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The Homestead Exemption in Tennessee: Finding a Balance

Bankruptcy law allows debtors to completely discharge their unsecured debt or repay a portion of it based on their ability to pay. Both options are intended to provide honest but unfortunate debtors a fresh start and avoid making them destitute while allowing creditors to reclaim at least a portion of the money owed. In order to accomplish this, both state and federal law exempt certain assets from the claims of creditors while providing creditors with some protections. While bankruptcy laws have been around for centuries, they became more important as consumer lending changed in the 1950s and 1960s with the advent of credit cards and the transition from local personal lending to transactions no longer limited by location.

With expanding credit operations came greater risk for lenders, and these companies began feeling constrained by state usury laws, which capped interest rates, limiting the companies' ability to moderate risk. In the 1978 US Supreme Court ruling *Marquette National Bank of Minneapolis v. First Omaha Service Corporation*, the court allowed consumer credit agencies to apply the interest rates from the state in which they incorporated. After the *Marquette* ruling, many states increased or eliminated their usury limits in order to compete for the business of national lenders.

Around the same time as the *Marquette* ruling, Congress passed the Bankruptcy Reform Act of 1978, which was the largest change in the bankruptcy code since 1898 and eased the process of filing for Chapter 13—the chapter used to reorganize and repay unsecured debt. Until then, Chapter 7—the chapter used to liquidate assets to repay creditors—was the only alternative available to most debtors. The act also created a set of exemptions for debtors, including a homestead exemption, which is designed to protect some of the equity that people have in their primary residence. The set of exemptions are 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. In 1978, Tennessee enacted legislation providing a homestead exemption of \$5,000 for individuals and in 1980 added an exemption of \$7,500 for joint owners.¹ Since that time, Tennessee's exemptions for individuals and joint owners have not been adjusted and are currently the lowest of the 31 states that limit residents to state exemptions.² Of those states, only eight including Tennessee have homestead exemptions that are less than the federal exemption, which is currently \$22,975 for an individual and is doubled to \$45,950 for debtors who are filing jointly. Bankruptcy trustees and attorneys

¹ In Tennessee, homestead exemptions can also protect equity from execution, attachment, or sale under other legal proceedings.

² Tennessee is tied with Virginia for the lowest individual exemption among the states that limit residences to state exemptions but has the lowest joint exemption among these states.

speaking before the Commission at its September 2015 meeting agreed that the homestead exemption amounts for individual and joint filers may be too low. Although these amounts haven't been increased for most debtors and are out of date, the General Assembly has granted enhanced exemptions to four groups of filers:

- Individuals age 62 or older (\$12,500) [2004]
- married couples with one spouse age 62 or older (\$20,000) [2004]
- married couples with both spouses age 62 or older (\$25,000) [2004]
- individuals with custody of a minor child (\$25,000) [2007], doubled by judicial ruling for joint filers [2009].

These exemption amounts have not been changed since they were placed in law. After several efforts to increase the homestead exemption over the last 20 years, the General Assembly enacted Public Chapter 326, Acts of 2015, requiring the Commission to study the homestead exemption amounts in Tennessee and determine whether they should be increased to accurately reflect the cost of living. The act also requires the Commission to compare the various categories of homestead exemptions in detail to those of other states. See appendix A.

The neighboring state of Alabama tripled its homestead exemption amount for individuals, which had been unchanged since 1980, from \$5,000 to \$15,000 in 2015 and indexed it for inflation going forward. The amount is doubled for joint filers. Alaska, California, Indiana, Michigan, Minnesota, Ohio, and South Carolina also index their exemption amounts for inflation (see table 1 on page 15). If Tennessee's homestead exemption amounts for individuals and joint filers had kept pace with inflation since their adoption roughly 35 years ago, they would currently be valued at \$16,304 and \$21,645. If the exemption for joint filers was double the exemption for individuals, it would currently be valued at \$32,608. A simpler way to bring these figures up to date and keep them up to date would be to adopt the federal homestead exemption amounts, which are adjusted for inflation every three years. Tennessee's exemption amounts for debtors with custody of a minor child are currently more than those amounts and would need to be grandfathered until the federal exemption amount catches up to it.

The need for consumer protection in bankruptcy

With traditional consumer loans, lenders could often meet their customers face to face, and the extension of credit was a personal act based on a good faith guarantee of repayment. As Professor Maurie J. Cohen, writing in the *International Journal of Consumer Studies*, put it, “this geographic proximity enabled lenders to rely on individual judgment to gauge the likelihood of default and to set their rates and terms accordingly.” But the nature of personal credit began to change in the 1950s and 1960s with the advent of credit cards, and debtor-creditor relationships that were no longer limited by location. Tim Westrich and Malcolm Bush, researchers focused on community reinvestment and economic development, characterized this change in a report presented at a Federal Deposit Insurance Corporation conference:

Before [the late 1960s], consumer credit was extended by banks primarily through installment loans for large durable goods, such as the family automobile, furniture, and large appliances. “Open-ended” credit was rare. Otherwise, consumers could obtain credit only through “open book” accounts or “tabs” with local businesses, usually guaranteed by a personal relationship between the business owner and the consumer. In the late 1950s, banks began to explore alternatives to these small consumer loans, which had high overhead costs and labor-intensive underwriting. Enter the credit card: an instant line of open-ended credit. Bank of America launched the BankAmericard, the first universal credit card, in 1958; imitators were quick to follow. By 1970, the United States was blanketed by two large merchant networks, the predecessors to Visa and MasterCard.

As credit cards became more widespread, banks felt constrained by state usury laws capping interest rates. Lawrence M. Ausubel, an economist writing in *The American Bankruptcy Law Journal*, said, “. . .during the 1970s, the banking industry heavily litigated the issue of the “exportation” of interest rates, i.e., the issue of which state’s usury ceiling constrains the interest rate if a bank located in one state issues a credit card to a consumer in a different state.” This controversy worked its way up to the US Supreme Court, and in a 1978 ruling, *Marquette National Bank of Minneapolis v. First Omaha Service Corporation*, the court allowed consumer credit agencies to apply the interest rates from the state in which they incorporated. As explained in the January/February 2007 issue of the *Federal Reserve Bank of St. Louis Review*

Prior to this time, many states had usury ceilings on credit card interest rates. The high inflation and interest rates of the late 1970s significantly reduced the earnings of credit card companies. As a result, credit card companies in states with relatively high interest rate ceilings attempted to solicit their credit cards to people living in states with lower interest rate ceilings—and still charge the higher interest rates. Controversy over this practice culminated in [the *Marquette* case] in which the Supreme Court ruled that lenders in states with

high interest rate ceilings could export those high rates to consumers residing in states with more restrictive interest rate ceilings. The result of this ruling was an expansion of credit card availability and a reduction in the average credit quality of cardholders.

After the Marquette ruling, many states increased or eliminated their usury limits in order to compete for the business of national lenders.³

By the time of the Marquette decision, Congress had been considering bankruptcy reform for roughly a decade. As Bret Fulkerson, Assistant Attorney General, Texas Attorney General's Office put it, "Unlike other major amendments to United States bankruptcy law, the 1978 Act was not passed in response to an economic downturn. Instead, changes were made to the 1898 Act because it was perceived as outmoded and unresponsive to the needs of both debtors and creditors." The last major change was 40 years earlier.⁴ The wide disparity in state bankruptcy laws created a hodgepodge that creditors and bankruptcy courts found difficult to administer. This hodgepodge also made navigating the bankruptcy process and making a fresh start difficult for debtors. In response to these concerns, Congress modernized the US bankruptcy code. The Bankruptcy Reform Act of 1978 established federal bankruptcy courts; created 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 (liquidating) their assets. Until then, Chapter 7, which allows debtors to discharge most of their debts but may require them to give up some of their property, was the only alternative available to most debtors.

