

Bankruptcy Exemptions – *Be the Pig!*

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Live Presentation at the Third Annual Southern District of Texas Consumer
Bankruptcy Conference in Houston, Texas

By

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Pigs get fat, hogs get slaughtered.



Matter of Swift 3 F.3d 929 (5th Cir. 1993)

REMINDER OF BASIC CONCEPTS



Voluntary Petition = Estate Creation

Estate = All Interests in Property

- **§ 541(a):** Upon filing a bankruptcy, a new legal entity is created, the bankruptcy estate.
 - most of the debtor's property interests come automatically into the bankruptcy estate immediately upon the filing of the case, which is referred to as “property of the estate.”
- **§ 541(a)(1):** “Property of the estate” is broadly defined as “all legal or equitable interests of the debtor in property as of the commencement of the case.”

Exclusions & Exemptions From Estate

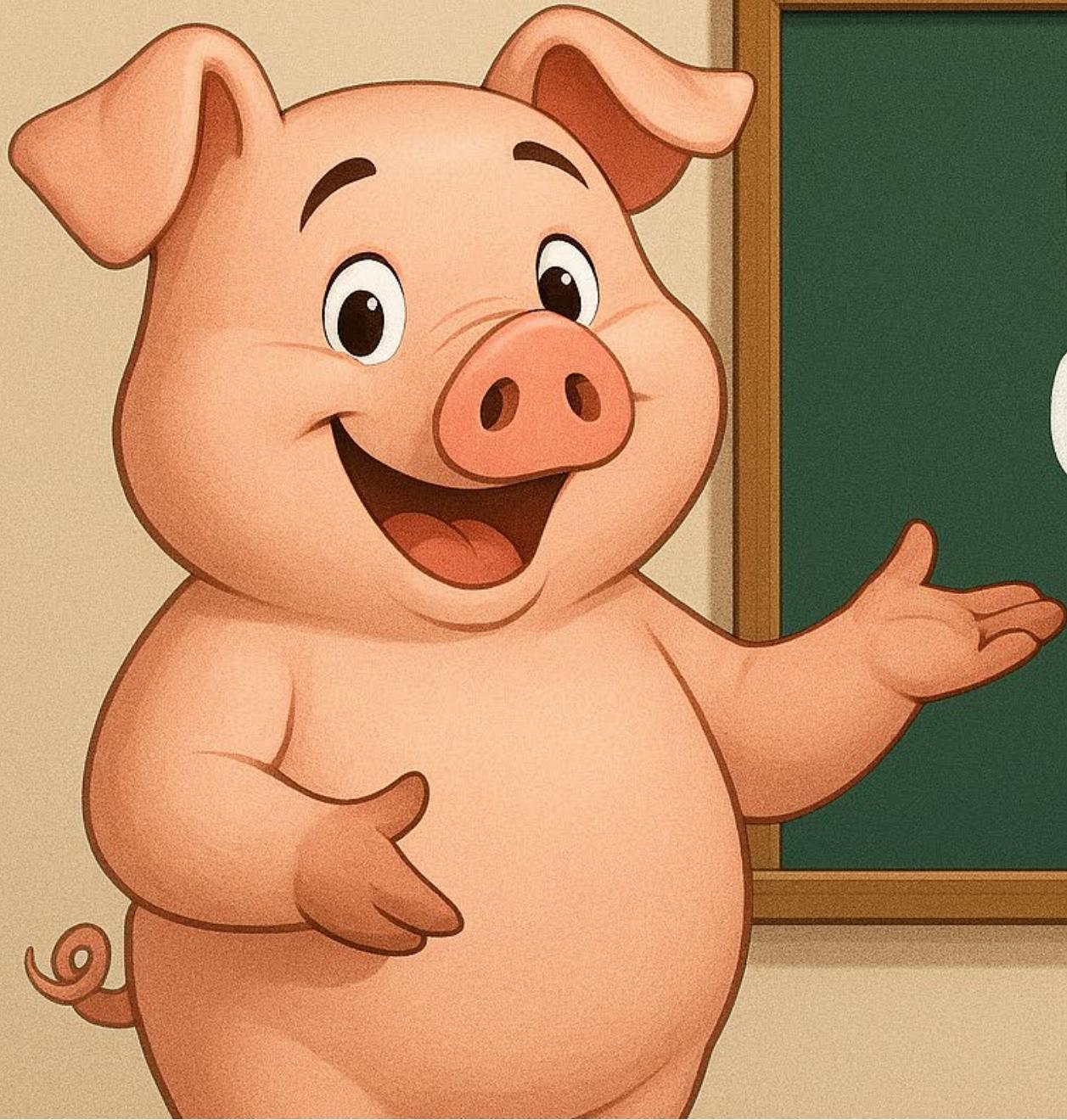
- **§ 541(b): excludes certain property** from the estate and, unlike exemptions, these exclusions never become property of the bankruptcy estate.
- Thereafter, certain **property may be claimed as exempt** from the estate, essentially revesting in the debtor if the exemption claim is valid and allowed.
Owen v. Owen, 500 U.S. 305, 308 (1991)
- The ability to exempt property out of the estate is essential to the “fresh start” purpose of the Bankruptcy Code.

