

Appendix E. Homestead Exemption in Tennessee Bankruptcy (Public Chapter 326, Acts of 2015)-Panel Discussion

The Commission heard testimony from:

- Henry E. Hildebrand III, Chapter 13 Trustee
Middle District of Tennessee, United States Bankruptcy Court
- Robert H. Waldschmidt, Chapter 7 Trustee
Law Office of Robert H. Waldschmidt
- Tom Lawless, Certified Creditor Rights Specialist
Lawless and Associates, P.C.
- Maria Salas, Certified Consumer Bankruptcy Specialist
Salas Law Group, PLLC, Tennessee Bar Association
- Tim Amos, Executive Vice President/General Counsel
Tennessee Bankers Association
- Keith Slocum, Board Certified Bankruptcy Specialist
Harlan, Slocum, and Quillen
- Steve Hodgkins, President
Home Builders Association of Tennessee

Mr. HILDEBRAND began by giving a brief overview of the bankruptcy process. He explained that exemptions can be divided into three categories and that they make up only a part of the bankruptcy process: (1) exemptions for entire items, (2) exemptions based on dollar amounts that may be applied to personal property, and (3) exemptions for certain items up to a specific dollar amount, including homestead exemptions.

Mr. WALDSCHMIDT explained his perspective and experience as a trustee in dealing with Chapter 7 debtors. He sells property in only 5% of all cases, the rest being no-asset cases. When a debtor does have equity, the trustee must take into account the administrative costs of selling the home. Equity of \$2,000 would most likely not lead him to sell the home because it would not provide a meaningful return for the creditors. He expressed concern about the complexity of the current homestead exemptions and gave the example of a woman who could see her allowable exemption change at least eight times over her lifetime because of changes in marital status, parental status, and age: from \$5,000 to \$7,500 to \$50,000 to \$25,000 to \$5,000 to \$12,500 to \$20,000 to \$25,000. He said that Tennessee has the most convoluted system of homestead exemptions in the country.

Mr. LAWLESS suggested that all bankruptcy exemptions be reduced to two unified exemptions: a large exemption for Chapter 13 and a much smaller one for Chapter 7. This exemption scheme would encourage debtors to repay their debt in Chapter 13. Mr. LAWLESS and Mr. HILDEBRAND both said that some debtors abuse the system by converting nonexempt assets into exempt assets before filing by, for example, paying down their mortgages. Ms. SALAS said that although the Commission is being directed to study the homestead exemption, the Tennessee Bar Association wants the Commission to consider all exemptions.

Mr. AMOS argued that while the homestead exemption amounts of \$5,000 and \$7,500 are low, debtors have access to several large exemptions, specifically the personal property exemption of \$10,000 and the exemptions for the family Bible, pensions, etc.

Mr. SLOCUM said he rarely sees people try to game the system. He explained that many people want to pay back their debt but are unable to withstand aggressive debt collection efforts. These debtors use the system to help repay their debts and end the collection efforts. He agreed that a single number would be better but said that nothing should be taken away from the categories of individuals over 62 or individuals with minor children.

Mr. HODGKINS explained that the low homestead exemption in Tennessee is pushing people, including some of his friends, to move to Florida and Texas, which have unlimited homestead exemptions, to protect their assets. He said that bankers use the system to collect money when they could negotiate with debtors upfront and place a lien on the homes. Further, he argued that the unlimited exemptions in Florida and Texas have not made credit difficult to get or caused interest rates to increase there. He said that the Home Builders Association of Tennessee wants people to invest in Tennessee and feel safe in their investment.

Chairman NORRIS and Representative CARTER asked how Tennessee's homestead exemption compared to the federal homestead exemption and whether allowing the federal exemption would be an option to consider. The panelists explained that the federal homestead exemption is a single number, but the filer may use up to \$11,500 of an unused portion of the exemption on other property. Mr. WALDSCHMIDT said the federal set of exemptions is extremely high. Senator YARBRO asked whether members of the panel think Tennessee's homestead exemption should be lower than the federal. Mr. WALDSCHMIDT explained that setting an exemption amount is a balancing act between fairness to debtors and creditors; Ms. SALAS said that the exemptions that need to be considered for increases are those for those under the age of 62 without minor children.