There are many reasons that consumers end up in bankruptcy court. Medical bills,⁵ job loss, and other income reduction or divorce-related costs are frequently cited as reasons.⁶ Financing everyday expenses with credit cards (a form of revolving credit),⁷ accumulating student loan debt, and taking on high-risk home loans may also lead a consumer into bankruptcy. When a consumer falls behind on their payments debt can increase quickly because of late fees, interest rate hikes, and over-limit fees. As illustrated in figure 1, revolving consumer credit has continued to rise since the time of the Marquette ruling and the Bankruptcy Reform Act of 1978.

³ Tennessee's current usury limit is the greater of 24% or 4% above prime.

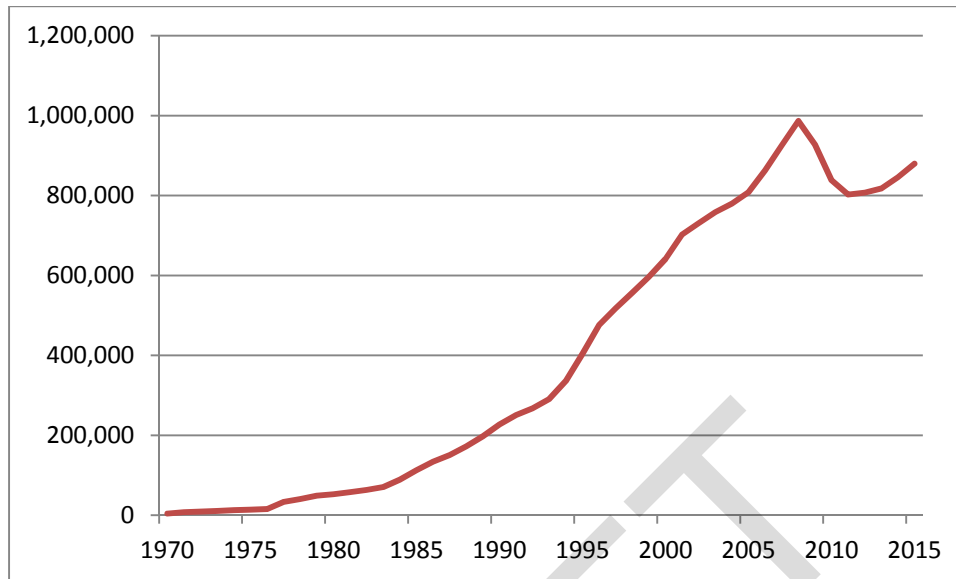
⁴ The Chandler Act of 1938 first established Chapter 13.

⁵ Himmelstein et al. 2009.

⁶ Garrett 2007.

⁷ Revolving credit, such as a credit card account, allows a loan amount to be withdrawn, repaid, and redrawn again and does not have a fixed number of payments.

Figure 1. Revolving Consumer Credit Outstanding in the US
(Millions of dollars; not seasonally adjusted)



Source: Board of Governors of the Federal Reserve System, Historical Data, Consumer Credit - G.1

Note: Revolving credit outstanding is mostly credit card debt but also includes prearranged overdraft plan debt.

Tennessee has the highest bankruptcy filing rate per capita in the country, but the state is one of only nine states in which most people filing for bankruptcy do so under Chapter 13. For Chapter 7 filings, Tennessee ranks twelfth; for Chapter 13, Tennessee ranks third. Some debtors may seek to repay their debt through Chapter 13 in order to protect their assets, while others may be redirected from Chapter 7 for any number of reasons indicating that allowing them to use Chapter 7 would be an abuse of the bankruptcy system. Filers who are unable to afford the repayment plan required by Chapter 13 must use Chapter 7. More bankruptcy filers in Tennessee use Chapter 13 (58%) than all but four other states. Nationally, only 33% of bankruptcy filers use Chapter 13. See appendix B for bankruptcy filings by state.

Balancing the interests of debtors and creditors

Bankruptcy law seeks to promote a balance between the interests of debtors and creditors, being fair to both while allowing a debtor to completely discharge their debt or repay a portion of it based on their ability to pay. State and federal bankruptcy laws allow debtors to exempt certain assets from the claims of creditors, usually up to specified dollar amounts but occasionally without limit, in order to avoid leaving them destitute. As Assistant Texas Attorney General Fulkerson describes it,

The Code provides for the debtors' interests by giving them the ability to embark on a fresh start after financial failure by means of liquidation or a restructured payment plan. Conversely, creditors are given an opportunity to collect on some portion of the debtors' contractual obligations through the bankruptcy laws. On a more fundamental level, bankruptcy laws attempt to

reconcile countervailing social interests in seeing that obligations to repay debt are fulfilled while allowing individuals to maintain dignity and self-respect after financial ruin. The balance is effected by subjective assessments of debtors, creditors, society, and the administrators of the bankruptcy system.

Both Chapter 7 and Chapter 13 are designed to allow debtors a fresh start and avoid making them destitute while allowing creditors to receive at least a portion of the money owed.

Giving debtors a fresh start

As explained in an article about bankruptcy on the official website of the Judicial Branch of the U.S. Government,

A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision:

[I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from ever taking any action against the debtor to collect those debts.

The federal bankruptcy code, like most states' bankruptcy laws, permits 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 homestead exemption can also help renters exempt personal property, but Tennessee's cannot. The federal bankruptcy code, as well as many states including Tennessee, also allow an exemption for tools of the trade used by the debtor to make a living (i.e., auto tools for an auto mechanic or dental tools for a dentist). See appendix C for a comparison of the federal and Tennessee exemptions.

Homestead exemptions in Tennessee and other states

The first states to offer homestead exemptions were Georgia and Mississippi in 1841; Texas adopted its first homestead exemption in 1829 while still a part of Mexico. Tennessee's homestead exemption dates back to 1852, and was originally set at a maximum of \$500.⁸ Eighteen years later, Tennessee's 1870 constitution increased that exemption to \$1,000, where

⁸ Acts of 1851-52, Chapter 161.

it remained for over 100 years. The 1977 state constitutional convention increased the exemption to \$5,000 and gave the legislature the ability to increase it further.

The US Bankruptcy Reform Act of 1978 established a set of exemptions that included an individual homestead exemption of \$7,500, which was \$2,500 more than the state exemption at that time, and a higher exemption for joint filers of \$15,000, which was double the federal exemption for individuals and \$10,000 more than the state exemption. The set of federal exemptions is available in whole or in part to debtors in all states unless the state has passed a law saying otherwise.⁹ Thirty-one states including Tennessee currently have laws restricting their residents to state exemptions. Residents of 17 states can choose between state and federal exemptions. Two states, New Jersey and Pennsylvania, have not established their own homestead exemptions; residents there rely on the federal homestead exemptions.

