



Defining Residency Under The Federal Homestead Exemption

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Introduction

The homestead exemption is a longstanding doctrine in American jurisprudence that protects the interest debtors have in their dwelling when filing for bankruptcy.¹ Section 522(d)(1) of the Bankruptcy Code's federal exemption scheme provides debtors with the opportunity to preserve the interest they have in their residence, with outside limits on the amount that interest is valued.² However, courts are divided on the interpretation of the word "residence," and have struggled to determine whether "residence" requires actual occupancy of the claimed property at the date of filing.³

There are two canons of statutory interpretation that are used in this context, one known as the "plain meaning approach" and the other "the residence as homestead approach."⁴ The plain meaning approach employs a broader and more liberal interpretation of the statute, which could potentially permit a debtor to claim an exemption on property other than his or her primary residence;⁵ whereas the residence as homestead approach (the majority view) is much narrower,

¹ Alison D. Morantz, *There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America*, 24 LAW & HIST. REV. 245, 256 n. 37 (2006).

² 11 U.S.C. § 522(d)(1) (2012).

³ Compare *In re Lawrence*, 219 B.R. 786 (E.D. Tenn. 1998) with *In re Stoner*, 487 B.R. 410 (Bankr. D. N.J. 2013).

⁴ See *Stoner*, 487 B.R. at 415–416.

⁵ See *Lawrence*, 469 B.R. at 142 (holding that the statute does not necessarily mandate that the property be the debtor's principal or primary residence); see also *In re DeMasi*, 227 B.R. 586 (D.R.I. 1998) (holding that the

and this theory specifically construes the word “residence” interchangeably with the word “homestead” as defined by the state in which the property sits.⁶ Although the word “residence” is only one of many in the statute, it has led to significantly different applications of the federal homestead exemption.

This Article is divided into five parts: Part I will discuss the exemption schemes available to a debtor when filing a bankruptcy petition; part II will explore the purpose and effect of the federal homestead exemption; part III will explain the plain meaning approach to defining “residency” under section 522(d)(1) of the Bankruptcy Code; part IV will explain the residence as homestead approach; and finally, Part IV will address the effects and implications each approach.

I. Exemptions Generally

In the interest of providing bankruptcy petitioners with a “fresh start,”⁷ a debtor is entitled to exempt certain property from the bankruptcy estate, shielding those assets from the claims of creditors.⁸ The purpose for the exemptions is to allow debtors to keep the basic necessities of life so that they will not be left “destitute and a public charge”⁹ after filing for bankruptcy. To effectuate this purpose, courts have held that the exemptions should be construed liberally in favor of the debtor.¹⁰

debtor’s exemption was valid even though a relative was occupying the residence at the time the bankruptcy petition was filed, and the debtor was not).

⁶ See *Stoner*, 487 B.R. at 420 (holding that, although the debtor had legal title of the property because he was a representative of his father’s probate estate, the residence did not constitute his primary residence).

⁷ *In re Applebaum*, 422 B.R. 685 (B.A.P. 9th Cir. 2009) (“Allowing debtors exemptions enables them to emerge from bankruptcy with adequate property to achieve the fundamental goal of the Bankruptcy Code, a financial ‘fresh start.’”); *In re Long*, 260 B.R. 859, 861 (Bankr. S.D. Ohio 2001).

⁸ See generally 11 U.S.C. § 522(d)(1) (2012); *Wells Fargo Bank, N.A. v. Jimenez*, 406 B.R. 935, 942 (D.N.M. 2008); *In re Lawrence*, 219 B.R. 786, 790 (E.D. Tenn. 1998).

⁹ H.R. REP. NO. 95-595, 95th Cong., 1st Sess. 126 (1977).

¹⁰ See *Matter of Barker*, 768 F.2d 191, 196 (7th Cir. 1985); see also *Hyman v. Stern*, 43 F.2d 666, 668 (4th Cir. 1930).

