CHAPTER 41

Homestead and Other Exemptions

ARTICLE 1

Homestead and Other Exemptions

**SECTION 15‑41‑10.** Minimum bid when selling property subject to exemption.

 When selling property in which a debtor has an exemption as provided in Section 15‑41‑30, the sheriff or other officer conducting the sale, in the advertisement of the sale, also shall state that the minimum bid for the property must be in the amount of the exemption and no bid less than the amount of exemption may be accepted.

HISTORY: Former Section 15‑41‑10: 1962 Code Section 34‑1; 1952 Code Section 34‑1; 1942 Code Section 9085; 1932 Code Section 9085; Civ. C. ‘22 Section 5490; Civ. C. ‘12 Section 3711; Civ. C. ‘02 Section 2626; G. S. 1994; R. S. 2126; 1896 (22) 190; 1936 (39) 1594; Const. 1895, Art. 3, Section 28; 1988 Act No. 415, Section 1.

CROSS REFERENCES

Judicial sales generally, see Sections 15‑39‑610 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 202k202.5; 202k203.

Homestead 202.5, 203.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

Forms

Am. Jur. Pl. & Pr. Forms Homestead Section 1 , Introductory Comments.

NOTES OF DECISIONS

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1. In general

Sheriff had standing to require judgment creditor’s payment of homestead exemption when bidding on debtor’s property in sheriff’s sale, since the statute governing minimum bids in sheriff’s sales required that the minimum bid be in the amount of the exemption. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Homestead 192; Homestead 202.5

2. Child support

Judgment debtor’s children were not protected by homestead exemption with regard to the sheriff’s sale of debtor’s property, and thus, judgment creditor, who was also children’s mother, could not assert child support arrearages in lieu of paying homestead amount to judgment debtor; homestead exemption inured primarily to the benefit of the debtor and only derivatively to dependent children, and children did not reside at debtor’s property. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Homestead 22; Homestead 202.5

**SECTION 15‑41‑20.** Exempted amounts collected to be deposited with clerk of court.

 Any exempted amounts collected by the sheriff or other officer pursuant to Section 15‑41‑30 must be deposited with the clerk of court in the county where the amounts are collected. Any person requesting disbursement of these funds shall petition the court of common pleas.

HISTORY: Former Section 15‑41‑20: 1962 Code Section 34‑2; 1952 Code Section 34‑2; 1942 Code Section 9085; 1932 Code Section 9085; Civ. C. ‘22 Section 5490; Civ. C. ‘12 Section 3711; Civ. C. ‘02 Section 2626; G. S. 1994; R. S. 2126; 1896 (22) 190; 1936 (39) 1594; Const. 1895, Art. 3, Section 28; 1988 Act No. 415, Section 1.

CROSS REFERENCES

Claims for surplus money under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 202k203.

Homestead 203.

**SECTION 15‑41‑30.** Property exempt from attachment, levy, and sale.

 (A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

 (1)(a) The debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars.

 (b) In addition to the aggregate interest as provided in subsection (A)(1)(a), a surviving spouse may also exempt the aggregate interest to which the surviving spouse succeeded by inheritance, testamentary transfer, or nonprobate transfer on the death of the decedent spouse, not to exceed fifty thousand dollars. For purposes of this subsection, a surviving spouse means a spouse married to the decedent at the time of death, who is entitled to the homestead property tax exemption as provided in Section 12‑37‑250, who has not remarried, and who is living in the residence or cooperative that is used as a residence.

 (2) The debtor’s interest, not to exceed five thousand dollars in value, in one motor vehicle.

 (3) The debtor’s interest, not to exceed four thousand dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

 (4) The debtor’s aggregate interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

 (5) The debtor’s aggregate interest in cash and other liquid assets to the extent of a value not exceeding five thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term “liquid assets” includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

 (6) The debtor’s aggregate interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

 (7) The debtor’s aggregate interest in any property, not to exceed five thousand dollars in value of an unused exemption amount to which the debtor is entitled pursuant to subsection (A), items (1) through (6).

