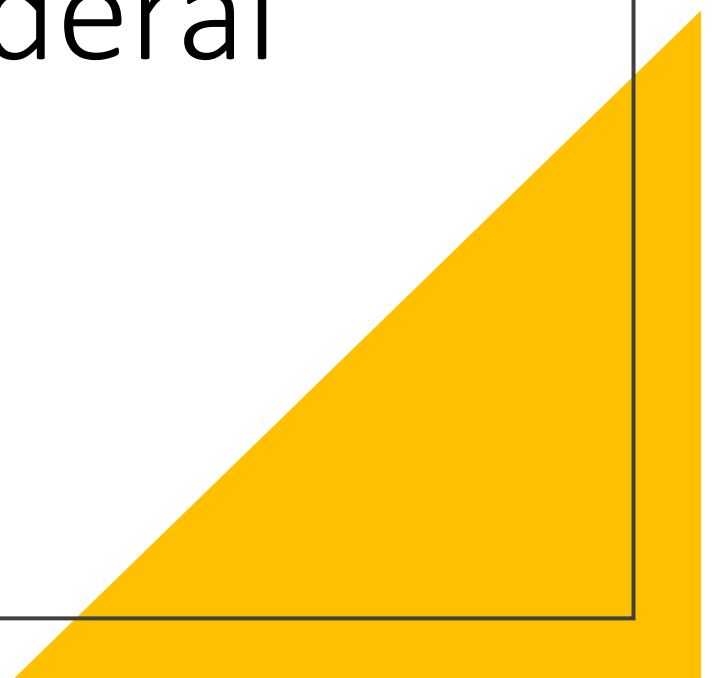


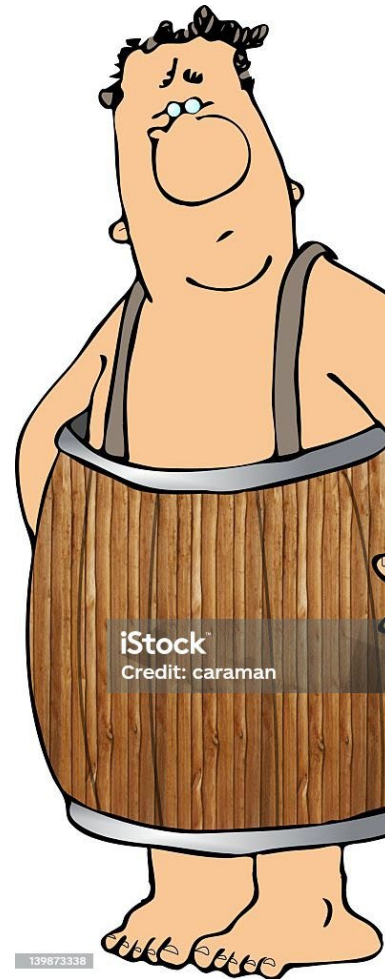
# Primer on Debtor Exemptions: Texas Property Code v. Federal Bankruptcy Code

Carlos Miranda and Elias Yazbeck



# Property Exempt from Seizure

- Enough basic property to have a chance
- State:
  - Exempt from seizure by writ through formal collections process
- Bankruptcy:
  - Property not listed as exempt will be sold by trustee



# State v. Federal

- 1898 Bankruptcy Act deferred to states
- Modernization in 1978 – belief in developing federal exemptions
  - Led to conflict in Congress between stingy and generous states
- Sec. 522(b)(2) compromise
  - Uniform federal exemptions, but states permitted to opt-out
- Texas did not opt-out so Texans can choose

# Texas Exemptions under Tex. Prop. Code

- Sec. 41.001; interests in land
  - Homestead + fixtures + burial lot
  - Unlimited
  - Exceptions for certain encumbrances
    - Purchase money (mortgages)
    - Taxes
    - Improvement liens
- Sec. 41.002; definition of homestead
  - If urban, 10 acres
  - If rural, 200 acres for family, 100 acres for single adult person

