# Select Materials Regarding Exemptions

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| | **Langston v. Dallas Commodity Company,** 5th Cir. Case no. 24-10883, 11/17/25 | 7 | Debtor filed a chapter 7. The trustee conducted multiple 341 meetings, each time announcing that the meeting was being continued to a future date. At the end of the last such meeting, the trustee told parties he would "get back" to them regarding the date for the continued meeting, and the debtor agreed to amend his schedules and provide documents. The trustee did not get back to anyone about a new 341 meeting date. Ten months later the trustee entered on the docket that the 341 meeting was "concluded." Twenty days later, a creditor filed objections to claimed exemptions. The debtor argued that the objection was untimely under Rule 2003's 30-day deadline to object. After the exemption objections, debtor amended his claimed exemptions. | The Fifth Circuit held that a 2011 amendment to B.R. 2003(e) did not create a bright line rule automatically cutting off the time for objecting the exemptions.<br><br>The Fifth Circuit held that equitable considerations continue to govern extensions of the deadline, including equitable concepts such as waiver by the debtor, consider that the debtor agreed to multiple continuances and benefited from the extensions, including by amending his claimed exemptions. |
| **Tex. Prop. Code §42.001(a)** | **In re Westen**, 2018 WL1174888 (E.D. Tex. Mar. 5, 2018). | 7 | Debtors listed $41,450 in "Collectables," including a specific work of art, as their personal property in their Schedule A/B and exempted them as "home furnishings" on Schedule C. | Artwork, under certain circumstances, can qualify as exempt "home furnishings" under Texas law, but was subject to the monetary cap on exemptions. |
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| **Tex. Prop. Code §42.002(a)(4)** | **In re Hughes,** 2025 WL 1788026, case no. 25-31870 (Bankr. S.D. Tex. | 13 | Chapter 13 debtor's schedules claimed an exemption for $15,000 of landscaping tools. The chapter 13 trustee objected, pointing out that debtor had not performed landscaping services | Exemption allowed and objection overruled. The unrefuted testimony from a credible witness (and the sole witness), debtor, was that debtor would return to his part-time landscaping business after his wife recovers from |

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| | 6/27/25)(J. Isgur) | | with the tools (or other trade) for six months. | an illness. The court held, therefore, that the trustee had not demonstrated an intent to abandon the landscaping business. |
| **Tex. Prop. Code §42.002(a)(1)** | **In re Clark**, 2017 WL 5505135 (Bankr. W.D. Tex. 2017). | 13 | Debtor claimed baseball cards and NASCAR collectables as home furnishings or family heirlooms. | Baseball cards and NASCAR collectables were not home furnishings under §42.002(a)(1). |
| **Tex. Prop. Code §42.0021(a)** | **In re Kara**, 573 B.R. 696 (Bankr. W.D. Tex. 2017). | 7 | Debtor inherited an IRA from her aunt and sought to exempt it under § 42.0021(a). | Debtor's interest in tax-exempt individual retirement account (IRA) that she inherited from her aunt was exempt from taxation at time of transfer and could therefore be claimed as exempt under Texas exemption statute that explicitly extended to inherited, tax-exempt IRAs. |
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| **Tex. Prop. Code §42.0021** | **In re Langston,** case no. 19-33022, (Bankr. N.D. of Tex.) (J. Jernigan) 7/21/23 | 7 | Debtors owned valuable traditional and Roth IRA. There were multiple transfers from the IRAs to family-owned business, and the fund were often used to pay debtors' personal expenses. The transfers did not appear on debtors' tax returns. Debtors filed a joint chapter 7 petition. A judgment creditor objected to debtors' claim that the IRAs were exempt. | The court found that the transfers from the IRAs to family-owned businesses were "prohibited transactions" under section 408(e)(2) of the Internal Revenue Code and that, as such, the IRAs were not "exempt from federal income tax" in a manner required by Tex. Prop. Code 42.0021 to enjoy exemption. |
| **Tex. Prop. Code §42.0021(c)** | **In re Hawk**, 871 F.3d 287 (5th Cir. 2017). | 7 | Debtors' schedule of assets claimed an exemption for funds held in an IRA. No party in interest timely objected to the IRA exemption. Over time, Debtors withdrew all of the funds from the IRA, and did not reinvest those funds into another IRA within 60 days. The funds were used for living and other expenses and at least $30k was placed in a shoebox. | Debtors, by withdrawing funds from their exempt retirement account post-petition and failing to deposit the funds into another retirement account within 60 days as required by Texas law, did not lose the exemption. |
| | **In re Taylor,** case. no. 24-10298, Bankr. W.D. Tex. (J. Bradley), 3/21/25 | 7 | Spouses filed joint bankruptcy, disclosed employee stock options but did not claim them as exempt. The trustee filed a motion for turnover of stock options. Debtors conceded that stock options vested pre-bankruptcy were property of the estate but argued that unvested stock options were not because, pre-bankruptcy, debtor had not worked the full number of days to earn the options. | Court held that unvested stock options, the vesting of which is dependent upon continued post-petition employment, are not property of the estate. The court rejected the trustee's 541(a)(6) "proceeds" of the estate argument, explaining that 541(a)(6) contains an express exceptions for "earnings from services performed by an individual debtor[.]" The court also held that stock options are executory contracts, as urged by debtors, but that there auto-rejection under 365(d)(1) is of no economic |