Pursuant to section 522(b),¹¹ a debtor may choose between the federal exemptions listed under the Code or exemptions under state law, unless the debtor's state has opted out of the federal exemption scheme.¹² If a debtor voluntarily chooses state law, or is prohibited from choosing the federal exemptions, he or she may exempt property under state or local law applicable in the debtor's domicile.¹³ If given an option, a debtor cannot choose both the federal and state exemptions.¹⁴ A majority of states have opted out of the federal exemption scheme.¹⁵

II. The Federal Homestead Exemption

The homestead exemption doctrine exists in both federal and state law, finding its origins in a movement which began in the South during the 1850's and 60's.¹⁶ All but a few states have codified homestead exemptions for bankruptcy petitioners.¹⁷ However, Under section 522(d)(1) of the Bankruptcy Code, federal law has its own formulation of the exemption which is designed to protect a debtor or his or her dependents¹⁸ by preserving the interest these individuals have in their home.¹⁹ Under this provision, a debtor may exempt a portion of his or her interest in real estate for a value that cannot exceed \$22,975 for a single debtor, or \$45,950 for joint debtors in

¹¹ See § 522(b) (stating that a debtor may exempt either property specified under federal law in section 522(d), or, "property that is exempt under federal law, other than subsection (d) of this section, or State or local law[.]")

¹² See *In re Caliri*, 347 B.R. 788, 796 (Bankr. M.D. Fla. 2006); *In re Lantz*, 446 B.R. 850, 853 n. 2 (Bankr. N.D. Ill. 2011).

¹³ See § 522(b, d); *In re Giffune*, 343 B.R. 883, 892 (Bankr. N.D. Ill. 2006).

¹⁴ See § 522(d); *In re Odes Ho Kim*, 748 F.3d 647, 656 (5th Cir. 2014) (exemplifying that, under Texas law, a debtor must choose between the federal exemptions and the state exemptions).

¹⁵ States which have opted out of the federal exemption scheme include: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. See Joan N. Feeney et al., *BANKRUPTCY LAW MANUAL* § 5:35 (5th ed.) (2004).

¹⁶ Alison D. Morantz, *There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America*, 24 *LAW & HIST. REV.* 245, 256 n. 37 (2006).

¹⁷ Delaware, Maryland, New Jersey, and Pennsylvania, have not codified their own specific homestead exemptions. *Bankruptcy Law Reporter – Laws, explanations, rules of procedure, forms, state exemptions, court decisions, organized by Code section*, Bankr. L. Rptr. (CCH) (2012).

¹⁸ The homestead exemption may be available for a debtor's residence where a dependent lives alone. See generally *In re Reed*, 331 B.R. 44 (Bankr. D. Conn. 2005) (permitting an exemption on property used solely by the debtor's dependent wife, even though the debtor was estranged from her at the time).

¹⁹ § 11 U.S.C. § 522(d)(1) (2012). See *In re Sanders*, 39 F.3d 258, 260 (10th Cir. 1994); accord *In re Pearson*, 428 B.R. 533, 535 (Bankr. D. Colo. 2010).

real or personal property used as a residence.²⁰

Courts applying section 522(d)(2) have noted that it should be construed liberally to further the purpose of exemptions generally, however, it must not be construed so liberally as to allow the provision to become an instrument of fraud.²¹ Section 522(d)(1) cannot be interpreted in a way that would allow a debtor to claim an exemption on real estate that is not a “residence” within the meaning of the statute.²²

Yet, the exemption applies equally to both real and personal property.²³ Courts have sustained exemptions when applied to dry-docked boats,²⁴ motor homes,²⁵ and mobile homes.²⁶ Other courts limited the exemption to exclude property that was not designed or manufactured for residential purposes.²⁷ Additionally, property used for commercial purposes²⁸ and lots adjacent to the residential property do not qualify for the exemption.²⁹

Under the federal homestead exemption, property will qualify when it is actually used as a residence at the time when the bankruptcy petition is filed.³⁰ Many states under their own exemption scheme will disqualify property that is not actually in use as a residence at the time of

²⁰ § 522(d)(1).

²¹ *In re Frederick*, 183 B.R. 968, 970 (Bankr. M.D. Fla. 1995), determination sustained, (May 18, 1995).

²² § 522(d)(1); *In re Stoner*, 487 B.R. 410, 421 (Bankr. D. N.J. 2013).

²³ § 522(d)(1).

²⁴ *See In re Herd*, 176 B.R. 312, 314 (Bankr. D. Conn. 1994).

²⁵ *See In re Irwin*, 293 B.R. 28, 34–35 (Bankr. D. Ariz. 2003) (“Other states with similar homestead statutes have extended the interpretation to even more non-traditional homes actually used as residences”).

²⁶ *See In re Graff*, 457 B.R. 429, 433–34 (Bankr. W.D. Pa. 2011).