 (8) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

 (9) The debtor’s aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

 (10) Professionally prescribed health aids for the debtor or a dependent of the debtor.

 (11) The debtor’s right to receive or property that is traceable to:

 (a) a social security benefit, unemployment compensation, or a local public assistance benefit;

 (b) a veteran’s benefit;

 (c) a disability benefit, except as provided in Section 15‑41‑33, or an illness or unemployment benefit;

 (d) alimony, support, or separate maintenance; or

 (e) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless:

 (i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor’s rights under the plan or contract arose;

 (ii) the payment is on account of age or length of service; and

 (iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), or 409).

 (12) The debtor’s right to receive or property that is traceable to:

 (a) an award under a crime victim’s reparation law;

 (b) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent; or

 (c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual’s death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

 (13) The debtor’s right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, “Internal Revenue Code” has the meaning provided in Section 12‑6‑40(A). The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15‑41‑35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

 (14) The debtor’s interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

 (15) The debtor’s aggregate interest, not to exceed three thousand dollars in value in any rifle, shotgun, pistol, or any combination not to exceed three firearms.

 (B) Beginning on July 1, 2008, and each even‑numbered year thereafter, each dollar amount in subsection (A), items (1) through (14), immediately before July first, must be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most recent year ending immediately before January first preceding July first, and to round to the nearest twenty‑five dollars, the dollar amount that represents this change. No later than March first of each even‑numbered year, the Economic Research Division of the Office of Research and Statistics of the Revenue and Fiscal Affairs Office shall publish in the State Register the dollar amounts that will become effective on July first of each even‑numbered year.

HISTORY: Former Section 15‑41‑30: 1962 Code Section 34‑3; 1952 Code Section 34‑3; 1942 Code Section 9085; 1932 Code Section 9085; Civ. C. ‘22 Section 5490; Civ. C. ‘12 Section 3711; Civ. C. ‘02 Section 2626; G. S. 1994; R. S. 2126; 1896 (22) 190; 1936 (39) 1594; Const. 1895, Art. 3, Section 28; En as 15‑41‑200, 1981 Act No. 53, Section 2, renumbered as Section 15‑41‑30 by 1988 Act No. 415, Section 1; 1999 Act No. 60, Section 1; 2000 Act No. 333, Section 1; 2006 Act No. 300, Section 2, eff upon approval (became law without the Governor’s signature on May 25, 2006); 2008 Act No. 225, Section 1, eff May 22, 2008; 2012 Act No. 153, Section 1, eff May 14, 2012; 2017 Act No. 63 (H.3176), Section 1, eff May 19, 2017; 2017 Act No. 69 (H.3429), Section 1, eff May 19, 2017.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

At the direction of the Code Commissioner, the amendments made by 2017 Act No. 63 and 2017 Act No. 69 were read together.

Editor’s Note

2006 Act No. 300, Section 1, provides as follows:

“This act may be cited as the “Home Security Act”. It is the intent of the General Assembly, because of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, to offer to the citizens of South Carolina protection for their homes in the event that financial difficulties, such as military deployment or extreme medical emergencies, occur for which bankruptcy filing may be the only available remedy.”

2008 Act No. 225, Section 2, provides as follows:

“This act takes effect upon approval by the Governor and is immediately applicable to all attachments, levies, and sales under any mesne or final process issued by a court or bankruptcy proceeding.”

Effect of Amendment

The 2006 amendment, in subsection (B) in the first sentence substituted “fifty thousand” for “five thousand” dollars and “one hundred thousand” for “ten thousand” dollars, and added the third and fourth sentences relating to adjustment of the exemptions.