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| | | | | consequence in the dispute because vested options are property rights, not mere contract rights. |
| **Tex. Prop. Code §§42.0021(a) and (c)** | **In re Arlin**, 596 B.R. 516 (Bankr. N.D. Tex. 2019). | 13 | Debtor sought to exempt the funds in her 401k Plan under § 42.0021, no parties objected. Debtor subsequently incurred unexpected medical and home-repair expenses. She unilaterally withdrew funds from her 401k Plan to pay such expenses. None of the funds were rolled over to a qualified retirement account within 60 days of withdrawal. | The 401k funds lost their exempt status when the distributed funds were not rolled over into another retirement account within sixty days and the withdrawals became non-exempt property of the bankruptcy estate pursuant to §1306(a)(1). |
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| **Tex. Ins. Code §§ 1108.001 and 1108.051** | **In re Meinscher,** case no. 22-50925, 2023 WL 1999098 (Bankr. W.D. of Tex. 2/14/23) (J. Gargotta) | 7 | Husband and wife filed a joint chapter 7. They scheduled and claimed as exempt two life insurance policies, one on the life of the husband payable to the wife, and one on the life of the wife, payable to the husband.<br><br>The trustee objected arguing that (1) debtors claimed exemptions, as scheduled, try to exempt policy owner rights, not the rights of insureds or beneficiaries, and owner rights are not exempt, (2) under the Fifth Circuit's *Trautman* holding, as insureds, the debtors have no rights to the | The exemption claims were allowed. First, the trustee misreads schedule C. The debtors' claimed exemptions in ownership rights, beneficiary rights, and insured rights. Next, as to the Fifth Circuit's *Trautman* holding, the trustee, in error, confuses an existing life insurance policy's cash surrender value (such as debtors') with cash already paid out from a surrendered life insurance policy, as was the case in *Trautman*. Next, the Texas Insurance Code unambiguously provides an exemption for benefits "to be provided to an insured or |