Mayor WATERS asked why Tennessee has the highest bankruptcy filings in the country. Mr. HILDEBRAND explained that people use the system to help them repay their debt, which explains why Chapter 13s are so high. Mr. AMOS agreed and added that because of the efficiency of the system, creditors are more willing to go along with repayment plans. Ms. SALAS added that Tennessee has the highest divorce rate in the country and that this is a leading factor. Mayor HUFFMAN asked what effect medical bills have on the filing rate in Tennessee. The panelists responded that this is a major factor. Mr. WALDSCHMIDT said that

medical bills often do not show up on the filing forms because people use credit cards to pay for nearly everything but explained that he did his own study of the cases that he worked, and medical bills ranked at the top of reasons people file. Mr. HILDEBRAND said that a Harvard study had found medical bills to be the number one reason for filing. He added that while medical bills may push someone into filing, that could be the result of a lack of coverage or a loss of a job. Mr. HUFFMAN followed up by asking how Tennessee ranks when looking at just Chapter 7 filings. Mr. WALDSCHMIDT said that Tennessee is somewhere in the middle.

Representative PARKINSON asked how people determine which chapter to file. Mr. HILDEBRAND explained that it is up to the debtor but that judges in Tennessee are very willing to accept Chapter 13 repayment plans and that bankruptcy lawyers often encourage people to repay their debt in a Chapter 13. Ms. SALAS explained that people often use the system to help them repay their debt, which greatly influences their filing decision. Other factors include the age of the debtor, job, eligibility, and last time filing bankruptcy. Ms. ROEHRICH-PATRICK asked how eligibility for filing Chapter 7 is determined. Ms. SALAS explained that a filer would have to pass a means test and that generally the filer must fall below the median household income for their family size.

Several alternatives were proposed by the panelists including creating a uniform exemption and creating different exemptions for Chapter 7 and Chapter 13. Chairman NORRIS asked whether any other states currently operate under a uniform exemption. Mr. LAWLESS responded that other states have gone to a more level, transparent, and fair system and have a single homestead exemption but there are no states that have one exemption that covers anything up to a set dollar amount. Creating separate exemptions for Chapter 7 and Chapter 13 would also be a new concept not used by any other state.

When asked by Senator MCNALLY what a good number would be for a uniform exemption, the panelists all said they would not be able to agree on a number. Senator MCNALLY asked what would happen if we had no exemptions. Ms. SALAS responded that individuals with disabilities or people out of work would be forced to give up their furniture, Bibles, clothes, houses, etc. She said it would not be good to get rid of exemptions. The number of Chapter 7 filings would also drop to nearly zero.

Mr. AMOS said the Commission should not recommend allowing the federal exemptions or indexing for inflation because of states' rights issues and periodic changes leading to further uncertainty for lenders. Mr. LAWLESS agreed. Senator YARBRO said the current system already sounds convoluted and that there must be a way to index for increases in inflation without causing too much instability.

Senator MCNALLY and Mayor BICKERS both asked what effect increasing exemptions would have on businesses and consumers. Mr. WALDSCHMIDT said that unsecured creditors must absorb any debt not repaid when exempt property is not sold. Mr. LAWLESS added that businesses build this into their cost of doing business, and as such, we all end up paying for it. Mr. AMOS said that any significant change in the homestead exemption would cause banks to change their lending practices, though a small or moderate increase would likely not have an

effect. Mr. HILDEBRAND warned the Commission against believing that any reform of bankruptcy exemptions would have any significant effect on the filing rate. Many believed the 2005 reform would lower the rate, but several studies have shown it had no major effect on the filing rate.

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