The 2008 amendment, in paragraph (A)(1), deleted the third and fourth sentences; in paragraph (A)(2), substituted “five thousand dollars” for “one thousand two hundred dollars”; in paragraph (A)(3), substituted “four thousand dollars” for “two thousand five hundred dollars”; in paragraph (A)(4), substituted “one thousand dollars” for “five hundred dollars”; in paragraph (A)(5), substituted “five thousand dollars” for “one thousand dollars”; in paragraph (A)(6), substituted “one thousand five hundred dollars” for “seven hundred fifth dollars”; added paragraph (A)(7); redesignated paragraphs (A)(7) to (A)(13) as paragraphs (A)(8) to (A)(14); and added subsection (B) relating to adjustment of the amounts in paragraphs (A)(1) to (14).

The 2012 amendment in subsection (A)(13) deleted “, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor” at the end of the first sentence, and added the last two sentences.

2017 Act No. 63, Section 1, in (A)(13), in the fourth sentence, deleted “to the same extent permitted in Section 522(d) under federal bankruptcy law”.

2017 Act No. 69, Section 1, in (A), redesignated (1) as (1)(a), added (1)(b), providing that a surviving spouse may also exempt the aggregate interest to which the surviving spouse succeeded by inheritance, testamentary transfer, or nonprobate transfer, and added (15), relating to the debtor’s aggregate interest in any combination of up to three firearms.

CROSS REFERENCES

Minimum bids, see Section 15‑41‑10.

Use of this section in figuring exemption of certain insurance proceeds and cash surrender values from creditors’ claims, see Section 38‑63‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 163k31 to 163k61; 202k58 to 202k89.

Exemptions 31 to 61.

Homestead 58 to 89.

RESEARCH REFERENCES

ALR Library

133 ALR, Federal 1 , Individual Retirement Accounts as Exempt Property in Bankruptcy.

99 ALR 6th 481 , Validity, Construction, and Application of State Exemption Statutes for Proceeds of Personal Injury or Wrongful Death Lawsuits.

Encyclopedias

76 Am. Jur. Proof of Facts 3d 1, Homestead Claimant’s Proof that Property Qualifies for Homestead Exemption from Creditor Claims.

121 Am. Jur. Proof of Facts 3d 191, Proof of Complaint to Determine Liens, Claims, Interests, and Encumbrances Against Property of Bankruptcy Estate, Pursuant to 11 U.S.C.A. Section 363(B), 506(A) and 541(A) in Sale of Property of Estate and Otherwise and Fed. R.

Am. Jur. 2d Exemptions Section 16, Liberal Construction.

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

S.C. Jur. Attachment Section 5, Types of Property Subject to Attachment.

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

S.C. Jur. Cemeteries Section 10, Nature of Title.

S.C. Jur. Landlord and Tenant Section 46, Under the RLTA.

S.C. Jur. Landlord and Tenant Section 54, Distress Under the RLTA.

Treatises and Practice Aids

Family Estate Planning Guide Section 36:19, Retirement Accounts.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:21, Homestead.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:26, Marital Rights/Signature Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

Selected Substantive Provisions of the South Carolina Probate Code: a Comparison with Previous South Carolina Law. 38 S.C. L. Rev. 611.

NOTES OF DECISIONS

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1. Constitutionality

Section 15‑41‑30, which provides a homestead exemption from attachment and levy on the debtor’s right to receive property that is traceable to a payment on account of bodily injury, does not violate the equal protection rights of creditors, despite the absence of a monetary cap, since the purpose of such a payment is to compensate the victim for something lost, rather than to provide a windfall award. Cerny v. Salter (S.C. 1993) 311 S.C. 430, 429 S.E.2d 809. Constitutional Law 3496; Constitutional Law 4429; Homestead 4

2. In general

There is no instructive South Carolina case law interpreting the meaning of “aggregate interest” as set forth in the South Carolina homestead exemption statute, and therefore, court looks to interpretations of “aggregate interest” under bankruptcy homestead exemption statute to determine the nature of debtors’ interest. In re Childers (Bkrtcy.D.S.C. 2015) 526 B.R. 608. Homestead 1; Homestead 5