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| | | | cash value of the policies, and (3) beneficiaries have no right to exempt mere contingent (i.e., pre-death) interests life insurance policies. | beneficiary." Pointing to a footnote in *Trautman* to argue otherwise contravenes the gravamen of the *Trautman* holding. |
| **Tex. Prop. Code §42.001(a)**<br><br>**§522(a)** | **In re Shurley**, 163 B.R. 286 (Bankr. W.D. Tex.1993). | 7 | Chapter 7 trustee and creditors filed objections to debtors' exemptions for (i) jewelry and furs, arguing that the jewelry and furs were worth more than the debtor claimed and (ii) the cash surrender value of Debtors' life insurance policies, arguing that when combined with the value of Debtors' other claimed exemptions of personal property, cannot exceed $60k under Tex. Prop. Code § 42.001(a)(1). | (i) Objecting parties cannot carry their burden of proof by merely impeaching the debtors' valuation without the aid of appraisals or expert opinion evidence as to value. (ii) Art. 21.22, § 1 of the Texas Insurance Code, not Tex. Prop. Code §§ 42.001 and 42.002, applied to the cash surrender value of the life insurance policies. That article fully exempts the proceeds and is not preempted by federal law because 11 U.S.C. § 522(b)(2)(A) permits a debtor to claim state law exemptions. |
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| **§522(b)(3)(A)** | **In re Camp**, 631 F.3d 757 (5th Cir. 2011). | 7 | Debtor moved from Florida to Texas and less than 730 days later filed chapter 7. Issue: What exemptions was the debtor allowed to claim? (Note Florida opted out of Federal Exemptions, only State Exemptions were available). | Although Florida exemption statutes say that property can only be claimed as exempt by "residents of this state," and Debtor was no longer a resident of Florida, the Court held that the Florida opt out statute did not preclude debtor (non-resident) from claiming the federal exemptions. |
| | **In re Niland,** 825 F.2d 801 (5th Cir. 1987) | 13 | Debtor owned residence, his homestead, and a condo in which he never lived. Pre-bankruptcy and regarding multiple commercial loans, debtor executed a false affidavits and several other written misrepresentations to obtain loans secured by the residence. Later he convinced a judgment creditor to | Homestead claim allowed. "Texas law is clear that a homestead claimant is not estopped to assert his homestead rights in property on the basis of declarations made to the contrary if, at the time of the declarations, the claimant was in actual use and possession of the property." |

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| | | | release the judgment from the condo by lying that the condo was his homestead. Then he filed bankruptcy and claimed his residential home, not the condo, as his homestead. | |
| | **In re Villareal,** 401 B.R. 823, 836 (Bankr. S.D. Tex. 2009) | 13 | After losing their residence to foreclosure, debtors and family moved into their place of business a ballroom, and lived there surreptitiously (black curtains concealed the bedroom furniture etc.). Later, as part of a lawsuit settlement, debtor (husband) executed a promissory note in favor of a party who, post-settlement, would handle debtors' financial affairs. The note was secured by a deed of trust. The deed of trust contained the text: "No part of the property is used for residential purposes and is not, in whole or in part the homestead of Grantors." Eventually, the note holder foreclosed on the ballroom. In response, debtors sued for wrongful foreclosure on the ground that the ballroom was a homestead. Then debtors filed bankruptcy and removed the wrongful foreclosure litigation to bankruptcy court. Objections to the claim of homestead were filed. | Homestead claim disallowed.<br><br>"[W]hen the physical facts open to observation lead to a conclusion that the property in question is not the homestead of the mortgagor, and its use is not inconsistent with the representations made that the property is disclaimed as a homestead, and these representations were intended to be and were actually relied upon by the lender, then the owner is estopped from asserting a homestead claim in derogation of the mortgage to secure the loan" |
| | **In re LaQuay,** case no. 21-60099, Bankr. SD of TX, J. Lopez, 2/16/23 | 11 | Debtors owned multiple real properties, including a modest home, and a multimillion-dollar 150-acre ranch. Pre-bankruptcy, debtors (1) regarding the modest home, recorded in the | The debtors never testified that they ever stopped living in the modest home. Homestead claim disallowed not on estoppel grounds, but on abandonment grounds. The Court held that |

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| | | | county records a designation of homestead, (2) to obtain a commercial loan secured by a bank, told the SBA in writing that the modest home is debtors homestead, (3) regarding the valuable ranch, took the homestead tax exemption between 2012-2014 but thereafter took only the agricultural exemption, (4) to get a second home secured by the loan, foreswore any homestead interest in the ranch or intent to use the ranch as a residence, (5) as to the modest home, took the homestead tax exemption during the years immediately prior to the eventual bankruptcy filings, and (6) at all relevant times showed the address of the modest home on their drivers licenses. Debtors then filed a pro se bankruptcy and on the petition listed the address of the modest home as their address, not the address of the valuable ranch. Before schedules A/B or C were filed, the pro se case was dismissed for failure to seek credit counseling. Days later a second joint chapter 11 was filed with the assistance of counsel, in which the ranch was claimed as the homestead. The petition in the second case showed the ranch as the residence. One bank filed an objection to the homestead claim. | while the ranch may have been the homestead interest in 2011-2014, it was not thereafter. Any homestead interest in the ranch was abandoned after 2015. |

