495 B.R. 1 (8th Cir. BAP 2013) (affirming avoidance of lien of judgment within pre-acquisition debt exception to Missouri homestead exemption) (appended to Appendix B).

Numerous possible permutations of debts, judgments, and varying real estate interests can create difficulties of clear or clouded title that may not always be fully resolved by the cumulative effects of 11 U.S.C. § 524(a)(1) (“A discharge in a case under this title ... voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title ... .”) and Iowa Code § 624.23(3) (“Judgment liens ... shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.”). As a possible alternative to some appropriate bankruptcy court proceeding, consideration should be given to the possible sufficiency of the procedure available under the provisions of Iowa Code § 624.23(2)(b) (2015):

A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, the defendant’s agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate alleged to be or to have been 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. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner’s spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided by section 654.4A, subsections 1 through 3. A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

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 devote otherwise nonexempt funds to the satisfaction of encumbrances or the construction of physical improvements to the homestead. See supra § B. Prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, however, such conduct 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 debar some bright line between permissible and impermissible conduct. This circumstance certainly is not new, compare, e.g., Forsberg v. Security State Bank, 15 F. 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 (Bankr. D. Minn. 1989) (same debtor entitled to Chapter 11 discharge)], In re Trost, No. L88-00703W (Bankr. N.D. Iowa 1989) (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), and In re Smeby, No. X88-00159M (Bankr. N.D. Iowa 1989) (Judge Edmonds) (allowing exemption for almost $130,000 of life insurance where debtors retained unencumbered nonexempt property worth approximately $125,000) with In re Krantz, 97 B.R. 514 (Bankr. N.D. Iowa 1989) (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 (Bankr. 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 principle 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 the mortgagor freedom to choose new sources of financing and for allowing new lenders to come in with secure liens. 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.

Grant Gilmore, Security Interests in Personal Property § 35.4 (1965).

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); In re Rodemeyer, 99 B.R. 416 (Bankr. N.D. Iowa 1989) (denying life insurance exemption to extent policy purchased with funds derived from debtor's conversion of creditor's collateral). Another presumably is the amount of funds involved in the enhancement. See, e.g., In re Ellingson, 63 B.R. 271 (Bankr. 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 (Bankr. 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).
In the Eighth Circuit, however, a discharge cannot properly be denied based solely on the debtor's channeling of nonexempt assets into an exempt homestead where such conduct is permitted by state law. See In re Johnson, 880 F.2d 78, 82-84 (8th Cir. 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.)

[SEE § V.E. OF MAIN OUTLINE FOR POST-BAPCPA DEVELOPMENTS]
In re Patricia Anne MOORE, Debtor.

J & M Securities, LLC,  
Creditor–Appellant

v.

Patricia Anne Moore, Debtor–Appellee.

BAP No. 12–6061.

United States Bankruptcy Appellate Panel of the Eighth Circuit.

Submitted: May 14, 2013.

Decided: July 8, 2013.

Background: Chapter 13 debtor moved to avoid judgment lien on exemption-impairment grounds. The United States Bankruptcy Court for the Eastern District of Missouri granted motion, except to extent of $2,198.50 of lien, and judgment creditor appealed.

Holding: The Bankruptcy Appellate Panel, Kressel, J., held that Missouri state law exception to debtor’s homestead exemption rights did not prevent debtor from asserting her state law homestead exemption rights for purposes of avoiding, on exemption impairment grounds, a judgment lien that creditor obtained after debtor acquired homestead property, though judgment lien was rooted in cause of action that existed prior to debtor’s acquisition of homestead; to extent state law exception would except debtor’s homestead from exemption as to judgment creditor specifically, it was preempted by federal law. U.S.C.A. Const. Art. 6, cl. 2; 11 U.S.C.A. § 522(f); V.A.M.S. § 513.510.

Affirmed.

1. Bankruptcy ⇔3782, 3786


2. Bankruptcy ⇔2784.3

Debtor must have possessed interest in property to which lien attached, before lien attached, in order to avoid the fixing of lien on that interest on exemption-impairment grounds. 11 U.S.C.A. § 522(f).