Timing Matters

- **§ 522(b)(3)(A) - 730 Day Rule:** Debtor must be domiciled in Texas for at least 730 days pre-petition to be able to use Texas exemptions.
- **§ 522(b)(3)(A) - 180 Day Rule:** If debtor's domicile is not in Texas for at least 730 days, look to debtor's domicile for majority of 180-day period prior to the 730 period.
- **§ 522(p)(1) – 1,215 Day Rule:** Unlimited homestead exemption in Texas. Except, debtor may not exempt any amount in any homestead acquired during the 1,215 day period pre-petition exceeding \$214,000 (also referred to as the mansion loophole statute). *See In re Rogers, 513 F.3d 212 (5th Cir. 2008)*

Pre-Bankruptcy Planning or Abuse?

- “Some pre-bankruptcy planning is permissible, and that the mere conversion of assets from non-exempt to exempt on the eve of bankruptcy does not by itself suffice to prove an intent to defraud creditors. *See First Tex. Sav. Assoc., Inc. v. Reed, (5th Cir. 1983)In re Reed*), 700 F.2d 986, 990-91. “
- There might be nothing wrong from converting an unexempt asset into an exempt one. It depends on what it is, how much it’s worth, why you need to do it and when you do it.
- **Except:** Watch out for 522(p) (interest in homestead acquired during 1215 days pre-bankruptcy period).



I HAVE MANY
QUESTIONS
FOR YOU!

Pre-Bankruptcy Planning & Discharge Risks

Client is 72-years of age, widowed, a waitress with a \$90,000 mortgage against her home, and has no other assets or source of income. Due to knee problems, she must cease working.

You are preparing a chapter 7 filing. She has \$50,000 cash (from lottery). She wants **to pay down her mortgage** with the money.

Do you:

- A -- Tell her to go ahead.

- B -- Advise her against doing so on the ground that it may trigger a 727(a)(2)(A) loss of discharge (transfer property of the debtor during prior year with intent to hinder a creditor)

Pre-Bankruptcy Planning & Discharge Risks

Client for whom you are preparing a chapter 7 filing has \$50,000 cash and wants to **pay it to the IRS to release a tax lien** against the homestead.

There is a **receiver** in place due to the post-judgment collection efforts by a bank.

Do you:

- A -- Tell her to go ahead.
- B -- Advise her against doing so on the ground that it may trigger a 727(a)(2)(A) loss of discharge (transfer property of the debtor during prior year with intent to hinder a creditor)

Pre-Bankruptcy Planning & Discharge Risks

Client for whom you are preparing a chapter 7 filing has \$50,000 cash and wants to spend most of it (shortly before filing) on **experimental cancer treatment** for her very serious bone cancer.

Do you:

- A -- Tell her to go ahead.
- B -- Advise her against doing so on the ground that it may trigger a 727(a)(2)(A) loss of discharge (transfer property of the debtor during prior year with intent to hinder a creditor)

Pre-Bankruptcy Planning & Discharge Risks

Client for whom you are preparing a chapter 7 filing has \$5,000 cash. Client's mother in Mexico lives alone, cannot support herself, and for ten years has been supported by client's \$1,800 monthly contributions. Client wants to **send the \$5,000 to her mother.**

Do you:

- A -- Tell her to go ahead.
- B -- Advise her against doing so on the ground that it may trigger a 727(a)(2)(A) loss of discharge (transfer property of the debtor during prior year with intent to hinder a creditor)

SELECT
ISSUES AND
RECENT
CASES



DEADLINE TO OBJECT TO EXEMPTIONS



Exemption Objection Time- Barred?

Chapter 7 trustee continued the 341 meeting several times.

After adjourning again and advising there would be another 341– but failing to schedule another -- the trustee waited ten months then docketed that the 341 meeting was **concluded**.

Creditor filed an objection to exemptions 20 days later.



EQUITABLE EXTENSION OF DEADLINE

11/17/25 – Fifth
Circuit, No. 24-
10883, Langston v
Dallas Commodity

Facts:

Chapter 7 trustee continued the 341 meeting several times. At the last scheduled meeting the **debtor agreed to amend his schedules and provide documents to the creditor.**

The trustee advised he would “get back to” creditors/debtor about the date/time of the next meeting, but failed to do so.

Instead, **ten months later, the trustee entered on the docket that the 341 meeting had concluded.** Thereafter, the creditor objected to an exemption claim. The debtor argued that the objection was untimely.

EQUITABLE EXTENSION OF DEADLINE

11/17/25 – Fifth
Circuit, No. 24-
10883, Langston v
Dallas Commodity

Key ruling:

- The amendment to Bankruptcy Rule 2003(e) did not abrogate the Fifth Circuit's *Peres* case-by-case analysis approach, and did not create a bright-line rule automatically cutting off the time for objecting to exemptions.

EQUITABLE EXTENSION OF DEADLINE

11/17/25 – Fifth Circuit,
No. 24-10883, Langston
v Dallas Commodity



More key rulings/findings:

- Waiver by debtor: At the 341s, **debtor agreed to the continuances** and benefitted from the time extensions – amending schedules and producing documents.
- Equitable considerations still govern whether or when the time expired for objecting to exemptions.

EQUITABLE EXTENSION OF DEADLINE

In re William Glenn Johns (In re Johns), No. 21-60010-rlj7, 2023 WL 2227565 (Bankr. N.D. Tex. Feb. 23, 2023).

Facts: A chapter 7 trustee filed a joint motion for leave to file a supplemental objection to IRA exemption claims **nine months after the trustee's original objection** and more than a year and a half after the debtor commenced the bankruptcy case.