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| | **Law v. Siegel**, 571 U.S. 415 (2014). | 7 | Chapter 7 Trustee brought adversary proceeding to avoid lien on debtor's residential property as fraudulent transfer and moved to surcharge debtor's $75,000 homestead exemption based upon debtor's alleged misconducted in fraudulently representing that a lien existed on the property. | By surcharging debtor's exemption, bankruptcy court exceed its statutory and inherent sanction powers, and federal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Bankruptcy Code. |
| | **In re Fereday**, 2019 Bankr. LEXIS 468 (Bankr. S.D. Tex. 2019). | 7 | Debtor's home was destroyed by Hurricane Ike and he initiated reconstruction. The reconstructed house has never been livable, and the debtor has never resided in it. When the debtor sought to claim the property as exempt as his homestead, the Chapter 7 Trustee asserted that he could not do so because the property had been abandoned. | Abandonment may not be presumed merely from a change in the owner's residence; abandonment occurs when the claimant ceases to use the property and intends not to use it as a home again. |
| | **In re Arredondo-Smith**, 436 B.R. 412 (Bankr. W.D. Tex. 2010). | 7 | Debtor owns a property in Texas and moved to California after marrying her spouse on July 21, 2007. The Debtor separated from her spouse and moved back to Texas in June 2009. In October 2009, the Debtor filed this bankruptcy proceeding, claiming the homestead exemption to property located in Texas under California state law. | The Debtor was domiciled in California during the 730 days immediately preceding the filing of her bankruptcy petition in Texas, and she continued to reside in California for the longer portion of the 180-day look-back period. The Court held that the California state law is applicable because California is the state where the Debtor was domiciled longest for the 180-day period prior to the start of the 730-day period. |
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| **§522(b)(3)(C)(*)** | **Clark v. Rameker**, 573 U.S. 122 (2014). | 7 | Debtors sought to exempt $300,000 in an inherited individual retirement account (IRA). | Funds that were held in individual retirement account (IRA) that chapter 7 debtor had inherited from her late mother were not "retirement funds," as that term was used in bankruptcy exemption statute. |
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| **§522(d)** | **Matter of Ayobami**, 879 F.3d 152 (5th Cir. 2018). | 13 | Chapter 13 Debtor completed her bankruptcy schedule C by checking the box that allowed her to exempt from her bankruptcy estate 100% of fair market value, up to any applicable limit of certain property for 14 of her 17 exemptions. Trustee objected. | § 522(d) limits the value that may be exempted, not the Debtor's interest that may be exempted. Accordingly, Debtor's entire interest in an asset that is less than or equal to any dollar value limitation imposed by § 522(d) may be exempt by Debtor claiming her 100% interest in that asset. |
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| **§522(d)(6)** | **Schwab v. Reilly**, 560 U.S. 770 (2010). | 7 | Chapter 7 Trustee filed motion to sell debtor's business equipment. | When the Bankruptcy Code defines the property a debtor is authorized to exempt as an interest, the value of which may not exceed a certain dollar amount, in a particular type of asset, and the debtor's schedule of exempt property accurately describes the asset and declares the "value of [the] claimed exemption" in that asset to be an amount within the limits that the Code prescribes, an interested party is entitled to rely upon that value as evidence of the claim's validity and need not object to the exemption in order to preserve the estate's ability to recover value in the asset beyond the dollar value the debtor expressly declared exempt. |
| | **In re Chilton**, 674 F.3d 486 (5th Cir. 2012) | 13 | Bankruptcy trustee objected debtors' claim that IRA inherited pre-petition by debtor-wife was exempt from bankruptcy estate on the grounds that the funds in the inherited IRA are not "retirement funds" within the meaning of 11 U.S.C. § 522(d)(12). | The Court held that "retirement funds" can include funds that others had originally set aside for their retirement, as with inherited IRAs, and inherited IRA are contained in an "account" that is "exempt from taxation" as that phrase is used in section 522(d)(12). |
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| **§522(d)(10)(D)** | **In re Evert**, 342 F.3d 358 (5th Cir. 2003). | 13 | Chapter 13 Trustee objected to debtor's claim of exemption in $65,000 promissory note payable to her and executed by her | Given the unambiguous nature of the parties' divorce decree, there was no need for the bankruptcy court, in determining whether the note was "alimony" or "support" |