3. Bankruptcy ⇔2784.1

Avoidability of lien on exemption-impairment grounds is determined by answering the question of whether lien impairs exemption to which debtor would have been entitled but for the lien itself. 11 U.S.C.A. § 522(f).

4. Bankruptcy ⇔2792

Homestead ⇔95

Missouri state law exception to debtor’s homestead exemption rights, providing that homestead was subject to attachment and levy of execution on all causes of action existing at time that debtor acquired homestead, did not prevent Chapter 13 debtor from asserting her state law homestead exemption rights for purposes of avoiding, on exemption impairment grounds, a judgment lien that creditor obtained after debtor acquired homestead property, though judgment lien was rooted in cause of action that existed prior to debtor’s acquisition of homestead; to extent state law exception would except debtor’s homestead from exemption as to judgment creditor specifically, it was preempted by federal law. U.S.C.A. Const. Art. 6, cl. 2; 11 U.S.C.A. § 522(f); V.A.M.S. § 513.510.

5. Bankruptcy ⇔2761

In bankruptcy, exemption is issue between debtor and creditor body as whole, represented by trustee, not between debtor and single creditor. 11 U.S.C.A. § 522(b).

6. Bankruptcy ⇔2537, 2793

Exemptions prevent certain property from becoming part of bankruptcy estate, and thus place the exempted property beyond reach of bankruptcy trustee. 11 U.S.C.A. § 522(b).

7. Bankruptcy ⇔2002

States may not pass or enforce laws to interfere with or complement the Bank-
the Bankruptcy Code or to provide additional or auxiliary regulations.

West Codenotes

Limited on Preemption Grounds
V.A.M.S. § 513.510

Jay Robert Burns, Jr., argued, Saint Louis, MO, for appellant.

Steven C. Bain, argued, Saint Louis, MO, for appellee.

Before KRESSEL, SALADINO and SHODEEN, Bankruptcy Judges.

KRESSEL, Bankruptcy Judge.

J & M Securities, LLC, appeals from an order of the bankruptcy court granting Patricia Anne Moore’s motion to avoid a judicial lien on her homestead. Plainly stated, the ultimate question in this case is whether a state law exception to an exemption for a single creditor can prevent the debtor from exempting her homestead from property of the estate. 11 U.S.C. § 522(b). We hold that it does not and affirm.

Background

The facts are undisputed. On August 16, 2000, Patricia Ann Moore, the debtor, a/k/a Patricia Wallingsford, in conjunction with her then husband, John Wallingsford signed a guaranty of lease agreement with Caplaco Ten Inc., and Dierbergs Lemay, Inc.

The deed to Moore’s home was recorded in the St. Louis County Recorder of Deeds office on April 11, 2003. Moore holds a one half ownership interest in the home. She owns the property with her brother and sister-in-law, who together hold the other one half interest. Of the three owners, Moore is the only one occupying the house and resides in it as her homestead. Her brother and sister-in-law do not claim Moore’s home as their homestead.

On March 9, 2005, a judgment was entered against Moore in the Circuit Court of St. Louis County in favor of Caplaco and Dierbergs; Caplaco and Dierbergs transcribed the judgment on June 7, 2006, thereby creating a lien against Moore’s home. J & M Securities obtained the judgment and lien by assignment on July 10, 2006. In January 2011, Moore granted the Anheuser–Busch Employees’ Credit Union a mortgage against her home.

Moore filed her chapter 7 petition on September 6, 2011. She soon converted her case to one under chapter 13. On the petition date, the judgment lien was $72,770.73, the consensual lien (the mortgage) with ABECU was $108,603.00 and Moore’s home had a fair market value of $143,000.00. In her schedules, Moore claimed a homestead exemption of $15,000.00 pursuant to Mo. ANN. STAT. § 513.475. J & M objected to Moore’s homestead exemption in her chapter 7 case, but did not similarly object after she converted to chapter 13. The bankruptcy court entered the order confirming Moore’s chapter 13 plan on February 22, 2012.

Moore filed a motion to avoid J & M’s judicial lien. The credit union supported the motion and J & M objected. The bankruptcy court ruled that 11 U.S.C.