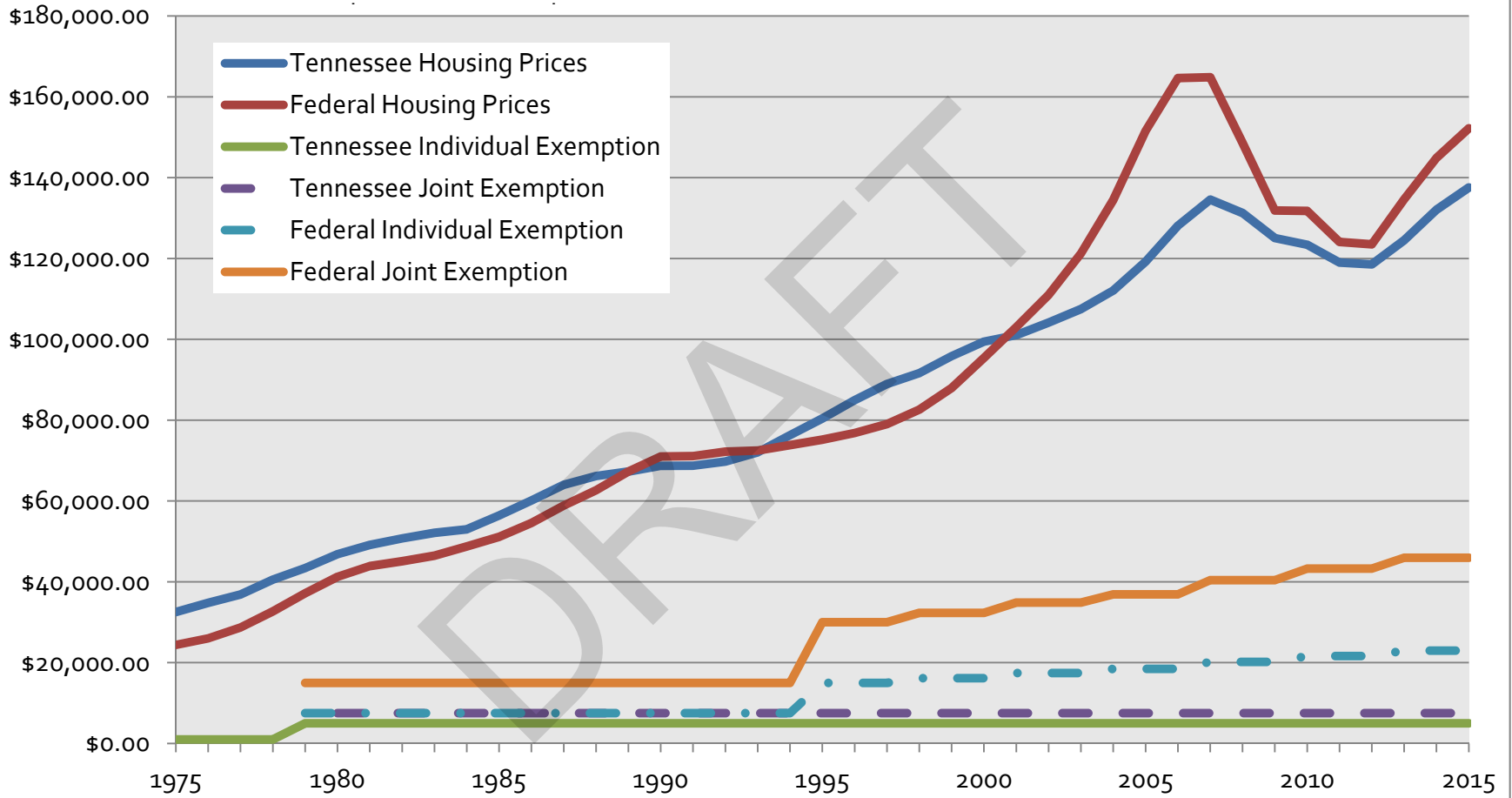
Reacting to the new federal law, the Tennessee General Assembly enacted Public Chapter 919, Acts of 1980, which restricted Tennessee residents to using only state exemptions but added a \$7,500 exemption for joint owners, half the federal amount for joint filers. Although the federal amounts increase with inflation and are now \$22,975 for individuals and \$45,950 for joint filers,¹⁰ Tennessee's exemptions remain at \$5,000 for individuals and \$7,500 for joint owners to this day. The federal homestead exemption offers filers more flexibility, allowing them to apply up to \$11,500 to other real property or to personal property if they cannot use it for equity in their primary residence. Eleven states also allow filers to use a portion of their unused homestead exemption for other property; like most states, Tennessee does not. Federal exemptions also include \$1,225 for other real or personal property. This flexibility allows renters to exempt more of their personal property than Tennessee's exemptions allow. Tennessee's exemption for personal property is \$10,000. Individual homeowners in Tennessee, then, can exempt a total of \$15,000 in real and personal property combined using this and the homestead exemption compared with a total of \$24,200 if the federal exemptions were available.

As shown in figure 2, there is growing disparity between the Tennessee and federal homestead exemptions as they relate to median housing prices in Tennessee and the United States. In 1979, Tennessee's individual homestead exemption was 12% of the state median housing price; the federal homestead exemption was 20% of the US median housing price. By 2015, Tennessee's percentage for individual filers had declined to 4%, but the federal percentage had declined only to 15%. Similarly, since 1980, Tennessee's percentage for joint filers has declined from 16% to 5% while the federal ratio declined from 36% to 30%. See appendix D.

⁹ Public Chapter 61, Acts of 1979, restricted the homestead exemption to real property that is the claimant's principal place of residence.

¹⁰ Amounts will be adjusted April 1, 2016.

Figure 2: Housing Prices between 1975 and 2015 Compared to Homestead Exemption



Source: Freddie Mac House Price Index 1975-Current

Past attempts to update Tennessee's homestead exemption

Recognizing that Tennessee's homestead exemption amounts have fallen well behind, the General Assembly has attempted to increase them 13 times in just the last 20 years. The most recent attempt was in 2012 when a bill was introduced to create an unlimited homestead exemption (Senate Bill 537 by Bell, House Bill 273 by Casada). The bill was supported by the Home Builders Association of Tennessee, whose representatives say that an unlimited exemption would help Tennessee compete economically with other states that have unlimited homestead exemptions, such as Florida and Texas. Other attempts included:

- five bills that sought to increase the homestead exemption for all homeowners, all of which failed;
- seven bills that sought to create new categories of debtors with enhanced exemptions, two of which were enacted:
 - Public Chapter 659, Acts of 2004, gave individuals who are 62 years of age or older a \$12,500 exemption. The exemption increases to \$20,000 for married homeowners if only one is 62 years of age or older and \$25,000 if both are 62 years of age or older.
 - Public Chapter 560, Acts of 2007, gave individuals with one or more minor children an exemption of \$25,000.

And while the Tennessee Supreme Court ruled in a 2009 case that current law allows "each of two individuals who are married and have custody of a minor child to claim a \$25,000 homestead exemption on real property that each owns and uses as a principal place of residence," bringing the total for them to \$50,000,¹¹ the legislature has not changed the amounts of the homestead exemption since 2007.

Concerns about the declining value of the standard homestead exemptions of \$5,000 for individuals and \$7,500 for joint owners led the General Assembly to enact Public Chapter 326, Acts of 2015, requiring the Commission to study the homestead exemption amounts in the state's bankruptcy law and determine whether they should be increased to accurately reflect the cost of living. The act also requires the Commission to compare the various categories of homestead exemptions in detail to those of other states. See appendix A.

