

How to Claim, Attack and Defend Exemptions

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Sec. 1306 of the Bankruptcy Code

- Defines what is property of the estate in a case filed under Chapter 13 of the Bankruptcy code
- A Chapter 7 debtor's property passes to the bankruptcy estate upon filing.
- All of the property except property abandoned by the Chapter 7 trustee or exempted is liquidated and the proceeds distributed to creditors.
- In Chapter 13, the debtor is allowed to retain exempt and non-exempt property in exchange for committing post-petition earnings or cash payments from his/her property to payment of the claims of creditors.

Why is understanding Sec 1306 Important In The Use of Exemptions?

- In Chapter 7, exemptions actually serve as a mechanism to remove control of property from the Chapter 7 Trustee.
- In Chapter 13, exemptions serve as credit against cash payments that must be paid to satisfy claims of creditors.
- The Chapter 13 trustee has no more than supervisory control of property of the estate (Sec 1302 of the Bankruptcy Code),
- The Debtor in Chapter 13 maintains the right to possession and use of exempt and nonexempt property during the pendency of the case.
- Post-petition property acquired by the debtor continues to enter the estate until the case is closed, dismissed or converted.
- 1306 includes in property of the estate debtor's interest in the monetized proceeds from the sale of unconditionally exempted property: *In re Hawk*, 871 F. 3rd 287 (5th Circuit 2017).

Goal of Exemptions

- To aid the individual debtor in achieving a fresh start.
- Exempt as much of the debtor's property as possible
- Reducing the amount of cash payments a debtor has to make to satisfy the prepetition claims of his/her creditors.
- Exemptions are not a windfall.

Five Cases Everyone Should Know When claiming Exemptions in Texas

- Taylor v. Freeland & Kronz, 503 U.S. 638 (1992)
- Schwab v. Reilly, 560 U.S. 770 (2010)
- In re Frost, 744 F. 3rd 384 (5th Cir. 2014)
- In re Hawk, 871 F. 3d 287 (5th Cir. 2017)
- In re Ayobami, 879 3d 152 (5th Cir. 2018)

Can Post-Petition Property Acquired by The Debtor Be Exempted?

- The debtor may amend the filed documents as a matter of course at any time before the case is closed. (Rule 1009)
- The Debtor in a Chapter 13 does not receive his/her fresh start until the plan of reorganization is completed.

Is the debtor At Risk of Losing The Right To Exempt Property Acquired Post-Petition

- Failing to disclose property when acquired. In re Flugence 738 F.3d 126 (5th Cir. 2013)
- Commonly missed assets that are not disclosed:
 - Inherited real estate
 - Legal claims (accidents, medical malpractice; employment claims)

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Schedule C

Brief description:	KY Consumer Protection Act claim	\$ 2,000.00	<input type="checkbox"/> \$ _____	11 U.S.C. § 522(d)(5)
Line from Schedule A/B:	33		<input checked="" type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____
Brief description:	Gamished wages	\$ 635.00	<input checked="" type="checkbox"/> \$ 635.00	11 U.S.C. § 522(d)(5)
Line from Schedule A/B:	34		<input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	_____

Use this language to indicate intent to exempt the entire asset, where the value of the asset is uncertain because it is contingent and unliquidated. See Schwab v. Reilly, 130 S.Ct. 2652 (2010).
 *If the exemption has a dollar cap, checking this box allows the Debtor to claim the full fair market value up to any applicable statutory limit.