# Texas Exemptions under Tex. Prop. Code

- Sec. 42.002; personal property exemption
  - Cap of \$100,000 for families
  - Cap of \$50,000 for single adult who is not member of a family
- Certain categories not included in caps and exempt from seizure
  - (1) current wages for personal services, except for the enforcement of court-ordered child support payments;
  - (2) professionally prescribed health aids of a debtor or a dependent of a debtor;
  - (3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and
  - (4) a religious bible or other book containing sacred writings of a religion that is seized by a creditor *other than* a lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.
    - A religious bible or other book seized by a lessor may not be included in the aggregate limitations

# Texas Exemptions under Tex. Prop. Code

- The following personal property is exempt under Section 42.001(a):
  - (1) home furnishings, including family heirlooms;
  - (2) provisions for consumption;
  - (3) farming or ranching vehicles and implements;
  - (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
  - (5) wearing apparel;
  - (6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
  - (7) two firearms;
  - (8) athletic and sporting equipment, including bicycles;
  - (9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;
  - (10) the following animals and forage on hand for their consumption: (A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each; (B) 12 head of cattle; (C) 60 head of other types of livestock; and (D) 120 fowl; and
  - (11) household pets.

# Texas Insurance Exemption

- Sec. 1108.051 of Texas Insurance Code
  - Exempts cash value and proceeds of insurance policy provided to insured or beneficiary under...
    - (1) an insurance policy or annuity contract issued by a life, health, or accident insurance company, including a mutual company or fraternal benefit society; or
    - (2) an annuity or benefit plan used by an employer or individual.
- fully exempt from:
  - (A) garnishment, attachment, execution, or other seizure;
  - (B) seizure, appropriation, or application by any legal or equitable process or by operation of law to pay a debt or other liability of an insured or of a beneficiary, either before or after the benefits are provided; and
  - (C) a demand in a bankruptcy proceeding of the insured or beneficiary.
- Do not apply to premiums paid in fraud of creditor or prevent child support liens.  
*See Sec. 1108.051.*

# 11 U.S.C. § 522 — Federal Exemptions

- Allows exemptions listed in § 522(d), unless state law opts out.
- Exemptions under non-§ 522(d) federal law, or applicable state/local law based on domicile rules (730-day rule / 180-day lookback)
- Exempt property not liable for prepetition debts, except:
  - Certain domestic support obligations (§ 523(a)(1), (5)).
  - Secured debts (certain liens not avoided).
  - Certain banking-regulator debts. Certain education-related fraud debts.
- Protects most retirement funds regardless of whether debtor lives in opt out state. 522(b)(3)(C)
- Sec. 522(d) gives boost to renters



# 11 U.S.C. § 522(d)

## Federal Exemption List (if electing (b)(2))

- Statutory amounts adjusted every 3 years for inflation
  - Homestead (statutory amount)
  - Motor vehicle.
  - Household goods/personal items (per-item and aggregate caps).
  - Jewelry.
  - Wildcard exemption.
  - Tools of the trade.
  - Unmatured life insurance contracts.
  - Life insurance cash value.
  - Health aids.
  - Right to receive benefits (social security, alimony, pensions, etc., with limitations).
  - Crime victims' awards; wrongful death; life insurance proceeds; bodily injury; loss of future earnings.
  - Tax-qualified retirement funds.

# Partially Exempt Property

- Property value > exemption cap
- Can be levied and sold
- Example with \$1000 exemption
  - Unsecured Creditors owed \$3000
  - Value is \$2800
  - Sale costs of \$100
  - Proceeds go...
    - \$100 to sale costs
    - \$1000 to debtor
    - Creditor gets \$1700

# Security interests in exempt property

- Secured party moves ahead of debtor and levying creditors
- Only when value is so high that it exceeds sales costs would trustee or levying creditor get money
  - Abandonment per Sec. 544

# Lien Avoidance per Sec. 522(f)(1)

- Only two kinds of liens are made avoidable
  - Judicial liens
  - Nonpossessory, nonpurchase money consensual security interests
- Bumps lienholder back to general unsecured to extent lien impedes exemption
- Why?
  - To prevent hostage value security interests (clothing, toys, family photographs)



Carlos Miranda

[cmiranda@eptxlawyers.com](mailto:cmiranda@eptxlawyers.com)



Elias Yazbeck

[elias@yazbecklaw.com](mailto:elias@yazbecklaw.com)