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

¹¹ *In re Hogue*, 286 S.W.3d 890 (Tenn. 2009).

for every filer. The attorney who spoke on behalf of debtors said that any simplified exemption should not be lower than current amounts. See appendix E for a list of panelists who appeared before the Commission and a summary of their testimony.

Homestead exemption practices vary widely across states.

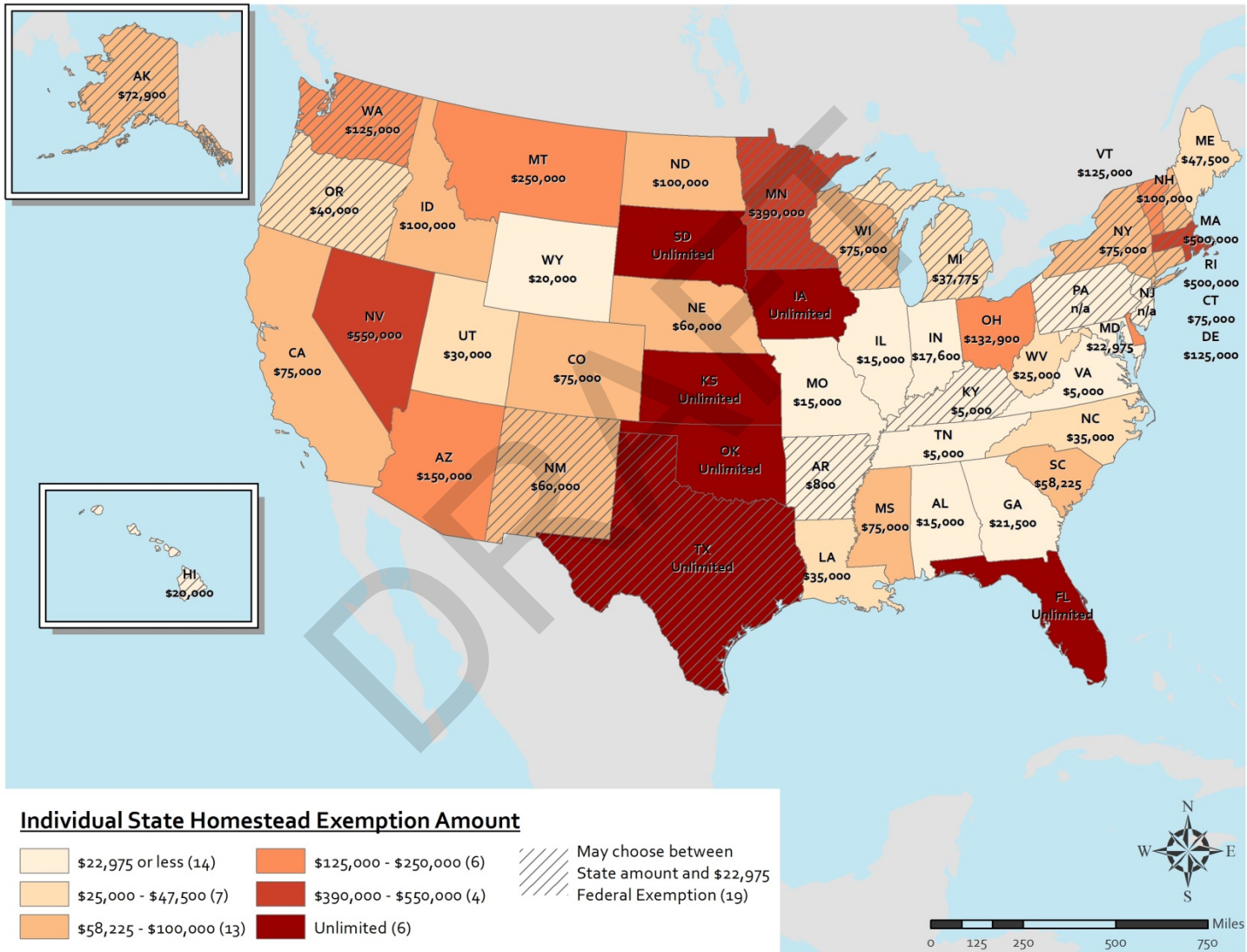
Most states have higher exemptions than Tennessee (see maps 1 and 2). Some allow residents to choose between the state and the federal exemptions, and some automatically increase the exemption amounts every two or three years for inflation. One adjusts its amount once every six years. See table 1. Twenty-four states have established a single homestead exemption amount, including seven with unlimited exemptions;¹² twelve more have established separate amounts for individuals and for joint filers or allow joint filers to double the individual exemption.¹³ The remainder, including Tennessee, have created several categories of debtors with different exemption amounts.

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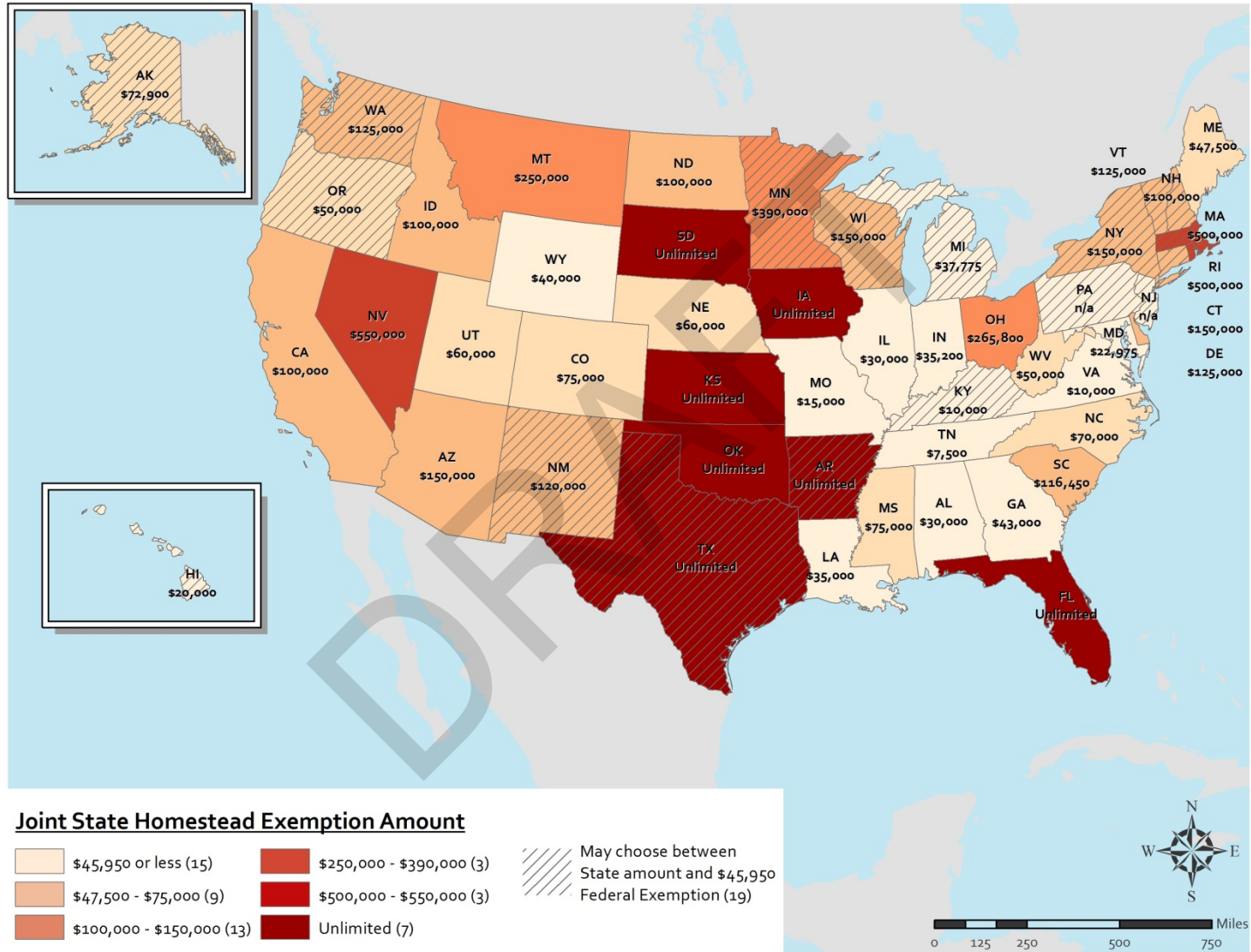
¹² Arkansas only offers an unlimited exemption for married individuals or head of family.