Interpreting South Carolina exemption for “[p]roceeds and cash surrender values of life insurance payable to a beneficiary other than the insured’s estate” as being available to debtor who was both the owner of and the named insured under a whole life policy, to permit debtor to totally exempt policy’s cash surrender value from property of estate, would not render meaningless another South Carolina exemption that permitted owner/insured to claim a more limited exemption, up to $4,125.00, in cash surrender value of any policy, without regard to identity of beneficiaries; while there might be some overlap between the two statutes, they were not in conflict and could be read together to achieve harmonious purpose. In re Patel (Bkrtcy.D.S.C. 2010) 431 B.R. 682. Exemptions 50(1)

Creditors to whom debtors had a preexisting contractual indebtedness on date that South Carolina legislature amended homestead exemption statute to increase amount of exemption from $5,000 to $50,000, shortly prior to debtors’ bankruptcy filing, had no reasonable expectation that any particular state’s exemption law in existence at time debt was incurred would continue to apply if debtors later filed for bankruptcy relief, and amended exemption could be invoked by debtors to remove homestead property from creditors’ reach without impermissibly impairing their contract rights. In re Evans (Bkrtcy.D.S.C. 2006) 362 B.R. 275. Homestead 7

Even assuming that it were appropriate for bankruptcy court to look to state court law in determining whether debtors were entitled to benefit from ten‑fold increase in amount of the South Carolina homestead exemption shortly prior to commencement of debtors’ Chapter 7 and Chapter 13 cases, South Carolina legislature manifested its intent that increase would go into effect immediately on effective date of statutory amendment, and could be claimed in any bankruptcy case filed on or after that date, even as to creditors to whom debtors became indebted before that date, by specifying that increase was meant to provide indirect relief to debtors subject to new strict provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA); to fulfill legislature’s stated intent, increase in exemption amount had to be given immediate effect. In re Evans (Bkrtcy.D.S.C. 2006) 362 B.R. 275. Homestead 7

Debtor need not have present right to receive payments in order to exempt otherwise‑qualified individual retirement account (IRA) under South Carolina law. In re Outen (Bkrtcy.D.S.C. 1998) 220 B.R. 26. Exemptions 49

The rationale for homestead exemptions is well established: to protect from creditors a certain portion of a debtor’s property from judicial sale, and to prevent citizens from becoming dependent on the state for support. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Homestead 1

Homestead interest depends entirely upon constitutional and statutory provisions. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Homestead 3

Homestead statute is to be construed liberally in debtor’s favor so as not to frustrate end sought to be accomplished. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Homestead 5

Father’s exemption for personal injury awards terminated at his death, and did not transfer to his adult and independent children. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Exemptions 30

Rationale for homestead exemptions is to protect from creditors a certain portion of debtor’s property and to prevent citizens from becoming dependent on state for support. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Homestead 1

2.4. Construction and application

Exemptions provided under South Carolina law generally are construed liberally in favor of debtors. In re Holt (Bkrtcy.D.S.C. 2013) 497 B.R. 817. Exemptions 4

As general rule, South Carolina exemptions are construed liberally in favor of debtor. In re Riley (Bkrtcy.D.S.C. 2013) 486 B.R. 711. Exemptions 4

2.5. Construction with other laws

South Carolina has opted out of the federal exemptions and set forth its own system of exemptions. In re Holt (Bkrtcy.D.S.C. 2013) 497 B.R. 817. Bankruptcy 2764

South Carolina homestead exemption statute is based on bankruptcy homestead exemption statute, and case law discussing bankruptcy exemption is instructive in interpreting the South Carolina statute. In re Scotti (Bkrtcy.D.S.C. 2011) 456 B.R. 760. Taxation 2300

2.7. Purpose

One purpose behind the homestead exemption in South Carolina is to keep individuals that have filed bankruptcy in their homes; in support of this purpose, courts construe the homestead exemption liberally in favor of debtors. In re Childers (Bkrtcy.D.S.C. 2015) 526 B.R. 608. Bankruptcy 3069

Rationale behind South Carolina’s system of exemptions is to protect from creditors a certain portion of the debtor’s property. In re Holt (Bkrtcy.D.S.C. 2013) 497 B.R. 817. Exemptions 1