²⁷ *See In re Brissont*, 250 B.R. 413, 415 (Bankr. M.D. Fla. 2000) (holding that a motorboat was not manufactured as a dwelling place and could not qualify for the exemption); *see also In re Hurd*, 441 B.R. 116, 120 (B.A.P. 8th Cir. 2010) (disqualifying a horse trailer).

²⁸ *See In re Bell*, 252 B.R. 562, 564–65 (Bankr. M.D. Fla. 2000) (holding that only the residential part of the debtor’s property qualified, and not the commercial part).

²⁹ *Lainer v. Beaman*, 394 B.R. 382, 383–84 (E.D.N.C. 2008).

³⁰ 11 U.S.C. 522(d)(1) (2012); *See In re May*, 329 B.R. 789, 792 (Bankr. D. N.H. 2005) (qualifying a residence where the debtor resided when petitioning for bankruptcy, even though the debtor sold the house and moved the following year).

filing.³¹ However, the same cannot necessarily be said for all property exemptions claimed under section 522(d)(1). There is a longstanding debate in the bankruptcy courts over whether actual occupancy of the property is required under the Code, or the extent to which an intent to return³² may be relevant.

Since the Bankruptcy Code does not explicitly define the term “residence,” courts are divided between applying the “plain meaning approach” and the “‘residence’ as ‘homestead’ approach” when interpreting the requirements of the statute.³³ This division originates from different applications of the principles of statutory interpretation.³⁴

III. The Plain Meaning Approach

The default rule of statutory construction used by the Supreme Court is the plain meaning approach, which posits that, if the statute is plain and unambiguous, it should be enforced as written—unless “doing so would lead to an absurd result or would be demonstrably contrary to Congressional intent.”³⁵ For example, in *In re Lawrence* the court applied this rule and held that, although the word “residence” is not explicitly defined, the term is not ambiguous.³⁶ It cited Black’s Law Dictionary to define a residence as “the place where one actually lives,” and emphasized that under this definition, a person may have “more than one residence at a time.”³⁷ Congress intended to “encompass a broader category than principal residences, namely any

³¹ See *In re Tevaga*, 35 B.R. 157, 160 (Bankr. D. Haw. 1983) (“Since Debtor was not residing at the Laie property at the time of filing his petition, he cannot claim said property as exempt.”).

³² See, e.g., *In re Feliciano*, 487 B.R. 47, 51–52 (Bankr. D. Mass. 2013) (“Unlike the Massachusetts homestead exemption statute, the federal statute contains no mention of intent, thereby creating a fairly high hurdle for the debtors to overcome... ‘bare allegations of an intent to return to his property are insufficient.[’]”).

³³ *In re Stoner*, 487 B.R. 410, 415–416 (Bankr. D.N.J. 2013).

³⁴ See *id.* at 415–16.

³⁵ *In re Demeter*, 478 B.R. 281, 286–87 (D.Mich 2012) (citing *Lamie v. United States Trustee*, 540 U.S. 526, 634 (2004); see also *Stoner*, 487 B.R. at 415).

³⁶ *In re Lawrence*, 469 B.R. 140, 142 (D.Mass May 2, 2012).

³⁷ *Id.* (quoting BLACK’S LAW DICTIONARY 1423 (9th ed. 2009)) (internal quotation marks omitted).

residence.”³⁸ Therefore, a plain meaning interpretation of section 522(d)(1) would lead to the conclusion that a debtor may exempt either a primary residence or a non-primary residence under the exemption.³⁹

Courts applying the plain meaning approach reject the proposition that “residence” must only refer to one’s “primary” or “principal residence,” because Congress has “explicitly, and repeatedly, drawn a distinction between ‘residence’ on one hand, and ‘principal residence’ and ‘primary residence’ on the other hand.”⁴⁰ Not only does section 101 define a debtor’s “principal residence,”⁴¹ but there are many other sections of the Code where the term “principal” or “primary” residence appears.⁴² Plain meaning jurisdictions conclude that since “residence” in section 522(d)(1) is not preceded by any modifiers like “principal” or “primary,” Congress meant for “residence” to include non-primary residences.⁴³ The court in *In re Demeter* further noted that if Congress intended residence to be construed narrowly, then these modifiers would be superfluous when interpreting other sections of the Code.⁴⁴

However, the exemption is not limitless; section 522(d)(1) further requires that the debtor “uses the residence.”⁴⁵ In *Lawrence*, the court reasoned that, since the Code “speaks in the present tense,” the usage of the property “must transcend the petition date or at least exist as of the petition date.”⁴⁶ Therefore, “where a debtor had never used a residence prior to filing,

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ *Demeter*, 478 B.R. at 287.