¹³ For some counties New York has an individual exemption higher than their standard \$75,000— Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam have a \$150,000 exemption; Dutchess, Albany, Columbia, Orange, Saratoga and Ulster have an exemption of \$125,000.

Map 1. Individual Homestead Exemptions by State



Map 2. Joint Homestead Exemptions by State



Some states periodically adjust exemption amounts for inflation.

If each Tennessee category had increased with inflation, their current values would be

- \$16,304 for single,
- \$21,645 for joint,
- \$15,736 for an individual 62 or older (which is lower than the \$16,304 for an individual),
- \$25,178 for a married couple with one spouse 62 or older,
- \$31,472 for a married couple with both spouses 62 or older,
- \$31,472 for an individual with custody of a minor child (doubled to \$62,944 for spouses with custody of a minor child).¹⁴

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 (see table 1). Alabama amended their bankruptcy law in 2015 to increase the homestead exemption and adjust it for inflation once every three years. None of these states decrease the homestead amount during an economic downturn.

¹⁴ Bureau of Labor and Statistics CPI Inflation Calculator: http://www.bls.gov/data/inflation_calculator.htm.

Table 1. Frequency and Basis for Adjusting Homestead Exemption Amounts

Government	Year	Frequency	Basis
Federal	1994	3 years	Consumer Price Index for all urban consumers
Alabama	2015	3 years	Consumer Price Index using US Dept. of Labor but at the State Treasurers discretion
Alaska	1982	2 years	Consumer Price Index for all urban consumers for the Anchorage Metropolitan Area
California	2003	2 years	California Consumer Price Index for all urban consumers
Indiana	2005	6 years	Consumer Price Index for all urban consumers
Michigan	2004	3 years	Consumer Price Index for all urban consumers in the area of Detroit-Ann Arbor-Flint, Michigan
Minnesota	2005	2 years	Implicit Price Deflator (IPD) for the Gross Domestic Product
Ohio	2012	3 years	Consumer Price Index for all urban consumers using US Dept. of Labor
South Carolina	2006	2 years	Consumer Price Index for all urban consumers for the southeastern region

Most states do not allow residents to use the federal exemption.

Initially, 37 states chose to limit residents to state exemptions, but since 1978, six states (Alaska, Arkansas, Kentucky, New York, New Hampshire, and Oregon) have reversed course and now allow their residents to choose between the federal and state exemptions. Twenty-two of the 31 states that do not allow residents to use the federal exemptions have higher homestead exemptions than the federal amounts. One, Maryland, sets its homestead exemption amount to the federal amount but does not allow joint filers to double it. Only eight including Tennessee¹⁵ offer an individual homestead exemption less than the federal amount. Tennessee's is the lowest of these. The highest, \$21,500 for individuals (double for joint filers), is in the neighboring state of Georgia.¹⁶

Five of the 22 states that do not allow residents to use the federal exemptions but have higher state exemptions—Florida, Iowa, Kansas, Oklahoma, and South Dakota—offer unlimited homestead exemptions.¹⁷ Exemptions in the remaining 17 states range from \$25,000 for individuals and \$50,000 for joint filers (West Virginia) to \$550,000 for individuals

¹⁵ Alabama, Georgia, Illinois, Indiana, Missouri, Virginia, and Wyoming.

¹⁶ Joint exemption is limited to a debtor who is married but has full individual ownership of the home - In re Taylor, 320 B.R. 214 (Bkrtcy.N.D.Ga., 2005).

¹⁷ All states with unlimited homestead exemptions have acreage restrictions.

with no doubling for joint filers (Nevada).¹⁸ Ohio, one of these 17, increased its homestead exemption from \$5,000 for an individual to the federal exemption in 2008 and further increased its exemption to \$125,000 (subject to doubling for joint) just four years later.¹⁹

The homestead exemption amounts in the 17 states that allow a choice between state and federal exemptions range in value from \$5,000 for individuals and \$10,000 for joint filers (Kentucky) to a flat exemption of \$500,000 (Massachusetts and Rhode Island). Texas offers an unlimited homestead exemption to all filers. Arkansas also offers an unlimited exemption but only to families or heads of families.²⁰ New Jersey and Pennsylvania have not established their own homestead exemptions; residents there use the federal exemption.

Fifteen states have created enhanced exemption categories for various debtors.

Fifteen states including Tennessee have established higher exemptions for certain groups of debtors (see table 2). In addition to Arkansas' unlimited exemption for families and heads of families, which includes filers who are married and those with dependents, higher exemptions have been made available to four groups of filers in various states:

- Seniors—Ten states
 - over the age of 60: Colorado, Maine, and Mississippi
 - 62 or older in Tennessee
 - over 62 in Massachusetts
 - 65 or older in California, Michigan, North Carolina, and Virginia
 - over the age of 65 in Hawaii.
- Filers with dependent minor children—Five states: California, Hawaii, Maine, Tennessee, and Virginia.
- Filers with medical debt—Four states: Connecticut, Louisiana, Ohio, and West Virginia.
- Filers with disabilities—Five states: California, Colorado, Maine, Massachusetts, and Michigan.

¹⁸ Arizona, Delaware, Montana, Nevada, Ohio, and South Carolina.

¹⁹ David Gold, Legislative Services Attorney, State of Ohio, email correspondence with Tyler Carpenter, July 8, 2015.

²⁰ The state exemption for all others is only \$800, but all residents have the option of using the federal exemptions.