Rationale behind South Carolina exemptions is to protect from creditors a certain portion of debtor’s property. In re Riley (Bkrtcy.D.S.C. 2013) 486 B.R. 711. Exemptions 1

Purpose of South Carolina legislature in allowing debtor to claim homestead exemption, not just in property that debtor uses as residence, but in property that “dependent” of debtor uses as residence, is to allow debtor to exempt interest in property of debtor if either debtor or dependent of debtor uses property as residence; however, use of property by both debtor and debtor’s dependent does not increase amount of exemption available to debtor. In re Scotti (Bkrtcy.D.S.C. 2011) 456 B.R. 760. Homestead 32; Homestead 62

3. Personal injury awards

Chapter 7 debtor who sustained personal injuries in vehicular accident that were severe enough to warrant compensation far in excess of policy‑limit settlements that he obtained from insurers, in total amount of $325,000, was entitled to South Carolina “personal injury” exemption for the entire $150,996.97 in settlement proceeds paid to him after deduction for his attorney’s fees and expenses, though personal injury attorney, as attachments to settlement demands mailed to insurers, appended medical bills reflecting medical expenses in amount of $192,339.67; medical bills were attached only as evidence of extent of debtor’s injuries and did not themselves demonstrate that settlement was intended to compensate for debtor’s medical expenses, such that, in absence of any allocation of settlement funds to specific categories of damages, court would not speculate that any portion of settlement was in nature of nonexempt payment for medical expenses. In re Brown (Bkrtcy.D.S.C. 2016) 551 B.R. 780. Exemptions 37

Exemption for personal injury awards contains no monetary cap, as purpose of personal injury or wrongful death payment is to compensate victim for something lost, rather than to provide windfall award. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Exemptions 35

Appropriate version of Homestead Act to apply in action to determine whether exemption for personal injury awards continued beyond debtor’s death was version in effect at time that debt arose. Scholtec v. Estate of Reeves (S.C.App. 1997) 327 S.C. 551, 490 S.E.2d 603, rehearing denied, certiorari denied. Homestead 6.1

The South Carolina homestead exemption statute, limiting the exemption for personal injury awards to South Carolina residents only, does not deprive non‑residents of South Carolina equal protection of the laws because (1) it is reasonably related to the legislative purpose of protecting South Carolina residents from financial indigence, (2) the members of the classes are treated alike since all residents are entitled to the exemptions, and (3) the classification is reasonably based upon South Carolina’s legitimate interest in preventing its citizens from becoming dependant upon the state for support. American Service Corp. of South Carolina v. Hickle (S.C. 1993) 312 S.C. 520, 435 S.E.2d 870, rehearing denied, certiorari denied 114 S.Ct. 1298, 510 U.S. 1193, 127 L.Ed.2d 651.

4. Individual retirement accounts

By marking exemption form in space provided, Chapter 7 debtor asserted South Carolina exemption in all property comprising his individual retirement account. In re Wiggins (Bkrtcy.D.S.C. 1998) 220 B.R. 262. Exemptions 121

Chapter 7 trustee’s failure to file timely objection to debtor’s claimed South Carolina exemption in individual retirement account (IRA), or to request extension of time to file objection, precluded his current objection and, thus, required denial of his turnover complaint; although determination of whether property at issue was estate property had no time limit, determination of allowability of exemptions had strict time limit, and there was no evidence that debtor misled trustee or waived his rights to claim for exemption. In re Wiggins (Bkrtcy.D.S.C. 1998) 220 B.R. 262. Bankruptcy 2531; Bankruptcy 2801

5. Incarcerated judgment debtor

Incarcerated judgment debtor was entitled to the protection of homestead exemption in the sheriff’s sale of his property; even though was in jail, debtor did not intend to transfer his residence from his property to detention center. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Homestead 28

