



Homestead Exemption

Issue

State legislation filed in 2019 would have significantly raised the homestead exemption and included language pertaining to farm property. Farm Bureau does not have policy pertaining to homestead exemptions. There have been state laws, known as exemption laws, protecting certain property from the claims of creditors that date back to the early 1800s. These laws aim to ensure that debtors are not left destitute. The laws can protect both personal and real property. Real property protections are called “homestead exemptions.” Homestead exemptions usually protect a certain amount of equity held in a home and the value varies state to state. In some states, the exemption can protect the entire residence regardless of its value.

Background

Providing an honest but unfortunate debtor a fresh start has long been an element of federal bankruptcy laws. According to the US Supreme Court in *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) a fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial “fresh start” from burdensome debts to provide “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.”

Fundamentally, bankruptcy is a legal proceeding in which a debtor, through the court, tells their creditors they are unable to pay back all their debts. Depending on which type of bankruptcy is pursued and the court’s perception of the ability to repay debts decides which creditors are to be paid, how much each creditor gets, and in what process. People and businesses file bankruptcy to temporarily stop creditors effort to collect their money, typically to stop foreclosure on the home or repossession of property. In the bankruptcy process most creditors cannot sue, call, or write the debtor after they have filed. The court decides how, if, and how much the debtor will pay back to their creditors. Every bankruptcy case is different and the court decides the details of the process and payments. Bankruptcy does not clear debts such as student loans, government debt (i.e. taxes, fines, etc.), child support and alimony, or expensive items which were purchased just before filing bankruptcy like cars, boats, jewelry, etc.

The Bankruptcy Code appears in title 11 of the United States Code and its principal chapters are 7, 11, 12, 13 and 15. Chapter 7 bankruptcy liquidates nonexempt assets and is available to consumers and businesses. Chapter 11 bankruptcy provides a procedure by which individuals or businesses can reorganize debts to continuing to operate and pay off the debt; the vast majority of these cases are filed by businesses. Chapter 12 allows a family farmer or a fisherman to file for bankruptcy, reorganize the business affairs, repay all or part of its debts, and continue operating. Chapter 13, often called wage-earner bankruptcy, is used primarily by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three or five years. Chapter 15 is for insolvency situations in foreign countries.

Chapter 12 bankruptcy was created in 1986 in response to the poor economic conditions that plagued agriculture, including low commodity prices, low farm income, record farm debt and tight agricultural credit markets. Modeled after Chapter 13 bankruptcy, Chapter 12 provides reorganizational advantages and financial relief specifically for family farmers in debt. Those advantages include a seasonal repayment schedule over a three- to five-year period and lower costs relative to other chapters. Filing under Chapter 12 provides a quick and predictable process for farmers to reorganize debt to avoid asset liquidation or foreclosure. In 2018 there were 498 Chapter 12 bankruptcy filings, compared to nearly 766,000 Chapter 13 and Chapter 7 filings -- which are predominately consumer in nature. Over the last decade there have been more than 10 million total filings in Chapter 7 and Chapter 13, compared to 5,039 Chapter 12 filings. During this time, Chapter 12 bankruptcy filings have represented less than five-hundredths of a percent of total consumer and business bankruptcy filings. Currently, there is a debt limit of \$4.1 million, preventing many family farmers from filing Chapter 12 bankruptcies and there is current legislation in Congress to raise that cap to \$10 million.

The Bankruptcy Reform Act of 1978 did several things including to establish independent federal bankruptcy courts. The 1978 Act listed a set of exemptions for debtors, including a homestead exemption; and eased the process of filing for Chapter 13, which allows debtors to repay their debt without selling their assets. The 1978 Act established an individual homestead exemption of \$7,500 and an exemption of \$15,000 for joint filers and is adjusted for inflation every three years, however states with homestead laws saying otherwise could maintain those levels. In 2019, the federal homestead exemption is \$25,150 for individuals and \$50,300 for joint filers.

The set of federal exemptions is available to debtors in all states unless the state has passed a law saying otherwise. Initially, 37 states including Tennessee chose to limit residents to state exemptions; six of those states have since reversed course and now allow their residents to choose between the federal and state sets of exemptions. Of the remaining 31 states, only eight including Tennessee have homestead exemptions that are less than the federal exemption.

According to a 2016 Tennessee Advisory Commission on Intergovernmental Relations (TACIR) report, Tennessee ranks first for Chapter 13 filings and tenth for Chapter 7 filings, and more bankruptcy filers in Tennessee use Chapter 13 (59.7%) than all but three other states. Nationally, 35.8% of bankruptcy filers use Chapter 13. Chapter 13 bankruptcies require filers to repay a fraction of their debts. Tennessee's overall high rank for bankruptcy filings may be directly connected to its high percentage of debtors using Chapter 13, although demographics of the population may play a role. It is unlikely that this has anything to do with the state's property exemption amounts, largely because few bankruptcies involve significant assets.