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| | | | former husband pursuant to parties' divorce decree. | for exemption purposes, to use the *Nunnally* factors for determining what constitutes "alimony" or "support" in the dischargeability context, and (2) the subject note was part of the parties' property division. |
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| **§522(d)(10)(E)** | **Rousey v. Jacoway**, 544 U.S. 320 (2005). | 7 | Trustee objected to debtors' claimed exemption in their individual retirement accounts. (IRAs) | Debtor's right to receive payment under their IRAs which began without penalty when debtors reached age of 59-and-a-half, was right to receive payment because of, or "on account of," their age, within meaning of exemption provision of the Bankruptcy Code, and IRAs qualified as "similar plans or contracts," within meaning of exemption statute. |
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| **§522(l)** | **Taylor v. Freeland & Kronz**, 503 U.S. 638 (1992). | 7 | Chapter 7 debtor claimed exemption in potential proceeds from pending employment discrimination suit, no formal objection was filed, and debtor then settled suit. | Chapter 7 Trustee could not contest the validity of claimed exemption after 30-day period for objecting had expired and no extension had been obtained, even though debtor had no colorable basis for claiming exemption. |
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| **§522(m)** | **Matter of Cannady**, 653 F.2d 210 (5th Cir. 1981). | 7 | One spouse claimed exemptions under federal law while other spouse claimed exemptions under state law and characterized debtors' business as part of the urban homestead under state law. | Legislative history behind Bankruptcy Code demonstrates that Congress intended to allow each debtor in a joint proceeding to choose the federal exemptions regardless of his or her spouse's choice of a family exemption under state law, unless and until state law precludes such a result, and (2) evidence sustained finding that debtors' place of business |

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| | | | | was part of the "urban homestead" exempted under Texas law. |
| | **In re Davis**, 170 F.3d 475, 478 (5th Cir. 1999). | 11 | Former wife of Chapter 11 debtor sought, under Texas turnover statute, seizure and sale of homestead that debtors had claimed as exempt under Texas law, for purposes of satisfying nondischargeable support judgment debt. | Both husband and wife may claim exemptions individually. |
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| **§522(o)** | **In re Sissom**, 366 B.R. 677 (Bankr. S.D. Tex. 2007).<br><br>*See also In re Cowin*, 2014 Bankr. Lexis 1119 (Bankr. S.D. Tex. 2014). | 7 | Debtor sold non-exempt stock for $200k, obtained a loan from the buyer for $50k, deposited $100k of the stock sale into another company he owned, gave wife $50k, Mrs. Sissom purchased a new home with the cash and $75k from the sale of their prior home was wired to her account. | Debtor disposed of property within 10 years of filing bankruptcy; property disposed of was non-exempt; and some of the funds were used to purchase a new homestead, at least the $50k; and as for the issue of intent to hinder, delay and defraud, the court found 11 of the 13 badges of fraud present. Debtor had to pay $50k to the estate – trustee. |