Key ruling: The supplemental objection was allowed under the **FRCP 15 “relation back” doctrine**. The supplemental objection described the same conduct described in the first objection, just added much needed factual clarity.

VALUE OF SCHEDULED ASSETS



What if the Debtor Does Not Know the Value?

Does the law impose a duty on the debtor to estimate value on Schedules A/B?

- Yes
- No



Excerpts from Official Form 106A/B

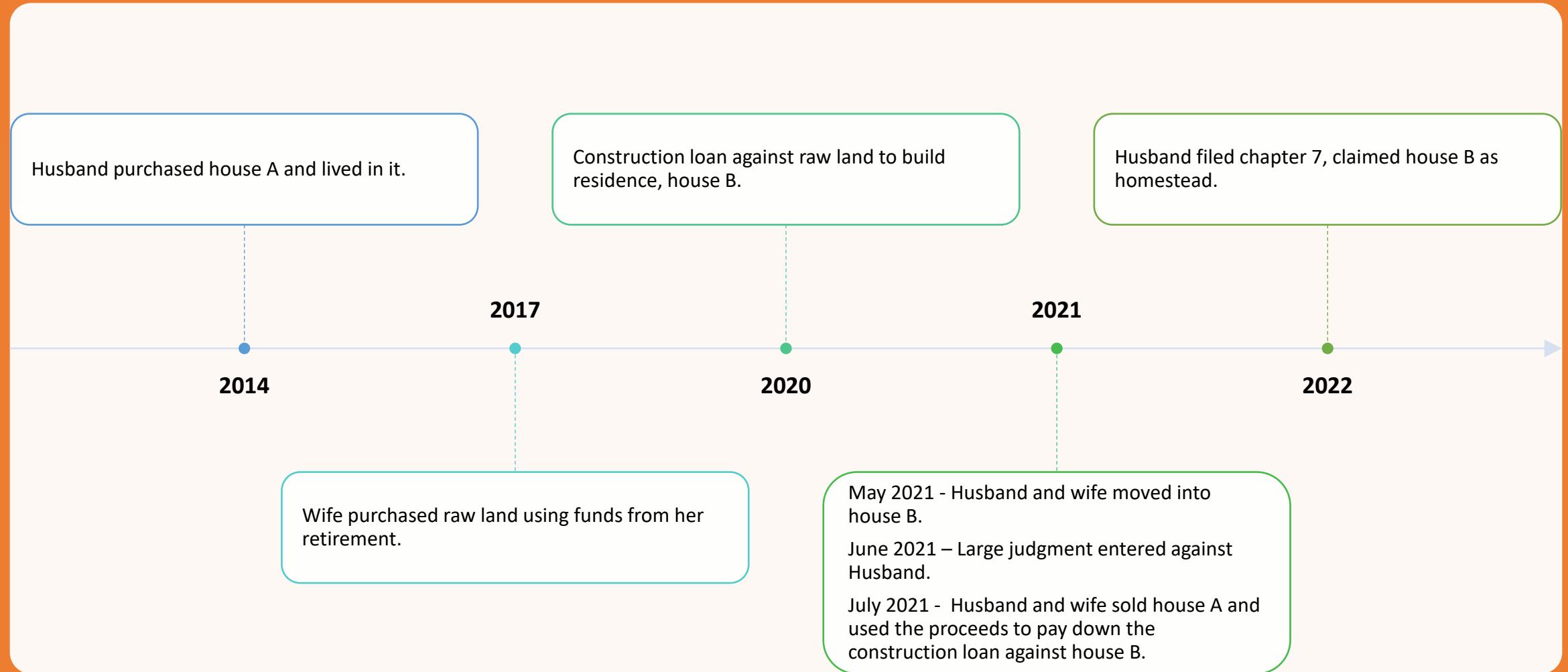
Current value — In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and, for this form, is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth, which may be more or less than when you purchased the property. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

In certain categories, *current value may be difficult to figure out*. When you cannot find the value from a reputable source (such as a pricing guide for your car), *estimate the value and be prepared to explain* how you determined it.



HOMESTEAD

Does This Homestead Claim Withstand Challenge?



Abandonment

9/16/24, In re
Pope, case no.
23-30283, Bankr.
SDTX (J.
Norman)(appeal
pending before J.
Bennett)

Facts:

2014 - debtor purchased **house A** and it became his homestead

2017 - wife purchased raw land using funds from her retirement

2020 – debtor/wife took out a construction loan against raw land and built a home, **house B**

May 2021 - debtor and wife moved into house B

June 2021 - large judgment entered against debtor

July 2021 - debtor and wife sold house A and used the proceeds to pay down the construction loan against house B

2022 - voluntary chapter 7

Abandonment

9/16/24, In re
Pope, case no. 23-
30283, Bankr.
SDTX (J.
Norman)(appeal
pending before J.
Bennett)

Key rulings/findings:

Debtor claimed house B as his homestead.

The **best evidence of an abandonment of residential homestead (house A) is that a new and permanent home (house B) has been acquired and occupied.**

Schedules reflect that debtor moved out of house A before moving into house B. The court **rejected debtor's "revisionist" testimony** that the transition between house A and house B was gradual, over time, and **did not complete until the post-move sale of house A.**

Abandonment

9/16/24, In re
Pope, case no. 23-
30283, Bankr.
SDTX (J.
Norman)(appeal
pending before J.
Bennett)

Key rulings/findings:

Because house A already had been abandoned by the time it was sold, the sale proceeds did not enjoy 6-months of continued homestead protection under the TX Prop Code.