1. The Honorable Barry S. Schermer, United States Bankruptcy Judge for the Eastern District of Missouri.

2. We agree with J & M that by granting the debtor’s lien avoidance motion, the bankruptcy court implicitly decided and overruled J & M’s objection to the debtor’s exemption claim.
§ 522(f) allowed avoidance of all but $2,198.50 of the lien and granted the motion except to that extent. We have jurisdiction to hear this appeal pursuant to 28 U.S.C. § 158(b).

**Standard of Review**


**Analysis**

On appeal, J & M challenges the propriety of the Eighth Circuit’s ruling in *Kolich v. Antioch Laurel Veterinary Hospital (In re Kolich)*, 328 F.3d 406 (8th Cir. 2003), and the bankruptcy court’s reliance on *Kolich*. We recognize that *Kolich* is controlling precedent in the Eighth Circuit and decline J & M’s invitation to revisit that court’s decision.

J & M also argues that the bankruptcy court erred by summarily dismissing two of its arguments, via footnote, as unpersuasive. J & M’s first argument is that Moore’s homestead exemption is self-executing which renders § 522(f) unnecessary. J & M anchors this theory in Judge Becker’s dissent from *Simonson v. First Bank of Greater Pittston (In re Simonson)*, 758 F.2d 103 (3rd Cir. 1985), explicitly adopted by Congress in the Bankruptcy Reform Act of 1994. Here J & M simply misses the mark. The *Simonson* dissent stands only for the proposition that pursuant to § 522(i), the debtor steps into the shoes of the judicial lien holder after avoiding that lien. Section 522(i) helps prioritize the debtor’s exemption under state law with respect to any remaining consensual liens.

We agree with the bankruptcy court that the self-execution argument is unpersuasive.

The second footnote argument is grounded upon a firmer legal basis and warrants a lengthier discussion. J & M argues that Missouri’s exception to the homestead exemption for prior causes of action by a single creditor prevents Moore from exempting her household from property of the estate.

**State law exceptions to exemptions**

We begin our analysis with the statute: “[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section.” 11 U.S.C. § 522(f)(1). Subsection (b) states, in pertinent part: “an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection . . . where such election is permitted under the law of the jurisdiction where the case is filed.” 11 U.S.C. § 522(b)(1). Paragraph (b)(2) points the debtor to the list of federal exemptions in § 522(d). Paragraph (b)(3) provides the debtor with the exemptions available under the debtor’s state’s law and any nonbankruptcy federal exemptions.

[2, 3] The Supreme Court has made two applicable holdings. First, the Court held that for § 522(f) to apply, the debtor must have “possessed an interest to which a lien attached, before it attached, to avoid the fixing of the lien on that interest.” *Farrey v. Sanderfoot*, 500 U.S. 291, 301,

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3. 4 Collier on Bankruptcy ¶ 522.11[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).
4. In a case where this was not an issue, the Eighth Circuit assumed, but did not decide, that this is the law. *See Walters v. Bank of the West (In re Walters)*, 675 F.3d 1142 (8th Cir. 2012).
Next, the Court held that the applicability of § 522(f) is determined by answering the question of whether the lien impairs an exemption to which the debtor "would have been entitled to but for the lien itself." Owen v. Owen, 500 U.S. 305, 310–311, 111 S.Ct. 1833, 114 L.Ed.2d 350 (1991). This first is clearly true; the second is the issue in this case.

The Code allows states to opt out—meaning a state can prevent its citizen debtors from choosing the federal bankruptcy exemptions. See 11 U.S.C. § 522(b). Missouri is an opt-out state. MO. ANN. STAT. § 513.427. To exempt her homestead, if at all, Moore was required to use Missouri's homestead exemption.

[4] J & M argues that under Missouri law, Moore is not entitled to the homestead exemption and, therefore, her avoidance request fails under step two. The applicable Missouri statutes read as follows:

The homestead of every person, consisting of a dwelling house and appurtenances, and the land used in connection therewith, not exceeding the value of fifteen thousand dollars, which is or shall be used by such person as a homestead, shall, together with the rents, issues and products thereof, be exempt from attachment and execution. The exemption allowed under this section shall not be allowed for more than one owner of any homestead if one owner claims the entire amount allowed under this subsection; but, if more than one owner of any homestead claims an exemption under this section, the exemption allowed to each of such owners shall not exceed, in the aggregate, the total exemption allowed under this subsection as to any one homestead.