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| | **Matter of Cipolla**, 476 Fed. App'x. 301 (5th Cir. 2012). | 7 | Chapter 7 debtor claimed homestead exemption under Texas law, and trustee objected. | Debtor disposed portion of non-exempt asset and transferred that value to property that was exempt as a homestead, within meaning of the Bankruptcy Code;<br>And fact that debtor was an attorney did not support presumption that he knew about states homestead exemptions. |
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| | **In re Pope**, case no. 23-30283, Bankr. S.D. Tex. (J. Norman), 9/16/24 (appeal pending as of 1/2/25) | 7 | Pre-bankruptcy, while living in homestead, wife used retirement funds to purchase raw land. With a construction loan, husband and wife built new house on raw land and moved into new house. Then husband and wife sold the first home and used the funds to pay off the construction loan on the new house. Then they filed bankruptcy. | The best evidence of abandonment of a homestead is that a new permanent home has been acquired and occupied. Debtors abandoned the first homestead before selling it. Therefore, the sale proceeds from the first home where not exempt under the 6-month rule. The debtors' use of the non-exempt sale proceeds to pay down the construction loan on the new homestead triggered 11 USC 522(o) (transfers into homestead with intent to hinder, delay, or defraud). |
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| **§522(p)** | **Matter of Rogers**, 513 F.3d 212 (5th Cir. 2008). | 7 | Debtor inherited a property in 1994, married, bought another property and built a house on it, then divorced, and reclaimed the inherited property as her homestead and then filed for bk, creditor objected to exemption arguing Debtor acquired it within 1215 days of filing. | The bankruptcy court held "interest" referred to title, and the district court held it referred to equity. The appellate court did not have to choose sides, finding that a homestead interest was not the equivalent of title or equity. The debtor acquired title to the property when she inherited it from her mother in 1994, which was outside the statutory period. The property was her separate property under Tex. Fam. Code Ann. § 3.001 because she inherited it before marriage. "Interest" as used in § 522(p)(1) was not intended to sweep so broadly as to cover a homestead interest because a homestead interest did not constitute a vested economic interest in property. "Interest" in § 522(p)(1) referred to vested economic interests the debtor acquired in the homestead property during the statutory period before bankruptcy. Thus, a homestead interest established within the statutory period, without more, did not fall within § 522(p)(1*)*. "Interest" referred to property interests acquired within the statutory period that the debtor could not exempt from the bankruptcy estate. A debtor acquired an interest in property, not in an exemption. |

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| | **In re Fehmel**, 372 Fed. App'x. 507 (5th Cir. 2010). | 7 | Debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. In their schedules, the debtors claimed a homestead exemption of $ 402,188.70. The chapter 7 trustee and appellees, a bank and others, objected. A bankruptcy court sustained the objection and limited the exemption to $ 273,750, under 11 U.S.C. § 522(p)(1). | Even if the court assumed that § 522(p)(1)'s cap only applied to actively acquired equity, and not to equity passively obtained from market appreciation, the bankruptcy court's findings of fact did not show that the debtors would have been entitled to an exemption any greater than $ 273,750 because, at the very least, the debtors actively acquired approximately $ 278,019.57 of the equity in the property: $ 71,000 from their down payment, $ 6,188.70 from their mortgage payments, and $ 200,830.87 from the cost of their improvements. |
| | **In re McCombs**, 659 F.3d 503 (5th Cir. 2011). | 7 | Trustee and non-debtor spouse appealed the bankruptcy court's grant of summary judgment to a judgment creditor. Trustee and the spouse argued that the bankruptcy court erred in holding that the judgment creditor had an enforceable lien against the proceeds of the sale of the debtor's homestead property in excess of the $125,000 homestead exemption. | The debtor's property was homestead property protected under Texas law when he filed bankruptcy, thus, the creditor had no enforceable lien at that time. 11 U.S.C. § 522(p)'s cap did not convert the lien from one that was unenforceable pre-petition to one that was enforceable as to the homestead post-petition. |