6. Bankruptcy

Chapter 13 debtors were entitled to South Carolina homestead exemption, not only in the recently subdivided 13‑acre parcel on which their home was located and on which they had continuously resided for several years, but also in the recently subdivided one‑acre parcel on which they were constructing a new home, and which also contained the well and portion of driveway used for their existing residence; one‑acre parcel was necessary to debtors’ use and enjoyment of existing home, as providing sole source of water for that home and means of access. In re Bycura (Bkrtcy.D.S.C. 2015) 540 B.R. 211. Domicile 1

Bankruptcy court would approve trustee’s sale of debtors’ residence to primary unsecured creditor for $60,000, free and clear of liens, even though debtors claimed a homestead exemption in the property, where the property had a current appraisal value of $80,000, the highest offer to purchase the property to date was $60,000, there was no indication that a public auction would realize a higher purchase price for the property, trustee held preserved lien for the benefit of the estate in the amount of $97,821.27, and debtors’ homestead exemption was second in priority. In re Childers (Bkrtcy.D.S.C. 2015) 526 B.R. 608. Bankruptcy 2793; Bankruptcy 3073

Where title to real property remained with the bankruptcy estate, South Carolina’s homestead exemption statute required equity in the property over and above consensual liens in order for debtors to qualify as interest holders under Bankruptcy Code provision governing trustee’s sale of property free and clear of any interest in such property. In re Childers (Bkrtcy.D.S.C. 2015) 526 B.R. 608. Bankruptcy 2762.1; Homestead 81

Regardless of whether South Carolina homestead exemption was broad enough to apply to funds traceable to insurance proceeds paid upon destruction of debtor’s residence in fire, debtor’s failure to forthrightly and properly account for $349,438.74 worth of proceeds paid after fire and his failure to truthfully disclose other assets, which had resulted in conversion of his bankruptcy case to one under Chapter 7 and denial of his bankruptcy discharge, also warranted denial, upon unclean hands theory, of South Carolina homestead and wildcard exemptions claimed by debtor in the $137,561.26 held in certificate of deposit (CD) account that was still traceable to fire insurance proceeds; it would be inequitable to allow debtor to keep any additional insurance proceeds after he had already failed to account for $349,438.74 in such proceeds and not truthfully disclosed other assets. In re Riley (Bkrtcy.D.S.C. 2013) 486 B.R. 711. Equity 65(2)

Under South Carolina law, former marital home was debtor‑former wife’s residence, for purposes of determining her entitlement to a homestead exemption therein; although debtor spent a significant amount of time in New York, caring for a sick parent, and also lived with a paramour for some period of time, she appeared to reside at the property in question and considered it to be her residence. In re Lafferty (Bkrtcy.D.S.C. 2012) 469 B.R. 235. Homestead 37

Under South Carolina law, former marital home was not debtor‑former husband’s residence and, thus, he was not entitled to a homestead exemption therein; both before and after the filing of his bankruptcy petition, debtor listed, under penalty of perjury, a different address as his residence on his food stamp application and recertifications, this other address was also used in communications with a third party regarding the sale of a motorcycle, and though it appeared that debtor may have occasionally spent the night at the property, given the conflicting testimony regarding when he moved into the house and his lack of familiarity with certain things connected with the house, it appeared that the property was not his residence during the relevant time. In re Lafferty (Bkrtcy.D.S.C. 2012) 469 B.R. 235. Homestead 37

South Carolina statute providing exemption for an unmatured life insurance contract itself, but not other rights that arise under the contract, prevents a bankruptcy trustee from surrendering a life insurance contract. In re Sims (Bkrtcy.D.S.C. 2010) 421 B.R. 745. Exemptions 50(1)

In addition to the lot on which their house was located, debtors would be allowed to include in their South Carolina homestead exemption a second lot which they used for access to the house; trustee, as objecting party, failed to meet his burden of proving that the exemption was improper, and the only evidence on the record regarding this second lot was debtor’s testimony that he had been driving across the lot and, then, his neighbors’ road, with their permission, in order to have a driveway from the lot on which the house stood to the public highway. In re Jones (Bkrtcy.D.S.C. 2008) 397 B.R. 765. Bankruptcy 2802; Homestead 70