Thus, use of the **house A** sale proceeds to pay down the construction mortgage on **house B**, triggered 522(o) (transfers into the homestead made with intent to hinder, delay or defraud).

Estoppel?

Can a homestead claimant be equitably estopped from protecting his actual homestead if he has **disclaimed** the homestead protection to a lender?

- Yes
- No
- Depends

No Estoppel

In re Niland,
825 F.2d 801
(5th Cir.
1987)

“We think that 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.”*

*** Fun fact: Debtor was a serial liar.**

Estoppel Applied

In re Villareal, 401 B.R. 823, 836 (Bankr. S.D. Tex. 2009) (citation removed) (J. Isgur)

“... in Texas ... when 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”

Estoppel Challenge Mooted Because Judge Found Abandonment

2/16/23, *In re LaQuay*, 21-60099, Bankr.
SDTX (J. Lopez)

Issue: Was modest residence OR
a very valuable 150-acre ranch
(as debtors claimed) the
homestead?

Key to case: Challenging facts
for debtors.



Estoppel Challenge Mooted Because Judge Found Abandonment

2/16/23, *In re LaQuay*, 21-60099, Bankr. SDTX (J. Lopez)

Niland(ish) facts part 1:

- Re: modest home - affidavit of homestead designation recorded in county records
- Re: modest home - to get loan against ranch, SBA loan docs named modest home as homestead
- Re: ranch - debtors took homestead tax exemption only 2012-2014 (not after)

Estoppel Challenge Mooted Because Judge Found Abandonment

2/16/23, *In re LaQuay*, 21-60099,
Bankr. SDTX (J.
Lopez)

Niland(ish) facts part 2:

- Re: valuable ranch - to get second loan, foreswore any homestead interest or intent to use as residence
- Re: modest home - took homestead tax exemption for years, including in 2021 (the year of two successive bankruptcies)
- Re: modest home - drivers license shows as residence

**Estoppel
Challenge Mooted
Because
Judge Found
Abandonment**

**2/16/23, *In re*
LaQuay, 21-60099,
Bankr. SDTX (J.
Lopez)**

Niland(ish) facts part 3:

- Re: modest home - Nov 2021 pro-se ch 11 petition showed as residence (no schedule A/B or C filed)
- Re: valuable ranch - Dec 2021 petition (w/atty assistance) showed as residence & claimed as homestead



Estoppel Challenge Mooted Because Judge Found Abandonment

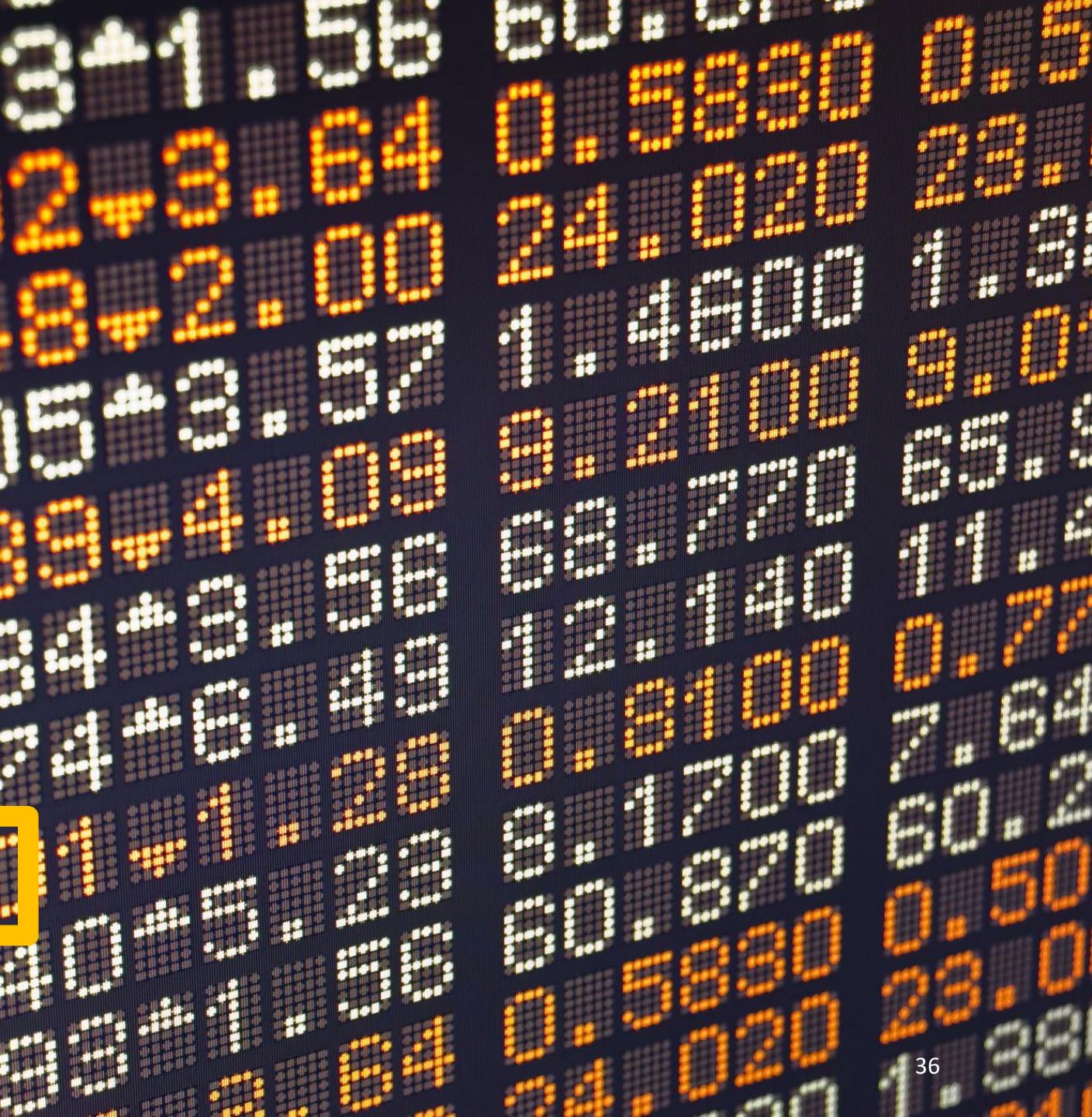
2/16/23, *In re*
LaQuay, 21-60099,
Bankr. SDTX (J.
Lopez)