⁴¹ 11 U.S.C. §101(13A) (2012).

⁴² *Demeter*, 478 B.R. at 287.

⁴³ *See Lawrence*, 469 B.R. at 142 (“Congress presumably intended to encompass a broader category than principal residences, namely any residence.”); *see also Demeter*, 478 B.R. at 287 (“‘[R]esidence’ is not limited to a debtor’s principal residence, and [] a debtor may have more than one ‘residence’ for purposes of § 522(d)(1).”).

⁴⁴ *Demeter*, 478 B.R. at 288.

⁴⁵ 11 U.S.C. 522(d)(1) (2012); *See Lawrence*, 469 B.R. at 142.

⁴⁶ *Lawrence*, 469 B.R. at 142.

bankruptcy courts have held that the residence may not be exempted under § 522(d).⁴⁷ The court held that the debtor, who used both his primary residence and his vacation home, could claim an exemption on either one of them, but only one.⁴⁸

Also applying the plain meaning approach, the court in *Demeter* held that the debtor could claim a homestead exemption either on his principal residence or his vacation home which he used on a seasonal basis.⁴⁹ However, in *In re Gandy*, the court held that the plain meaning of section 522(d)(1) “unambiguously requires actual occupancy at a point prior to the bankruptcy filing.”⁵⁰ Applying this interpretation of the plain meaning approach, the court declined to allow a debtor to exempt undeveloped land that he intended to occupy in the future for residential purposes.⁵¹ Although the debtor testified that he took actions to make the property his residence by paving a driveway and making inquiries into acquiring utilities for the property, the court held that this was insufficient to qualify for the homestead exemption.⁵²

IV. The Residence As Homestead Approach

The majority approach that courts take when interpreting section 522(d)(1) of the Code is the “‘residence’ as homestead’ approach.”⁵³ Under this theory, “residence” is interpreted in a way that is consistent with how applicable state law defines the term “homestead.”⁵⁴ These jurisdictions hold that the term “residence” is an ambiguous term, as evidenced by competing theories over the proper application of the homestead exemption.⁵⁵ Therefore, it is necessary to

⁴⁷ *Id.* at 142–43 (citing *In re Gandy*, 327 B.R. 807 (Bankr.S.D.Tex.2005); *In re Cole*, 185 B.R. 95 (Bankr.D.Me.1995)).

⁴⁸ *Id.*

⁴⁹ *Id.* at 285–86.

⁵⁰ *In re Gandy*, 327 B.R. 807, 809 (Bankr. S.D. Tex. July 29, 2005).

⁵¹ *Id.* at 810–11.

⁵² *Id.* at 811.

⁵³ *In re Stoner*, 487 B.R. 410, 416 (Bankr. D.N.J. 2013).

⁵⁴ *See id.*

⁵⁵ *Id.* at 418–19 (quoting *In re Asher*, 488 B.R. 58, 64 (Bankr. E.D.N.Y. Jan. 24, 2013)).

look to the legislative history of the statute to aid in the interpretation of the word “residence.”⁵⁶

In *In re Stoner*, the court noted that the federal exemptions originated from the Uniform Exemptions Act.⁵⁷ Section 4(a) of this Act, the “Homestead Exemption,” permitted an exemption on property in the state used as a home.⁵⁸ Therefore, the *Stoner* court reasoned that the term “homestead” and “residence” can be interpreted interchangeably under section 522(d)(1).⁵⁹

The court also looked to Congressional House Reports which were enacted prior to the passage of the Bankruptcy Code.⁶⁰ It found that the Commission on the Bankruptcy Laws of the United States recommended that the debtor be allowed to exempt property that is similar to the type traditionally exempt under state law.⁶¹ This notion is buttressed by the Supreme Court’s decision in *Butner v. United States*, where the Court stated that “[p]roperty interests are created and defined by state law,” and that “unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.”⁶² Courts applying the residence as homestead approach interpreted the holding in *Butner* to mean that it is necessary to define the word “residence” in a way that aligns with the definition of “homestead” under state law.⁶³ Additionally, Courts look to substantive state law to examine “the relationship between the Debtor and the Property and

⁵⁶ *Id.* at 419.

⁵⁷ *Id.*

⁵⁸ *Id.* at 419–20.