Table 2: Homestead Exemptions by State and Special Category

	Federal Available	Individual State	Joint	Seniors		Filers with dependent minor children	Filers with medical debt	Filers with disabilities
Alabama	no	\$15,000	\$30,000	n/a		n/a	n/a	n/a
Alaska	yes	\$72,900	n/a	n/a		n/a	n/a	n/a
Arizona	no	\$150,000	n/a	n/a		n/a	n/a	n/a
Arkansas ²¹	yes	Unlimited for families and heads of families (those with dependents); otherwise \$800						
California	no	\$75,000	\$100,000	≥65	\$175,000	\$100,000	n/a	\$175,000
Colorado	no	\$75,000	n/a	>60	\$105,000	n/a	n/a	\$105,000
Connecticut	yes	\$75,000	\$150,000	n/a		n/a	\$125,000	n/a
Delaware	no	\$125,000	n/a	n/a		n/a	n/a	n/a
Florida	no	Unlimited						
Georgia	no	\$21,500	\$43,000	n/a		n/a	n/a	n/a
Hawaii	yes	\$20,000	n/a	>65	\$30,000	\$30,000	n/a	n/a
Idaho	no	\$100,000	n/a	n/a		n/a	n/a	n/a
Illinois	no	\$15,000	\$30,000	n/a		n/a	n/a	n/a
Indiana	no	\$17,600	\$35,200	n/a		n/a	n/a	n/a

²¹ In addition to the federal, residents may choose between two lists of exemptions.

	Federal Available	Individual State	Joint	Seniors	Filers with dependent minor children	Filers with medical debt	Filers with disabilities	
Iowa	no	Unlimited						
Kansas	no	Unlimited						
Kentucky	yes	\$5,000	\$10,000	n/a	n/a	n/a	n/a	
Louisiana	no	\$35,000	n/a	n/a	n/a	Unlimited for catastrophic or terminal injury	n/a	
Maine	no	\$47,500	n/a	>60	\$95,000 individual \$190,000 joint	\$95,000	n/a	\$95,000 individual \$190,000 joint
Maryland	no	\$22,975	\$45,950	n/a	n/a	n/a	n/a	n/a
Massachusetts	yes	\$500,000	n/a	>62	\$750,000 individual \$1,000,000 joint	n/a	n/a	\$750,000 individual \$1,000,000 joint
Michigan	yes	\$37,775	n/a	≥65	\$56,650	n/a	n/a	\$56,650
Minnesota	yes	\$390,000	n/a	n/a	n/a	n/a	n/a	n/a
Mississippi	no	\$75,000	\$75,000	>60	May reside elsewhere	n/a	n/a	n/a
Missouri	no	\$15,000	n/a	n/a	n/a	n/a	n/a	n/a

	Federal Available	Individual State	Joint	Seniors	Filers with dependent minor children	Filers with medical debt	Filers with disabilities
Montana	no	\$250,000	n/a	n/a	n/a	n/a	n/a
Nebraska	no	\$60,000	n/a	n/a	n/a	n/a	n/a
Nevada	no	\$550,000	n/a	n/a	n/a	n/a	n/a
New Hampshire	yes	\$100,000	n/a	n/a	n/a	n/a	n/a
New Jersey	yes	n/a					
New Mexico	yes	\$60,000	\$120,000	n/a	n/a	n/a	n/a
New York	yes	\$75,000	\$150,000	n/a	n/a	n/a	n/a
North Carolina	no	\$35,000	\$70,000	≥65	\$60,000 ²²	n/a	n/a
North Dakota	no	\$100,000	n/a	n/a	n/a	n/a	n/a
Ohio	no	\$132,900	\$265,800	n/a	n/a	May not force the sale of the home for medical debts	n/a
Oklahoma	no	Unlimited					
Oregon	yes	\$40,000	\$50,000	n/a	n/a	n/a	n/a

²² An unmarried debtor who is 65 years of age or older is entitled to a \$ 60,000 exemption so long as the property was previously owned by the debtor as a tenant by the entirety or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased

	Federal Available	Individual State	Joint	Seniors	Filers with dependent minor children	Filers with medical debt	Filers with disabilities	
Pennsylvania	yes	n/a						
Rhode Island	yes	\$500,000	n/a	n/a	n/a	n/a	n/a	
South Carolina	no	\$58,225	\$116,450	n/a	n/a	n/a	n/a	
South Dakota	no	Unlimited						
Tennessee	no	\$5,000	\$7,500	≥62	\$12,500 individual, \$20,000 joint - one spouse age qualified, \$25,000 joint - both spouses age qualified	\$25,000 individual \$50,000 for spouses	n/a	n/a
Texas	yes	Unlimited						
Utah	no	\$30,000	\$60,000	n/a	n/a	n/a	n/a	
Vermont	yes	\$125,000	n/a	n/a	n/a	n/a	n/a	
Virginia	no	\$5,000	\$10,000	≥65	\$10,000	\$5,000 + \$500 per dependent child	n/a	n/a
Washington	yes	\$125,000	n/a	n/a	n/a	n/a	n/a	

	Federal Available	Individual State	Joint	Seniors	Filers with dependent minor children	Filers with medical debt	Filers with disabilities
West Virginia	no	\$25,000	\$50,000	n/a	n/a	\$7,500 (\$250,000 for physicians filing because of medical malpractice) ²³	n/a
Wisconsin	yes	\$75,000	\$150,000	n/a	n/a	n/a	n/a
Wyoming	no	\$20,000	\$40,000	n/a	n/a	n/a	n/a

²³ The physician must carry malpractice insurance of at least \$1 million for the exemption to apply.

Applying the homestead exemption

Tennessee debtors may claim the homestead exemption in non-bankruptcy or bankruptcy proceedings. Outside of bankruptcy, Tennessee permits debtors to use the homestead exemption to protect the equity in their home from execution, attachment, or sale under other legal proceedings. However, there is no requirement that a state offer the same homestead exemption for bankruptcy and other judgments. For example, three states—Delaware, Georgia, and Maryland—limit the homestead exemption to bankruptcy. In the case of West Virginia, individuals may claim a \$25,000 homestead exemption in bankruptcy but only \$5,000 for all other proceedings.

In personal bankruptcy, the use of the homestead exemption differs in Chapter 7 and Chapter 13. Most Chapter 7 filings in Tennessee are cases in which the homestead exemption would not apply because filers either do not own a home or have no equity in their homes.²⁴ The homestead exemption is nevertheless important to the minority of Chapter 7 filers who are homeowners because the trustee, an attorney appointed by the bankruptcy court to manage the debtor's estate, includes the homestead exemption in the calculation of whether selling (liquidating) the property will result in a meaningful distribution to creditors.²⁵ Even if a person saves their home, they are still obligated to repay their mortgage. As Kelly D. Edmiston, Senior Economist with the Federal Reserve Bank of Kansas City writes,

Chapter 7 requires the liquidation of nonexempt assets, the proceeds of which are distributed to creditors. . . . Exemptions can include personal property and homesteads and are determined by either state or federal statutes, depending on the state. Debts are then immediately discharged, unless they are nondischargeable debts such as court-ordered payments, student loans, and certain tax obligations. Almost all Chapter 7 filings are “no asset” cases where nothing is liquidated, and hence, holders of unsecured debt are offered no relief.