MO. ANN. STAT. § 513.475.1

Such homestead shall be subject to attachment and levy of execution upon all causes of action existing at the time of the acquiring [sic] such homestead, except as otherwise provided in sections 513.475 to 513.530; and for this purpose such time shall be the date of the filing in the proper office for the records of deeds, the deed of such homestead, when the party holds title under a deed ... in case of existing estates, such homestead shall not be subject to attachment or levy of execution upon any liability hereafter created.

MO. ANN. STAT. § 513.510

The thrust of J & M's argument is that because the judicial lien is rooted in a cause of action existing prior to Moore’s acquisition of her homestead, § 513.510, the exception to the exemption, prevents Moore from exempting her homestead from property of the estate. While the judicial lien clearly attached to a property interest she held prior to the lien attaching as required under § 522 and Sanderfoot—which J & M concedes—J & M argues that regardless of lien avoidance, Moore is not entitled to a homestead exemption.

J & M is adamant that the existing cause of action exception under § 513.510 is definitional to the homestead exemption. In our view, § 513.510 is a separate statute and therefore is not part of the homestead exemption definition. Regardless of how we view the operation of the two Missouri statutes, the Owen court answered J & M's question to the contrary. There, the Court framed the issue as follows: "The

5. Presumably, J & M's point is that since the statute makes the homestead subject to prior causes of action, and since J & M's judgment arose out of a prior cause of action, debtor does not have any value to which the homestead exemption could attach since the judgment lien exceeds the value of debtor's interest in the property."
question in this case is whether that elimination [of the judicial lien] can operate when the State has defined the exempt property in such a way as specifically to exclude property encumbered by [prior] judicial liens." 6 Owen, 500 U.S. at 306, 111 S.Ct. 1833. The Court's use of the word 'defined' was extremely broad in the sense that the Florida exception emanated from case law and was not part of the state exemption statutory scheme.

The Court went on to explain that "[p]re-existing liens, then, are in effect an exception to the Florida homestead exemption." 7 Id. at 307, 111 S.Ct. 1833.

Finally, the Owen court concluded that "Florida's exclusion of certain liens from the scope of its homestead protection does not achieve a similar exclusion from the Bankruptcy Code's lien avoidance provision." Id. at 313–314, 111 S.Ct. 1833. We think this holding by the Supreme Court is fatal to J & M's argument.

Missouri statutes do not single out prior liens as exempt from its homestead provision, but rather, except prior causes of action-a point J & M emphasizes. The First Circuit is the only court of appeals to address this issue directly and apply the Supreme Court's decision in Owen. See Patriot Portfolio v. Weinstein (In re Weinstein), 164 F.3d 677 (1st Cir.1999).

Currently, Massachusetts' statutes provide an exception to its homestead exemption for liens that attach prior to homestead creation. See MASS. GEN. LAWS ANN. ch. 188, § 3(b)(2). However, when Weinstein was decided, the state statutes also provided an exception from the homestead exemption for debts contracted prior to the homestead's acquisition, Weinstein, 164 F.3d at 681–682, similar to the exception in Missouri for prior causes of action. The court analyzed both state law exceptions.

Weinstein had owned his property for 20 years before the judicial lien was recorded. Some four years later, Weinstein recorded his declaration of homestead. Four months after establishing his homestead, Weinstein filed a chapter 7 petition, elected the state law exemption scheme under § 522 and sought to have the judicial lien avoided. The creditor objected to avoidance on the grounds that Massachusetts' prior lien and debt exceptions prevented Weinstein from exempting his homestead. Both the bankruptcy court and the district court ruled that federal law preempted the state law exceptions to the homestead exemption and allowed avoidance of the judicial lien; the First Circuit subsequently affirmed and the Supreme Court denied certiorari. See Patriot Portfolio v. Weinstein, 527 U.S. 1036, 119 S.Ct. 2394, 144 L.Ed.2d 794 (1999).

