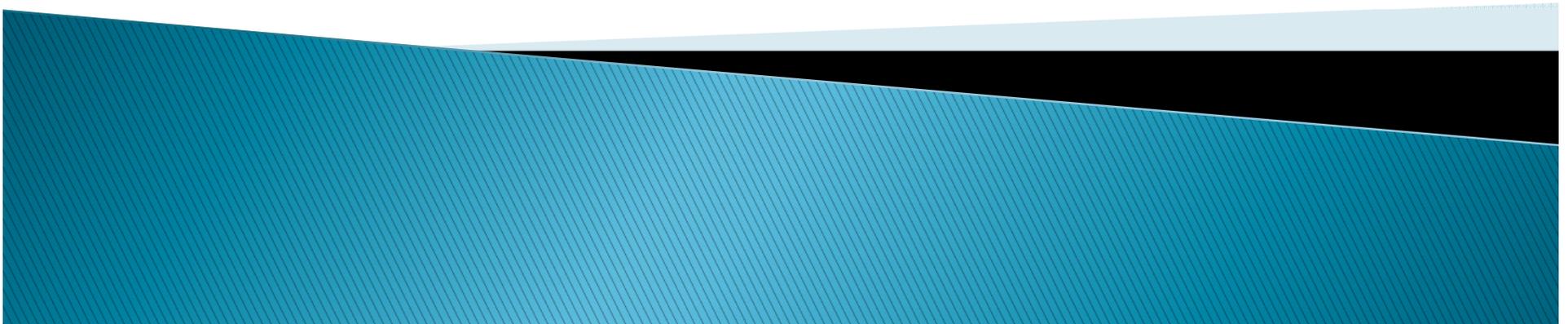


Tennessee Homestead Exemptions

The Bankruptcy Perspective



Who are we?

- ▶ *Henry E. Hildebrand*, Chapter 13 Trustee for MDTN
- ▶ *Thomas Lawless*, Attorney with emphasis on creditors' rights
- ▶ *Maria Salas*, Attorney with emphasis on consumer debtor protection
- ▶ *Keith Slocum*, Attorney with emphasis on Debtors' Rights, uniquely in the real estate arena
- ▶ *Robert Waldschmidt*, Chapter 7 Trustee in MDTN.



Common Points

- ▶ There are many forms of exemptions in Tennessee, like in most states.
- ▶ Exemptions tend to be based by the identity of the property (i.e., the family bible, clothing, ERISA qualified funds)
- ▶ Exemptions could be based only on amount that is exempted (i.e. \$10,000 personal property exemption)
- ▶ Exemptions could be based on amount and the property (i.e. homestead, personal injury, tools of the trade)



Federal Exemptions

- ▶ Section 522 of the Bankruptcy Code establishes a set of Federal default exemptions that apply in bankruptcy cases
- ▶ States can “Opt Out” of the federal exemptions and have their own state created exemptions apply in bankruptcy cases
- ▶ Tennessee has “opted out” of the federal scheme and has applied its own set of exemptions to bankruptcy cases



Tennessee Homestead

- ▶ In Bankruptcy, exemptions serve different purposes depending on the chapter under which the bankruptcy is filed
- ▶ In a chapter 7, the trustee is charged with turning into cash all property of the estate that has not been exempted.
- ▶ Note that some property that is generally regarded as “belonging” to debtors is, by definition, not included in “property of the estate”



Tennessee Homestead Amounts

- ▶ \$5,000 for an individual
- ▶ \$7,500 for a married couple
- ▶ \$12,500 for an individual over 62
- ▶ \$20,000 for a couple where one is over 62
- ▶ \$25,000 for a couple where both are over 62
- ▶ \$25,000 for an individual with custody of a minor child
- ▶ \$50,000 for a couple, both with custody of a minor child



The Chapter 7 Process

- ▶ The trustee takes title to all property of the estate owned by the debtor
- ▶ When a debtor files a chapter 7, the debtor will elect what they claim to be exempt
- ▶ 30 days after the meeting of creditors, the debtor's exemptions are fixed (or the court will determine what those exemptions are)
- ▶ If there are nonexempt assets, the trustee will undertake the steps needed to liquidate and sell the assets



The Homestead in Chapter 7

- ▶ If there is no non-exempt equity in property, the trustee will generally abandon the property, whereupon it will be “returned” to the debtors
- ▶ If there is non-exempt equity, the trustee will sell the property, pay the costs of sale from the proceeds, satisfy any liens on the property, pay to the debtors their elected exemption, and return the balance to the debtors



The Homestead in Chapter 13

- ▶ The debtor proposes a repayment plan that must pay to creditors what they would have received in a chapter 7 case
- ▶ A debtor with non-exempt equity in a home can still keep that home by proposing a chapter 13 plan that will pay enough
- ▶ In essence, the chapter 13 debtor is “buying back” the non-exempt equity from the creditors



How We Suggest You Look At This

- ▶ Any examination of a homestead exemption really calls for an examination of the entire scheme of Tennessee exemptions
- ▶ The federal “homestead” exemption allows this exemption to spill over, permitting a debtor to exempt other property
- ▶ Does it make sense to establish a different homestead exemption for chapter 7 cases than we do for chapter 13 cases?



Chapter Selection

- ▶ Tennessee has the highest bankruptcy filing rate in the country (per capita) – 6.49 per 1,000 people
- ▶ Tennessee has the highest chapter 13 filing rate in the country (per capita) – 3.60 per 1,000 people
- ▶ Our view is that the homestead exemption does not result in a bias in chapter selection since many chapter 13 cases are filed by debtors without non-exempt equity