State property exemption laws, like the federal bankruptcy laws, allow debtors to exempt certain assets from the claims of creditors, usually up to specified dollar amount but occasionally without limit, to avoid leaving them destitute. Property exemption laws permit debtors to protect certain real and personal property from unsecured creditors. Homeowners may be able to exempt all or a portion of the equity in their primary residence through homestead exemptions. The federal bankruptcy code as well as Tennessee law also provides an exemption for tools of the trade used by the debtor to make a living (such as tools for an auto mechanic or dental tools for a dentist).

Although the exemptions can be used to protect property from any judgment, they are most often used in bankruptcy proceedings. In fact, debtors sometimes file bankruptcy to protect their property from other types of judgments, particularly their homes. Filing bankruptcy temporarily halts repossession and foreclosure attempts and filing under Chapter 13 can allow debtors to work out their debt and keep most or even all of their property, although Chapter 7 is where property exemptions play their most direct role. And while most debtors who file under Chapter 7 in Tennessee either do not own a home or have no equity in their homes, the homestead exemption is nevertheless important to the minority of Chapter 7 filers who are homeowners.

It is important to note; bankruptcy law allows debtors to either completely discharge their unsecured debt or repay a portion of it based on their ability to pay. When debtors' homes are sold to repay unsecured debt, they are entitled to the lesser of the homestead exemption amount or the amount of equity they have in the property. A mortgage or car loan is an example of secured debt as the home, land, or vehicle are used as collateral. Unsecured debt doesn't have an asset as collateral, such as credit card or medical debt.

Tennessee's homestead exemption dates to 1852 and was originally set at a maximum of \$500. The same year Congress passed the Bankruptcy Reform Act in 1978, Tennessee enacted legislation increasing its homestead exemption from \$1,000 to \$5,000, which had remained unchanged at \$1,000 for over 100 years. Two years later, the General Assembly added an exemption of \$7,500 for joint property owners. Additionally, Tennessee's Homestead Exemption has been increased for four groups of filers, individuals 62 or older (\$12,500), married couples with one spouse 62 or older (\$20,000), married couples with both spouses 62 or older (\$25,000), and individuals with custody of a minor child (\$25,000) which is doubled if filed jointly.

According to the 2016 TACIR report, Tennessee has the lowest homestead exemption of the states that do not allow the use of the federal homestead exemption and has the third lowest combined dollar value of all property exemptions after Missouri and Alabama. Since implementation in state law, this exemption would be worth \$18,513 and \$21,907 respectively if considered for inflation.

Looking at other states, there are forty-seven that offer a set of individual exemptions valued higher than Tennessee's. Twenty-two states have established a single homestead exemption amount, including six with unlimited exemptions, thirteen more have established separate amounts for individuals and for joint filers or allow joint filers to double the individual. Eight states, as well as the federal government, adjust their homestead exemptions periodically to reflect increases in inflation based on the average change in the cost of living for the years between adjustments. Only eight states including Tennessee offer an individual homestead exemption less than the federal amount. Thirteen states including Tennessee have established higher exemptions for certain groups of debtors.

The 2016 TACIR report suggested that a simpler way to bring these figures up to date and keep them up to date would be to adopt or match the federal homestead exemption, which is adjusted for inflation every three years. If that were done, Tennessee's exemption amounts for debtors with custody of a minor child, which are currently more than the federal amounts, would need to be grandfathered until the federal exemption amount catches up to it. Tennessee bankruptcy trustees and attorneys speaking before the Commission on September 3, 2015, would prefer to see a single homestead exemption amount for every homeowner filing for bankruptcy rather than exemptions that depend on marital status, age, and whether the filer has dependents. An attorney who spoke on behalf of creditors proposed combining all current exemption amounts into a single amount applicable to all real and personal property for every filer.

There has been growing concern among members of the General Assembly that Tennessee's homestead exemption amounts have fallen behind for citizens, shown by the fact that there has been legislation attempting to increase the exemptions more than a dozen times in the last 25 years.

Last year the Tennessee Homebuilder's Association brought legislation that would have significantly increased the state's homestead exemption to several hundred thousand dollars and varied on age and single/joint filer status as initially drafted. The bill also included a provision that real property, up to one hundred sixty (160) acres, including any dwelling, that is considered agricultural land would be eligible for homestead exemption up to \$750,000. The values would also increase every three years with inflation set to the change in the average consumer price index.

Proponents argue that Tennesseans are at a disadvantage compared to residents of other states. Particularly, states like Texas and Florida which have unlimited homestead exemptions. They believe that equity in an individual's home should be protected. This would allow individuals to take more risk in the market place, thus increasing economic opportunity. Opponents argued that a modest increase would be sufficient, and that too much of an increase would hurt creditors. Additionally, the opponents argued that receiving credit in Tennessee would become more difficult thus hurting the consumers the legislation is intended to help.

Questions

1. Is most farmer's debt in your county secured or unsecured?
2. Farm Bureau policy does not address homestead exemptions, should it?
3. If Farm Bureau policy is changed to address homestead exemptions, should the exemption be kept the same or raised?
4. Should farm land be included in the state's homestead exemption?
5. Should Tennessee's Homestead Exemption
 - a. Stay the same
 - b. Increase to match the federal exemption
 - c. Increase above the federal exemption
 - d. Be unlimited to compete with states like Florida and Texas

Farm Bureau Policy

Farm Bureau does not have policy pertaining to homestead exemptions.