Key holding:

- **Valuable ranch may have been Homestead in 2011-2014**
- **But abandoned and homestead interest in modest home reestablished thereafter**
- **Zero testimony that debtors ever stopped living in modest home**

STOCK OPTIONS



THE RIGHT TO PURCHASE SHARES IN THE FUTURE, AT A DISCOUNT.

It is not uncommon for a debtor to own stock options issued by his employer.

Are stock options always Property of the Estate?

Under what circumstances might they not be Property of Estate?

VESTED OR UNVESTED?

3/21/25 -- In re Taylor,
24-10298 -- WDTX
(Bankr. J. Bradley)

Facts:

H and W filed joint ch 7 pet., disclosed stock options, but did not claim them as exempt. Trustee filed a motion to compel turnover.

Key rulings:

Vested stock options are Property of the Estate.

Unvested stock options-- *dependent upon continued post-petition employment* --are not property of the estate as they fall within the “earnings from services performed by an individual debtor” exception to 541(a)(6), the clause that sweeps “proceeds” of property of the estate into the definition of property of the estate.

VESTED OR UNVESTED?

3/21/25 -- In re Taylor, 24-10298 - - WDTX (Bankr. J. Bradley)

Bonus key ruling:

Vested stock options are property rights. Stock options are executory contracts under 365 (as debtor urged) but their 365(d)(1) auto-rejection in a ch 7 does not impact value-- of vested options -- to the estate.

TAX QUALIFIED SAVINGS PLANS



125,058
125,487
124,000
150,000
35,000

154,568
56,845
110,000
150,000
35,000

95,054
97,511
99,011
99,216
101,090
101,684
101,962

124,500
125,000
154,000
95,000
154,200
110,000
89,000
50,000

IRAs Under TX Prop Code 41.0021

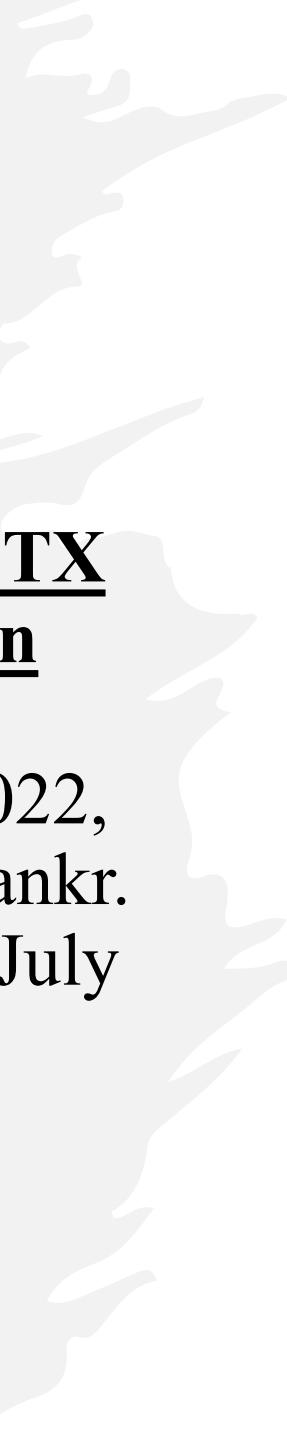
**Under what circumstances
would an IRA not qualify for
protection under TX
Property Code 41.0021?**

Loss of IRC Tax Exemption = Loss of TX Prop Code Exemption

In re Langston, 19-
33022, 2023 WL
4687824 (Bankr. N.D.
Tex. Dallas Div. July
21, 2023)

Facts:

- Debtor is aged over 59½- years.
- There were pre-bankruptcy, large transfers from the IRAs to the debtor's family-owned businesses.
- Transferred \$ then used by or for the debtor, including for personal use.
- The transfers were not reported in debtor's tax returns.