Debtors’ house, though small, with approximately 700 square feet of living space, qualified as a “residence,” and not merely as a “structure,” within the meaning of the South Carolina exemption statute; after downsizing, debtors made the house their home since prior to filing bankruptcy, the house, while by no means extravagant, was well maintained and appeared to contain all the appointments necessary for comfortable living, and fact that house encroached upon another lot by straddling the property line diminished the value of the property but did not support a finding that it was not a residence. In re Jones (Bkrtcy.D.S.C. 2008) 397 B.R. 765. Homestead 35; Homestead 62; Homestead 66

In South Carolina, a homestead exemption is properly taken in real property that the debtor uses as a residence. In re Jones (Bkrtcy.D.S.C. 2008) 397 B.R. 765. Homestead 35

Debtors who filed their Chapter 7 and Chapter 13 petitions after the South Carolina legislature, to provide indirect relief to debtors subject to the new strict provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), increased amount of South Carolina homestead exemption from $5,000 to $50,000 were entitled to this increased state law homestead exemption, as exemption that was in effect on petition date, despite South Carolina case law to effect that right of homestead is to be determined by laws of force when debt was contracted; to extent that, in state court proceeding to collect on prepetition debt, debtors would not be entitled to increased exemption because their prepetition debt predated amendment of the South Carolina homestead statute, any such state law limitations were inapplicable in bankruptcy as preempted by federal law. In re Evans (Bkrtcy.D.S.C. 2006) 362 B.R. 275. Bankruptcy 2766

7. Ownership interest

Under South Carolina law, debtors, each of whom had owned a 50% membership interest in a limited liability company (LLC), could not claim exemptions in promissory note payable to LLC, but debtors could, instead, claim exemptions in their distributional interests in the LLC; debtors did not have an interest in the note, as it was made payable to LLC by purchaser of LLC’s assets, but, even as dissociated members of LLC, debtors had distributional interests upon dissolution and winding up of the company. In re Holt (Bkrtcy.D.S.C. 2013) 497 B.R. 817. Judgment 828.11(1); Judgment 828.21(2)

To be entitled to homestead exemption in property under South Carolina law, debtor must have ownership interest in property that he seeks to exempt; his or her mere possessory interest in property solely owned by spouse, or potential equitable distribution interest in event that debtor and spouse divorce, is insufficient to support homestead exemption claim. In re Scotti (Bkrtcy.D.S.C. 2011) 456 B.R. 760. Homestead 81; Homestead 88

**SECTION 15‑41‑33.** Limits on applicability of exemption in Section 15‑41‑30(11)(C.

 The exemption for a disability benefit provided in Section 15‑41‑30(11)(C) does not apply with regard to a levy or execution of a judgment authorized by Section 17‑25‑323 or Section 17‑25‑325.

HISTORY: 2000 Act No. 333, Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 15‑41‑30(10)(C) was changed to Section 15‑41‑30(11)(C).

LIBRARY REFERENCES

Westlaw Key Number Search: 163k37.

Exemptions 37.

**SECTION 15‑41‑35.** Exempt property.

 No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. Section 522(d) except as may be expressly permitted by this chapter or by other provisions of law of this State.

HISTORY: 1990 Act No. 526, Section 1; 1996 Act No. 319, Section 1.

CROSS REFERENCES

Property exempt from attachment, levy, and sale, see Section 15‑41‑30.

Federal Aspects

Property exemptions in bankruptcy proceedings (Public Law 95‑598), see 11 U.S.C.A. Section 522.

LIBRARY REFERENCES

Westlaw Key Number Search: 51k2764.

Bankruptcy 2764.

C.J.S. Bankruptcy Section 172.

Notes of Decisions

In general 1

1. In general

Because South Carolina has opted out of the federal exemptions, those exemptions are not available to a South Carolina debtor in a bankruptcy proceeding. In re Lafferty (Bkrtcy.D.S.C. 2012) 469 B.R. 235. Bankruptcy 2764