Chapter 13 trustees also consider the homestead exemption in calculations, resulting in lower total repayment of unsecured debt. Currently, debtors seeking to save their home in bankruptcy will likely end up in Chapter 13 because the equity in their home is greater than the available exemption. See appendix F for a description of all bankruptcy chapters and appendix G for a comparison of Chapter 7 and Chapter 13. As Edmiston writes,

Chapter 13 allows debtors to keep their assets, as long as payments are made, while paying creditors—out of future earnings—a portion of what is owed

²⁴ <http://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/Publicat.pdf>

²⁵ Representatives from the offices of a Chapter 7 and a Chapter 13 trustee explained that any calculation must include costs associated with the sale. For example, a sale of the home resulting in \$800 being available to creditors would most likely not be pursued. See also <http://www.justice.gov/ust/handbook-chapter-7-trustees>.

according to a repayment plan developed and administered by a bankruptcy trustee (or bankruptcy court in Alabama and North Carolina). At the end of the repayment period, which lasts no more than five years, debtors who have fulfilled the requirements of their Chapter 13 reorganization plan will be discharged from the balance of their dischargeable debts. . Perhaps the most significant change in the new law [the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)] reflects an effort to steer more bankruptcy petitioners away from Chapter 7 toward Chapter 13. Under the new law, a means test determines, in part, whether or not a petitioner is allowed to proceed under Chapter 7. Specifically, cases in which debtors have income exceeding the median in their state of residence and, after covering necessary expenses and paying priority debt payments such as alimony, child support, and taxes, are able to contribute a minimal amount toward their debts.

In addition to steering filers into Chapter 13 rather than Chapter 7, BAPCPA also included other provisions aimed at curbing abuse. For property acquired within the 1,215-days immediately preceding a bankruptcy filing, the homestead exemption amount is limited to the smaller of the state exemption amount or \$146,450, even for states with an unlimited exemption. Debtors must also have lived in their current state for at least two years before they are eligible for that state's exemptions.²⁶

²⁶ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

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DRAFT

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Robert H. Waldschmidt, Chapter 7 Trustee, Law Office of Robert H. Waldschmidt

Appendix A. Public Chapter 326, Acts of 2015



State of Tennessee

PUBLIC CHAPTER NO. 326

SENATE BILL NO. 1000

By Niceley

Substituted for: House Bill No. 1093

By Armstrong, Timothy Hill

AN ACT to amend Tennessee Code Annotated, Title 26, Chapter 2, relative to homestead exemption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 26-2-301, is amended by adding the following new subsection:

(g) The Tennessee advisory commission on Intergovernmental relations shall study the current homestead exemption amounts allowed pursuant to this section to determine whether the exemptions should be increased to accurately reflect the cost of living and shall submit a written report to the members of the general assembly no later than January 1, 2016. The report shall detail the various categories of homestead exemptions and compare each category to the exemptions of other states.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1000

PASSED: April 13, 2015



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of April 2015



BILL HASLAM, GOVERNOR

Appendix B. American Bankruptcy Institute: Bankruptcy Filings 2014

States	Population	7 and 13 Filings	Per Capita	Chapter 7 Percentage	Total 7s	Per Capita	Chapter 13 Percentage	Total 13s	Per Capita
Total States and DC	318,857,056	899,220	3	67%	595,176	2	33%	297,002	1
Alabama	4,849,377	24,847	5	37%	9,083	2	63%	15,687	3
Alaska	736,732	448	1	83%	371	1	17%	75	0
Arizona	6,731,484	18,946	3	87%	16,298	2	13%	2,377	0
Arkansas	2,966,369	10,619	4	47%	4,994	2	53%	5,576	2
California	38,802,500	99,689	3	78%	76,894	2	22%	21,924	1
Colorado	5,355,866	17,134	3	84%	14,374	3	16%	2,691	1
Connecticut	3,596,677	6,862	2	84%	5,668	2	16%	1,084	0
Delaware	935,614	2,859	3	69%	1,674	2	31%	743	1
District of Columbia	658,893	759	1	84%	604	1	16%	118	0
Florida	19,893,297	66,431	3	65%	43,008	2	35%	22,751	1
Georgia	10,097,343	51,504	5	45%	22,965	2	55%	28,314	3
Hawaii	1,419,561	1,703	1	71%	1,197	1	29%	496	0
Idaho	1,634,464	4,623	3	90%	4,138	3	10%	464	0
Illinois	12,880,580	60,177	5	64%	38,199	3	36%	21,725	2
Indiana	6,596,855	28,115	4	72%	20,163	3	28%	7,862	1
Iowa	3,107,126	4,927	2	91%	4,465	1	9%	441	0
Kansas	2,904,021	7,368	3	59%	4,340	1	41%	2,990	1
Kentucky	4,413,457	16,337	4	72%	11,802	3	28%	4,482	1
Louisiana	4,649,676	14,536	3	29%	4,121	1	71%	10,288	2
Maine	1,330,089	2,007	2	83%	1,647	1	17%	343	0
Maryland	5,976,407	19,711	3	73%	14,290	2	27%	5,266	1
Massachusetts	6,745,408	10,034	1	79%	7,816	1	21%	2,109	0
Michigan	9,909,877	34,567	3	81%	27,779	3	19%	6,632	1
Minnesota	5,457,173	12,028	2	85%	10,172	2	15%	1,817	0
Mississippi	2,994,079	10,843	4	46%	5,006	2	54%	5,777	2

States	Population	7 and 13 Filings	Per Capita	Chapter 7 Percentage	Total 7s	Per Capita	Chapter 13 Percentage	Total 13s	Per Capita
Missouri	6,063,589	20,501	3	70%	14,372	2	30%	6,068	1
Montana	1,023,579	1,421	1	87%	1,227	1	13%	184	0
Nebraska	1,881,503	4,488	2	69%	3,067	2	31%	1,402	1
Nevada	2,839,099	10,650	4	84%	8,822	3	16%	1,647	1
New Hampshire	1,326,813	2,477	2	78%	1,911	1	22%	530	0
New Jersey	8,938,175	26,156	3	74%	19,167	2	26%	6,689	1
New Mexico	2,085,572	3,752	2	93%	3,443	2	7%	275	0
New York	19,746,227	31,533	2	82%	25,197	1	18%	5,588	0
North Carolina	9,943,964	16,388	2	41%	6,624	1	59%	9,603	1
North Dakota	739,482	679	1	90%	611	1	10%	67	0
Ohio	11,594,163	40,263	3	77%	30,892	3	23%	9,310	1
Oklahoma	3,878,051	9,555	2	83%	7,916	2	17%	1,602	0
Oregon	3,970,239	11,693	3	83%	9,629	2	17%	2,035	1
Pennsylvania	12,787,209	23,537	2	63%	14,714	1	37%	8,530	1
Rhode Island	1,055,173	2,858	3	84%	2,406	2	16%	448	0
South Carolina	4,832,482	7,324	2	41%	2,999	1	59%	4,291	1
South Dakota	853,175	1,184	1	91%	1,072	1	9%	109	0
Tennessee	6,549,352	38,393	6	42%	15,967	2	58%	22,271	3
Texas	26,956,958	35,721	1	43%	14,993	1	57%	20,249	1
Utah	2,942,902	13,519	5	64%	8,609	3	36%	4,894	2
Vermont	626,562	704	1	76%	533	1	24%	168	0
Virginia	8,326,289	23,722	3	61%	14,456	2	39%	9,113	1
Washington	7,061,530	20,731	3	79%	16,247	2	21%	4,356	1
West Virginia	1,850,326	3,308	2	87%	2,843	2	13%	424	0
Wisconsin	5,757,564	20,672	4	76%	15,581	3	24%	5,020	1
Wyoming	584,153	917	2	89%	810	1	11%	97	0