⁵⁹ *Id.* at 420.

⁶⁰ *Id.* at 420 (citing *Report of the Commission on the Bankruptcy Laws of the United States*, App. Pt. 1. H.R. DOC. NO. 93–137, 93d Cong., 1st Sess. 170–73, 195–96 (1973); H.R. 8200, 95th Cong., 1st Sess. § 522 (1977) (as reported by the House Committee on the Judiciary, September 8, 1977))

⁶¹ *Id.*; see also *Reid v. Richardson*, 304 F.2d 351, 353 (4th Cir. 1962) (“[P]roperty interest and estates are to be dealt with in the bankruptcy courts in such a manner as to give full respect to the rules of property followed in the state where the property is located.”); accord *In re Persky*, 134 B.R. 81, 85 (Bankr. E.D.N.Y. 1991).

⁶² *In re Stoner*, 487 B.R. 410, 421–22 (Bankr. D.N.J. 2013) (citing *Butner v. United States*, 440 U.S. 48, 55 (1979)).

⁶³ Compare *id.* at 416, with *In re Demeter*, 478 B.R. 281, 290–91 (D.Mich Aug. 31, 2012) (“It is contrary to the rules of statutory construction to use legislative history of § 522(d)(1) to, in essence, replace the word ‘residence,’ which was the actual word used by Congress in § 522(d)(1), with the word ‘homestead.’ “[L]egislative history cannot override the legislative intent expressed in the clear words of the statute.”) (quoting *In re Karben*, 201 B.R. 681, 683 (Bankr. S.D.N.Y. 1996)).

[consider] the Debtor’s intent as determinative.”⁶⁴

For example, in *In re Stoner*, the court held that a residence temporarily occupied by the debtor in order to care for his ailing father did not qualify as a residence under the federal homestead exemption.⁶⁵ The court defined “homestead” as a “principal residence,” adopting the meaning of the term as it is interpreted in other substantive areas of New Jersey law,⁶⁶ including tax law.⁶⁷ The majority in *Stoner* construed the term “residence” narrowly to imply that the debtor is residing there on a permanent basis, not just temporarily.⁶⁸ In that case, the debtor was staying with his father in order to care for him, but maintained a separate residence and “did not have the intent to make the Property his principal residence.”⁶⁹ The debtor demonstrated this by showing that he never attempted to change his mailing address, his driver’s license, or register to vote in the state at the time when the bankruptcy petition was filed.⁷⁰

Unlike *Stoner*, the court in *In re Anderson* held that the debtor’s residence, which she no longer occupied, qualified under the residence as homestead approach, because although the debtor did not actually occupy the residence on the petition date, she was absent due to military service.⁷¹ The court further held that military service is an “involuntary or compelled” absence, and her intent to return to the property can be inferred by her other actions with regard to the

⁶⁴ *Stoner*, 487 B.R. at 421.

⁶⁵ *Id.* at 420.

⁶⁶ *Id.* at 421.

⁶⁷ *Id.* at 422. (quoting *Rubin v. Glaser*, 166 N.J.Super. 258, 264 (N.J. Super. Ct. App. Div. 1979)) In *Rubin v. Glaser*, the court reasoned that the framers of a tax statute used the word “homestead” to refer to “a popularly understood concept of an owner’s principal residence.” *Rubin*, 166 N.J.Super. at 264. The *Rubin* court supported its finding with the decisions of courts in other jurisdictions that defined “homestead” as a place of actual occupancy, where mere intention to occupy is insufficient. *Id.* (citations omitted).

⁶⁸ *Stoner*, 487 B.R. at 422 (“this Court reads the term ‘residence’ in a manner requiring some measure of permanence. This approach is consistent with the New Jersey state law’s interpretation of the term ‘homestead,’ equating it to a principal residence.”)

⁶⁹ *Id.* at 422.

⁷⁰ *Id.*

⁷¹ *In re Anderson*, 240 B.R. 254, 258 (W.D. Tex. 1999).

property.⁷²

V. Effect and Implications

Whether or not a debtor may claim an exemption on either their primary residence or his or her alternate residence will depend on the court's application of either the plain meaning approach or the residence as homestead approach. If a debtor files for bankruptcy in a plain meaning jurisdiction, the property (or properties) may be eligible for exemption regardless of the amount of time the debtor occupies the property, just as long as it is used before the petition date. Some courts require that the property is at least in use for some statutory minimum⁷³ or is occupied at any point prior to filing for bankruptcy.⁷⁴ Regardless, in plain meaning jurisdictions there is less risk that a debtor's proposed exemption will be denied on the basis that the debtor's property is not his primary residence, as long as it is being used by the debtor at some point before the petition date.