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| | **In re Odes Ho Kim**, 748 F.3d 647 (5th Cir. 2014). | 11 | Home acquired in Debtor's name only and debtor's wife was not included in the involuntary bankruptcy filing. Debtor valued home at $1,000,000, and lived there with his wife, but the home was acquired within 1215 days of involuntary bankruptcy filing by a creditor holding a $5 million-dollar judgment against Debtor. Issue: Whether the bankruptcy court could require the sale of Debtor's homestead, and if so, whether Debtor's wife must be compensated for her homestead interest in the residence. | The non-debtor spouse's homestead rights were limited to the dollar amount of the exemption in 11 U.S.C. § 522(p) and there was no unconstitutional taking of the value of the non-debtor spouse's interest in the homestead. |
| | **In re Thaw**, 769 F.3d 366 (5th Cir. 2014). | 7 | Chapter 7 Trustee objected to Texas state law homestead exemption claimed by Debtor in property that he and his wife had agreed to purchase a matter of days after state court entered substantial judgment against debtor. | The bankruptcy court was authorized under 11 U.S.C.S. § 363 to order a forced sale of a residence owned by a debtor and his non-debtor spouse. The Fifth Amendment Takings Clause did not entitle the spouse to compensation for the sale of the property because her homestead interest was acquired after enactment of BAPCPA and therefore did not constitute a vested property right. The forced sale would not be a "gratuitous confiscation" because § 363 contained protection for non-debtor spouses. The protections under the Bankruptcy Code also made the sale of the property not so unreasonable or onerous as to compel compensation. |

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| | **Matter of Wiggains**, 848 F.3d 655 (5th Cir. 2017). | 7 | Chapter 7 trustee filed complaint to avoid, as fraudulent transfer, debtor's pre-petition partition of $3.4 M residence that he owned as community property (to re-characterize as separate property). | Bankruptcy court properly avoided debtor's pre-petition partition of community property as fraudulent transfer. The entire community property residence was brought into the estate. Non-debtor spouse was limited to receiving proceeds from the sale of the property at Debtor's capped homestead amount. |
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| **§522(q)** | **In re Bounds**, 491 B.R. 440 (Bankr. W.D. Tex. 2013). | 7 | A judgment debtor with a state court judgment in the amount of $2,289,349 and the trustee objected to Debtor's claim that he was allowed to exempt equity he had in a home he owned with his non-debtor spouse from creditors' claims. The state court judgment was based on a violation of Texas securities laws. | Debtor was only allowed to exempt $136,875 from creditors' claims under § 522(q) because a state court jury found that he committed securities fraud. Debtor and his spouse were not eligible for protection under the savings clause in § 522(q)(2) because they had enough income from the wife's business to meet their financial obligations while paying their debts. Additionally, because Debtor's spouse was not a joint debtor, they were not entitled to "stack" the homestead cap. |
| **§522(o)**<br><br>**§522(p)**<br><br>**§522(q)** | **In re Presto**, 376 B.R. 554, 563 (Bankr. S.D. Tex. 2007). | 7 | A judgment creditor objected to Texas state law homestead exemption claimed by Debtor and sought to limit Debtor's state law homestead exemption rights under three provisions added to the Code by BAPCPA. | Debtor was judicially estopped by his schedules from denying that the creditor held a claim based on the judgment and had standing to object to a homestead exemption. The objection was sustained under 11 U.S.C.S. § 522(o) because the debtor used the sale proceeds, which were nonexempt under Tex. Prop. Code § 41.001(c), to make improvements within 10 years of his July 2006 bankruptcy filing and failed to disclose the |

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| | | | | improvements, which was 1 one of 13 badges of fraud. Absent other evidence of the extent to which value of Debtor's homestead was increased by the nearly $120,000 that he spent in improving property, the court fixed the increase in value at $28,200 for the purpose of limiting Debtor's state law homestead exemption. The amount of equity Debtor could "roll over" from his prior marital residence in excess of the $125,000 cap amount for purposes of exempting his new homestead under Texas law was limited to equity which Debtor possessed at time of divorce, before he acquired his ex-wife's one-half interest in the marital property. Debtor's failure to deliver to his ex-wife her one-half share of tax refund that he received in connection with their joint return, and his intentional concealment of fact that he had received refund, was both a "fraud or deceit" and a "manipulation" that Debtor committed while under state law fiduciary obligation to account to wife for refund and served to limit Debtor to maximum state law homestead exemption of $125,000. |