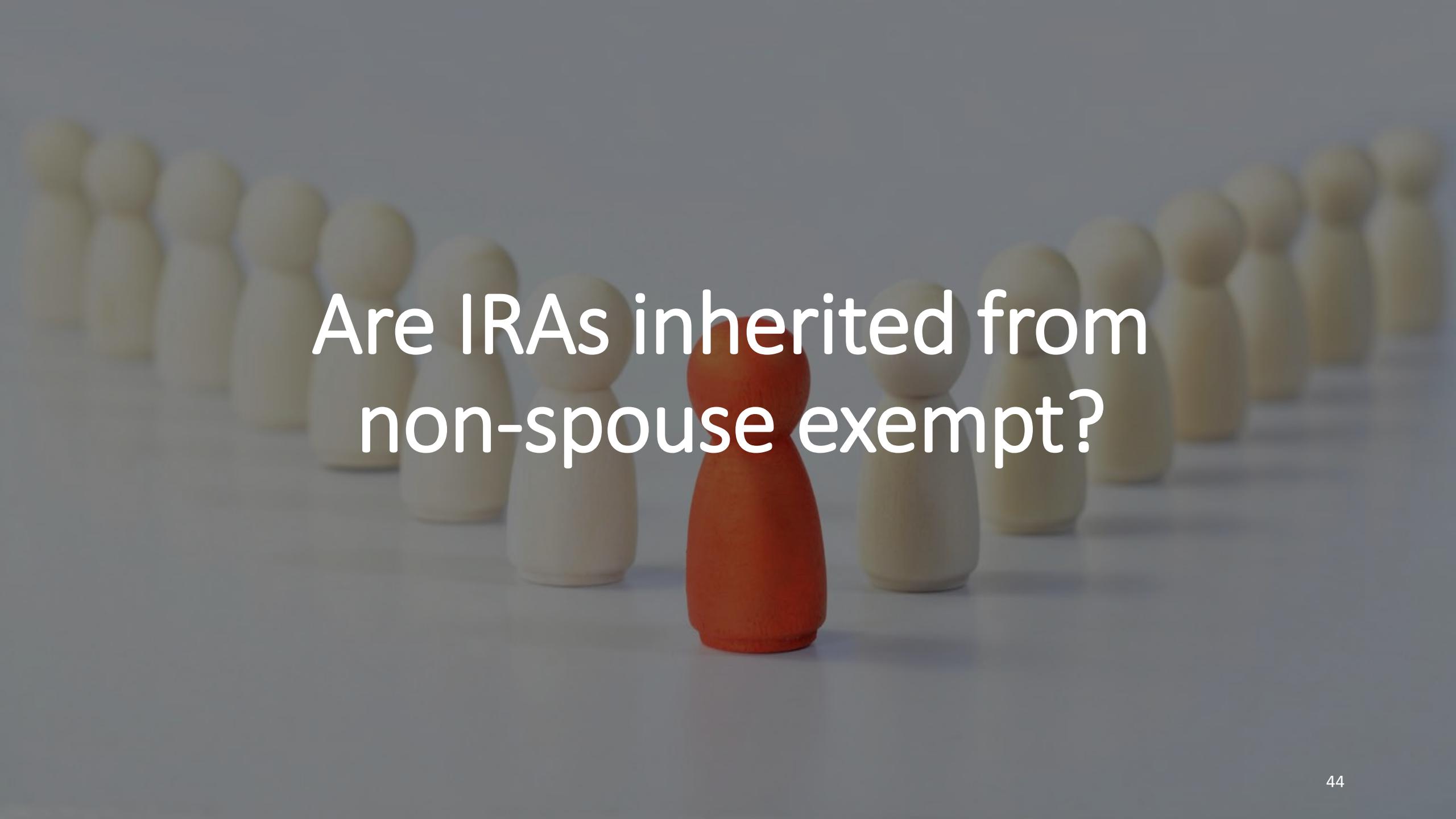


Loss of IRC Tax Exemption = Loss of TX Prop Code Exemption

In re Langston, 19-33022,
2023 WL 4687824 (Bankr.
N.D. Tex. Dallas Div. July
21, 2023)

Key rulings:

- TX Prop Code 42.0021 exempts a "qualified savings plan" (including IRAs) from creditors, *to the extent that* the plan or account is exempt from federal income tax.
- Under IRC 408(e)(2), engaging in a "prohibited transaction" = loss of the tax exemption of the IRA.
- No tax exemption under IRC = no property exemption under 42.0021.

A row of wooden human-shaped figurines standing in a line, with one red figurine standing out from the rest.

Are IRAs inherited from
non-spouse exempt?

In re Kara, 573 BR 696, (Bankr. WDTX 2017) (J. Gargotta)

Facts:

- Original schedules claimed "state exemptions"
- Amended schedules claimed "bankruptcy exemptions"
- At 341, debtor testified she inherited an IRA **from aunt**
- Trustee objected to Debtor's claim of exemption in the Inherited IRA
- Debtor amended her claim of exemptions for a second time, changing back to state exemptions and claiming the IRA was exempt under **42.0021 of the Texas Property Code.**

In re Kara, 573 BR 696, (Bankr. WDTX 2017) (J. Gargotta)

Trustee objections:

- In *Clark v. Rameker*, the Supreme Court held that an IRA, inherited from a non-spouse, did not meet the definition of "retirement funds" within the plain meaning of § 522(b)(3).
- § 42.0021 of the Texas Property Code does not protect the IRA.



In re Kara, 573 BR 696, (Bankr. WDTX 2017) (J. Gargotta)

Rulings:

- *Clark v. Rameker* distinguishable because no one claimed a state exemption in that case. The only exemption basis was 522(b)(3).
- Allowing the exemption, Judge Gargotta followed J. Isgur's Enloe decision, applying plain text of 42.0021(a) ("*inherited [IRA] ... is exempt*")



TOOLS OF THE TRADE

What if debtor stops using his tools?

Can he keep them?