[5, 6] In a bankruptcy case, exemption is an issue between the debtor and the creditor body as a whole, represented by the trustee, not between the debtor and a single creditor. 8 Which is not to say that the issue of an exemption cannot be raised by a creditor. Clearly, a single creditor has the right to object.


7. Emphasis added.

8. Which is not to say that the issue of an exemption cannot be raised by a creditor. Clearly, a single creditor has the right to object.
because an asset would be available to one creditor outside of bankruptcy, that it is available to all creditors in a bankruptcy case.

Section 522(c) states that "property exempted under this section is not liable during the case for any debt of the debtor that arose ... before the commencement of the case except—" 1) a tax or a customs duty, 2) domestic obligations, 3) liens that cannot be avoided, 4) liens that are not void, 5) tax liens, and 6) certain nondischargeable debts owed to federal depository institutions. See 11 U.S.C. § 522(c); Weinstein, 164 F.3d at 679. Missouri statute § 513.510 serves a similar function—excepting a certain type of debt from exemption protection. But can the Missouri exception provide additional debt protection beyond the Code’s enumerated provisions?

[7] "States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." International Shoe Co. v. Pinkus, 278 U.S. 261, 265, 49 S.Ct. 108, 73 L.Ed. 318 (1929). Of course, as we noted previously, the Code allows states to opt out of the bankruptcy exemption scheme. However, the opt out clause does not naturally lead to “the conclusion that the ‘property exempted’ in section 522(c) must be defined by first applying all the built-in exceptions to the state exemption statute.” Weinstein, 164 F.3d at 683. “The state’s ability to define its exemptions is not absolute and must yield to conflicting policies in the Bankruptcy Code.” Id. citing Owen, 500 U.S. at 313, 111 S.Ct. 1833.

To the extent § 513.510 would except Moore’s homestead from exemption from property of the estate, we hold that this result is at odds with the Code’s exemption scheme—and is also preempted.

Other circuit courts have similarly found that Owen prevents state law exceptions to exemptions from determining exemptible property under the Code. The Fifth Circuit has held that “although the states remain free to define the property eligible for exemptions under § 522(b), the particular liens that may be avoided on that property are determined by reference to Federal law; specifically, § 522(f) of the Bankruptcy Code." Tower Loan of Mississippi, Inc. v. Maddox (In re Maddox), 15 F.3d 1347, 1356 (5th Cir.1994). The Fourth Circuit has held that a North Carolina state statute must similarly yield to § 522(f). See Wachovia Bank and Trust Co. N.A. v. Opperman (In re Opperman), 943 F.2d 441 (4th Cir.1991). Ultimately, J & M’s state exception to the exemption argument is unpersuasive.

**Statutory calculation**

Because the debtor would be entitled to claim her homestead exempt in her bankruptcy case, but for J & M’s lien, § 522(f) is available to her. To determine whether a lien impairs an exemption, the Code provides the following formula:

a lien shall be considered to impair an exemption to the extent that the sum of—(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor’s interest in the property would have in the absence of any liens.


In Kolich, the Eighth Circuit acknowledged that there are a number of cases from other circuits that allowed modifying the ‘all other liens’ aspect of the statutory
formula in the context of a debtor possessing less than 100% interest in the property. However, the Eighth Circuit found “no sufficient basis for concluding that the statutory formula produces . . . a result ‘demonstrably at odds with the intentions of its drafters.’” Kolich 328 F.3d at 410. The court went on to say, “our task is simply to apply § 522(f)(2)(A) as Congress wrote it.” Id. And, of course, our task is to apply the law as the Eighth Circuit interpreted it.

The parties stipulated that only 50% of the credit union’s consensual lien should be used in the Kolich calculation. J & M argues that Kolich is incorrect. However, we are compelled to apply the Eighth Circuit’s precedent. We accept the parties’ stipulation and apply Kolich.

The Missouri homestead exemption statute, § 513.475, provides for a $15,000.00 exemption. The statute allows an individual owner to claim the entire $15,000.00 exemption if no other property owners claim part of the exemption, but limits multiple owners to exempting, in the aggregate, only $15,000.00. In other words, the maximum that can be exempted from one homestead property is $15,000.00. Here, Moore’s claim of a $15,000.00 exemption is allowed under Missouri’s scheme.