Conversely, in residence as homestead jurisdictions, the debtor's eligibility to claim the exemption may turn on his or her duration of occupancy in the claimed residence. In *In re Abraham*, the eligibility of the debtors' New Jersey property for exemption status hinged on the frequency of the debtors' occupancy, as well as their intent to return.⁷⁵ Their claim being denied, the debtors' interest in the property where their children lived fell within the reach of creditors because it was not used as their primary residence. In cases like this, a debtor considering

⁷² *Id.* at 258–259 (internal quotation marks omitted). The court noted that the act of renting out the property in her absence is not inconsistent with her intent to return, especially because rental can be a way of “preserving the property pending the owner’s return.” *Id.* at 259.

⁷³ See Lawrence, 469 B.R. at 142–43 (“The only requirement for eligibility under § 522(d)(1) is that the debtor “uses” the residence.”).

⁷⁴ *In re Gandy*, 327 B.R. 807 (Bankr. S.D. Tex. 2005) (“Under the plain language of the statute, the phrase ‘uses as a residence’ indicates a present use or occupancy as opposed to future intent to occupy. Accordingly, the Court concludes that § 522(d)(1)’s plain language unambiguously requires actual occupancy at a point prior to the bankruptcy filing.”).

⁷⁵ *In re Abraham*, 2014 WL 3377370 at *3 (Bankr. D.N.J. 2014).

bankruptcy may decide to file under chapter 13, or not file at all (if he or she does not currently reside at the property), because that property may be used to satisfy the debtor's creditors' claim if he or she files for bankruptcy under chapter 7.

Additionally, debtors who own and use multiple residences in plain meaning jurisdictions have the benefit of foresight when calculating how the amount of the federal exemption may affect their ability to keep one of their homes. The federal homestead exemption only protects \$22,975 for a single debtor, or \$45,950 for joint debtors.⁷⁶ If joint debtors have a home with \$200,000 of equity, the homestead exemption will only protect \$45,950; creditors will be able to reach \$154,050 of that equity. In that case, the debtors will most likely lose their home, and the \$154,050 will go to creditors. However, if the debtors' claim an exemption on an alternate residence that has significantly less equity, the trustee may not choose to sell the property because the remaining equity after the sale will do little to satisfy debts. Therefore, the property will be abandoned back to the debtor, who will take it subject to the mortgage.

If a debtor has multiple residences to choose from, the debtor may be able to pick and choose a property that he or she would be most likely be able to keep. Or, the debtor may file under the state exemption scheme which could offer a higher exemption amount than section 522(d)(1) of the Code.⁷⁷ In some cases a debtor would prefer to file under chapter 13, so that he or she could keep a residence at the cost of paying disposable income towards a plan that repays creditors for 3 to 5 years depending on his or her income.⁷⁸

Conclusion

⁷⁶ 11 U.S.C. 522(d)(1) (2012).

⁷⁷ For example, bankruptcy petitioners in Rhode Island may exempt a very generous amount of up to \$500,000 of their homestead estate under the state exemption scheme. R.I. Gen. Laws Ann. § 9-26-4.1 (West 2012). However, Rhode Islanders have a choice between using the state exemption system or the federal exemption system. *See e.g.*, *In re Corse*, 486 B.R. 241 (Bankr. D. R.I. 2013); *see also In re DeMasi*, 227 B.R. 586 (D.R.I. 1998).

⁷⁸ *See* 11 U.S.C. § 1325(b) (2012).

When filing for bankruptcy in a jurisdiction that has not yet decided the issue of defining residence under section 522(d)(1), a debtor should be wary of the likelihood that the court will adopt the majority view—the residence as homestead approach. If this approach prevails, a debtor will likely be prevented from claiming an exemption on a property that is not their primary residence. For this reason, it is essential that attorneys advising clients planning to file for bankruptcy inform them of this risk, and advise them that they may want to file under chapter 13 instead of chapter 7, so that their residence will not be immediately liquidated. Or they may not want to file at all if they are concerned about losing their alternate residence. Ultimately, however, the conflicting definitions of “residence” will only affect a small class of individuals who own more than one residential property.