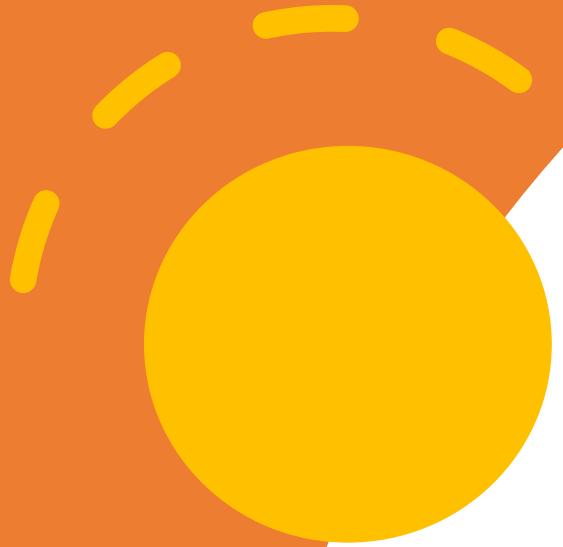
In re Hughes, 2025 WL 1788026, 25-31870 (Bankr. S.D. Tex. 6/27/25) (J. Isgur).

Chapter 13 debtor's schedules listed \$15,000.00 of landscaping tools as a tools of trade under TPC §§ 42.001(a), 42.002(a)(4). The chapter 13 trustee objected, arguing that debtor does not presently perform any trade.

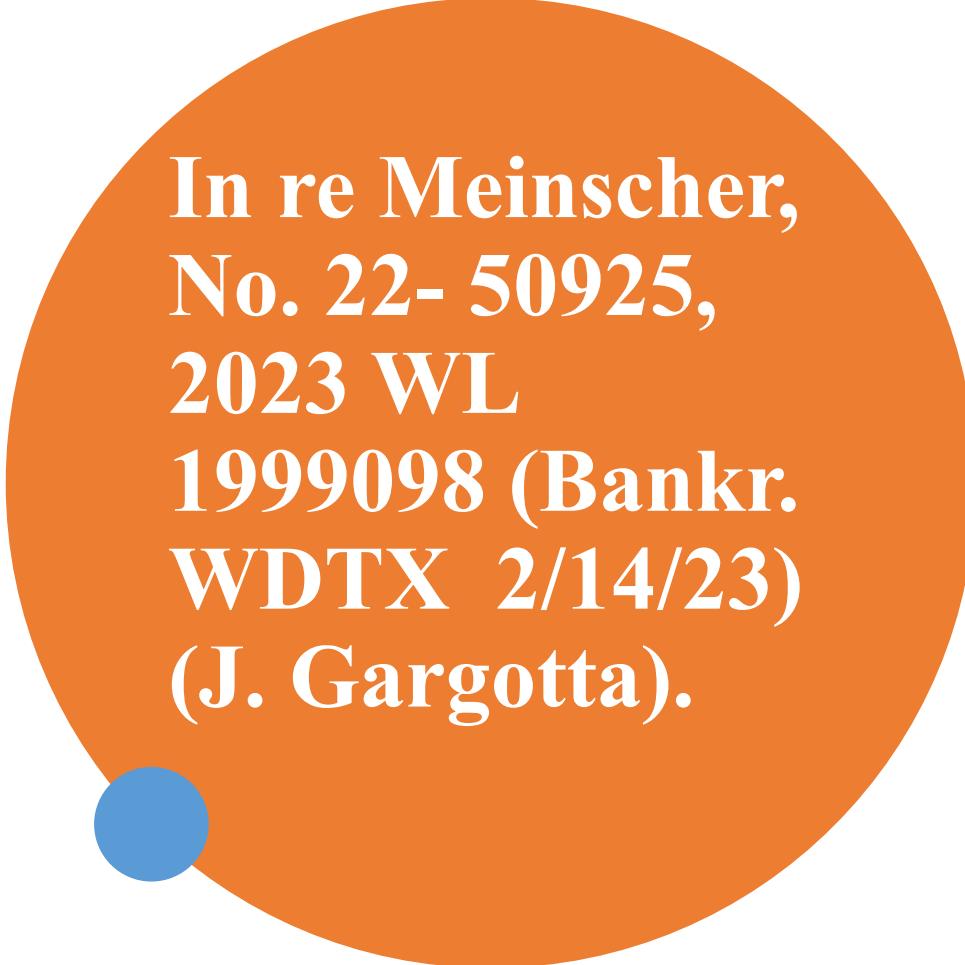
Debtor testified he will return to landscaping when his wife recovers from illness. Because **debtor has not abandoned his landscaping business**, objection overruled.

A pink piggy bank is centered on a dark wooden surface. It is covered by a black umbrella, symbolizing protection. The piggy bank has a white text overlay that reads "LIFE INSURANCE".

LIFE INSURANCE



Can a debtor keep her
contingent (pre-death)
beneficial interest in
life insurance?



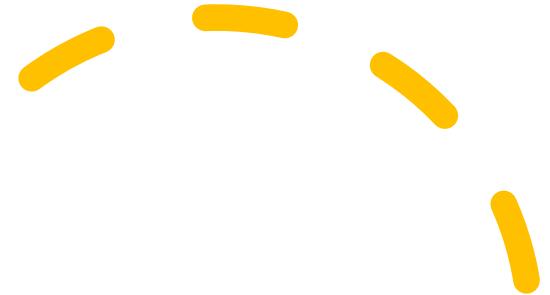
**In re Meinscher,
No. 22- 50925,
2023 WL
1999098 (Bankr.
WDTX 2/14/23)
(J. Gargotta).**



Facts: H and W filed joint Ch 7 petition. They scheduled and claimed as exempt 2 life insurance policies, each payable on death to the other. Tex. Ins. Code §§ 1108.001 and 1108.051.