The bankruptcy court applied the § 522(f)(2) statutory formula as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The judicial lien—plus</td>
<td>$72,770.73</td>
</tr>
<tr>
<td>All other liens on the property (50% of credit union’s consensual lien)—plus</td>
<td>$54,301.50</td>
</tr>
<tr>
<td>Exemption Moore could claim absent any liens equals:</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Sum</td>
<td>$142,072.23</td>
</tr>
<tr>
<td>Minus—Value of Moore’s interest in the property absent any liens (50% of</td>
<td></td>
</tr>
<tr>
<td>$143,000.00)</td>
<td>$71,500.00</td>
</tr>
<tr>
<td>Equals—Extent of the Impairment</td>
<td>$70,572.23</td>
</tr>
</tbody>
</table>

The bankruptcy court found that subtracting the extent of the impairment ($70,572.23) from the judicial lien ($72,770.73) left $2,198.50 of the lien unimpaired. The value the bankruptcy court used for all other liens on the property was 50% of the credit union’s consensual lien in accordance with Moore’s concession that it would be inequitable to apply the entire lien to her interest in property that secures only 50% of the lien. The bankruptcy court held that whether Moore had equity in her interest in the property was irrelevant because the debtor in Kolich, likewise, did not have equity. We agree. The bankruptcy court properly calculated the extent of the impairment in accordance with the statute, Eighth Circuit precedent, and the parties’ stipulation.

**Conclusion**

We hold that the debtor was entitled to claim her homestead exempt in her bankruptcy case; that J & M’s judicial lien impaired her exemption; and that the bankruptcy court properly applied Kolich in computing the extent to which the lien impaired the debtor’s exemption. Therefore, we affirm the bankruptcy court.
<table>
<thead>
<tr>
<th>State</th>
<th>Homestead Exemption</th>
<th>Garnishment Law* Wages that are Exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>$5,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Alaska</td>
<td>$67,500</td>
<td>$402.50</td>
</tr>
<tr>
<td>Arizona</td>
<td>$150,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Arkansas</td>
<td>$2,500</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>California</td>
<td>$50,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Colorado</td>
<td>$45,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Connecticut</td>
<td>$75,000</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Delaware</td>
<td>$50,000</td>
<td>85 Percent</td>
</tr>
<tr>
<td>Florida</td>
<td>Unlimited</td>
<td>100 Percent</td>
</tr>
<tr>
<td>Georgia</td>
<td>$10,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$20,000</td>
<td>80 Percent</td>
</tr>
<tr>
<td>Idaho</td>
<td>$50,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Illinois</td>
<td>$7,500</td>
<td>85 Percent or 45 Times Minimum Wage</td>
</tr>
<tr>
<td>Indiana</td>
<td>$15,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Iowa</td>
<td>Unlimited</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Kansas</td>
<td>Unlimited</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$5,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$25,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Maine</td>
<td>$35,000</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Maryland</td>
<td>$0</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$500,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Michigan</td>
<td>$3,500</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$200,000</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$75,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Missouri</td>
<td>$15,000</td>
<td>90 Percent</td>
</tr>
<tr>
<td>Montana</td>
<td>$100,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Nebraska</td>
<td>$12,500</td>
<td>85 Percent</td>
</tr>
<tr>
<td>Nevada</td>
<td>$350,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$100,000</td>
<td>50 Times Minimum Wage</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$0</td>
<td>90 Percent</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$30,000</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>New York</td>
<td>$50,000</td>
<td>90 Percent</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$18,500</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>North Dakota</td>
<td>$80,000</td>
<td>40 Times Minimum Wage</td>
</tr>
<tr>
<td>Ohio</td>
<td>$5,000</td>
<td>Federal Limit</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Unlimited</td>
<td>Federal Limit</td>
</tr>
</tbody>
</table>

* "Federal Limit" indicates that 75 percent or 30 times the federal minimum wage per week is exempt from garnishment.

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Michelle M. Miller, Who Files for Bankruptcy? State Laws and the Characteristics of Bankrupt Households (2011) [available @ http://ssrn.com/abstract=1983371]