Trustee objection: “Debtors have rights as the owners of the cash surrender value. But those rights are not exempt. The Debtors, as insureds, have no rights to the cash surrender value of the policies. The Debtors, as beneficiaries, have no current rights to the cash surrender value of the policies. Beneficiaries have no rights [to exempt] until the insured dies.”

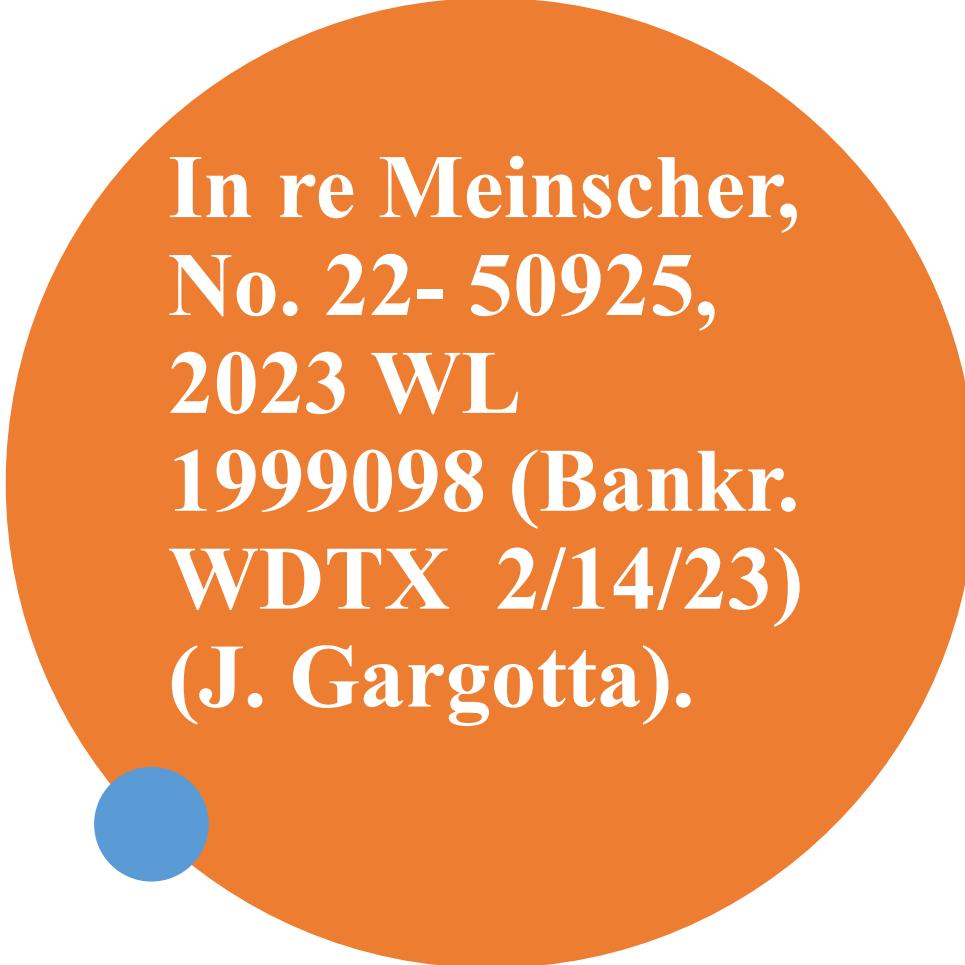
**In re Meinscher,
No. 22- 50925,
2023 WL
1999098 (Bankr.
WDTX 2/14/23)
(J. Gargotta).**



Ruling:

First, the trustee confuses an existing life insurance policy's cash surrender value with the cash paid out from a surrendered life insurance policy.

Thus, the trustee's reliance on *Milligan v. Trautman* (*In re Trautman*), 496 F.3d 366 (5th Cir. 2007) ("cash from a surrendered whole-life policy is not exempt under Texas law") is an error. The debtors have surrendered no policy.



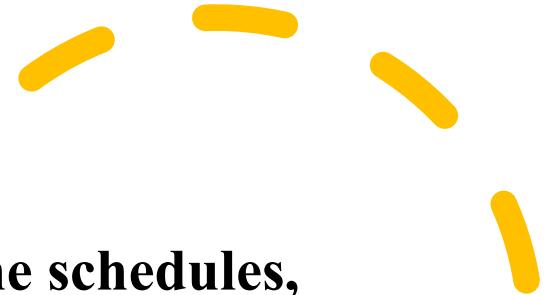
**In re Meinscher,
No. 22- 50925,
2023 WL
1999098 (Bankr.
WDTX 2/14/23)
(J. Gargotta).**

Ruling:

Second, the trustee misreads the schedules, the debtors claims the exemptions as beneficiaries, not just as owners.

Third, the TX Insurance Code “unambiguously provides an exemption for benefits ‘to be provided to an insured or beneficiary.’”

Arguing contingent beneficiary rights are not exempt contravenes the Fifth Circuit in *Trautman. Id.*



Any
questions?