Appendix C. Comparison of Federal and Tennessee Bankruptcy Exemptions

Federal Bankruptcy Exemptions	
Homestead	Real property, including mobile homes and co-ops, or burial plots up to \$22,975; Unused portion of homestead, up to \$11,500 may be used for other property
Personal Property	Motor vehicle up to \$3,675; Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$575 per item, and up to \$12,250 total; Jewelry up to \$1,550; Health aids. Wrongful death recovery for person you depended upon; Personal injury recovery up to \$22,975 except for pain and suffering or for pecuniary loss; Lost earnings payments
Pensions	Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans); IRAs and Roth IRAs to \$1,245,475
Public Benefits	Public assistance, Social Security, Veteran's benefits, Unemployment Compensation; Crime victim's compensation
Tools of Trade	Implements, books and tools of trade, up to \$2,300
Alimony and Child Support	Alimony and child support
Insurance	Unmatured life insurance policy except credit insurance; Life insurance policy with loan value up to \$12,250; Disability, unemployment or illness benefits; Life insurance payments for a person you depended on, which you need for support
Wildcard	\$1,225 of any property, and unused portion of homestead up to \$11,500

Tennessee Bankruptcy Exemptions	
Homestead	\$5,000, \$7,500 for joint owners, 12,500 for an individual 62 or older, 20,000 for married couples with one person age 62 or older, 25,000 for married couples who are both age 62 or older, 25,000 for individuals with a minor child in their custody (may double exemption for married couples with joint custody); Life estates and leaseholds (ranging 2-15 years)
Personal Property	Bible, schoolbooks, pictures, portraits, clothing & storage containers; burial plot to 1 acre; Health aids; Lost earnings payments; Personal injury recoveries to \$7,500; wrongful death recoveries to \$10,000 (not more than \$15,000 total for personal injury, wrongful death & crime victims' compensation)
Pensions	ERISA-qualified benefits; Public employees; State & local government employees; Teachers
Public Benefits	Aid to blind and disabled; Crime victims' compensation to \$5,000; Local public assistance; Old-age assistance; Social security; Unemployment; Veterans' benefits; Workers' compensation
Tools of trade	Implements, books and tools of trade to \$1,900
Wages and other	Minimum 75% of earned but unpaid wages, plus \$2.50/week/child; bankruptcy judge may authorize more for low-income debtors; Alimony owed for 30 days before filing for bankruptcy; Property of business partnership
Insurance	Accident, health or disability benefits; Disability or illness benefits; Fraternal benefit society benefits; Homeowners' insurance proceeds to \$5,000; Life insurance or annuity for spouse/children/dependent relatives - exempt from all claims
Wildcard	\$10,000 on any personal property

Appendix D. Homestead Exemption as a Percentage of Median Housing Prices in Tennessee and the US, 1975 through 2015

Year	Tennessee Median Housing Price	Tennessee Individual Exemption	Homestead Exemption as a Percentage of TN Median Housing Price	Tennessee Joint Exemption	Homestead Exemption as a Percentage of TN Median Housing Price	US Median Housing Price	US Individual Exemption	Homestead Exemption as a Percentage of US Median Housing Price	US Joint Exemption	Homestead Exemption as a Percentage of Federal Median Housing Price
1975	\$ 32,514	\$ 1,000	3%			\$ 24,398				
1976	\$ 34,807	\$ 1,000	3%			\$ 26,021				
1977	\$ 36,866	\$ 1,000	3%			\$ 28,696				
1978	\$ 40,544	\$ 1,000	2%			\$ 32,692				
1979	\$ 43,414	\$ 5,000	12%			\$ 37,162	\$ 7,500	20%	\$ 15,000	40%
1980	\$ 46,835	\$ 5,000	11%	\$ 7,500	16%	\$ 41,253	\$ 7,500	18%	\$ 15,000	36%
1981	\$ 49,121	\$ 5,000	10%	\$ 7,500	15%	\$ 43,891	\$ 7,500	17%	\$ 15,000	34%
1982	\$ 50,755	\$ 5,000	10%	\$ 7,500	15%	\$ 45,101	\$ 7,500	17%	\$ 15,000	33%
1983	\$ 52,110	\$ 5,000	10%	\$ 7,500	14%	\$ 46,478	\$ 7,500	16%	\$ 15,000	32%
1984	\$ 52,977	\$ 5,000	9%	\$ 7,500	14%	\$ 48,739	\$ 7,500	15%	\$ 15,000	31%
1985	\$ 56,385	\$ 5,000	9%	\$ 7,500	13%	\$ 51,129	\$ 7,500	15%	\$ 15,000	29%
1986	\$ 60,136	\$ 5,000	8%	\$ 7,500	12%	\$ 54,545	\$ 7,500	14%	\$ 15,000	28%
1987	\$ 64,008	\$ 5,000	8%	\$ 7,500	12%	\$ 58,865	\$ 7,500	13%	\$ 15,000	25%
1988	\$ 66,181	\$ 5,000	8%	\$ 7,500	11%	\$ 62,663	\$ 7,500	12%	\$ 15,000	24%
1989	\$ 67,298	\$ 5,000	7%	\$ 7,500	11%	\$ 67,297	\$ 7,500	11%	\$ 15,000	22%
1990	\$ 68,696	\$ 5,000	7%	\$ 7,500	11%	\$ 70,998	\$ 7,500	11%	\$ 15,000	21%
1991	\$ 68,736	\$ 5,000	7%	\$ 7,500	11%	\$ 71,128	\$ 7,500	11%	\$ 15,000	21%
1992	\$ 69,760	\$ 5,000	7%	\$ 7,500	11%	\$ 72,199	\$ 7,500	10%	\$ 15,000	21%
1993	\$ 72,053	\$ 5,000	7%	\$ 7,500	10%	\$ 72,501	\$ 7,500	10%	\$ 15,000	21%
1994	\$ 76,272	\$ 5,000	7%	\$ 7,500	10%	\$ 73,833	\$ 7,500	10%	\$ 15,000	20%
1995	\$ 80,402	\$ 5,000	6%	\$ 7,500	9%	\$ 75,190	\$ 15,000	20%	\$ 30,000	40%

Year	Tennessee Median Housing Price	Tennessee Individual Exemption	Homestead Exemption as a Percentage of TN Median Housing Price	Tennessee Joint Exemption	Homestead Exemption as a Percentage of TN Median Housing Price	US Median Housing Price	US Individual Exemption	Homestead Exemption as a Percentage of US Median Housing Price	US Joint Exemption	Homestead Exemption as a Percentage of Federal Median Housing Price
1996	\$ 84,963	\$ 5,000	6%	\$ 7,500	9%	\$ 76,823	\$ 15,000	20%	\$ 30,000	39%
1997	\$ 88,940	\$ 5,000	6%	\$ 7,500	8%	\$ 79,019	\$ 15,000	19%	\$ 30,000	38%
1998	\$ 91,654	\$ 5,000	5%	\$ 7,500	8%	\$ 82,603	\$ 16,150	20%	\$ 32,300	39%
1999	\$ 95,838	\$ 5,000	5%	\$ 7,500	8%	\$ 87,956	\$ 16,150	18%	\$ 32,300	37%
2000	\$ 99,432	\$ 5,000	5%	\$ 7,500	8%	\$ 95,404	\$ 16,150	17%	\$ 32,300	34%
2001	\$ 101,053	\$ 5,000	5%	\$ 7,500	7%	\$ 103,057	\$ 17,430	17%	\$ 34,860	34%
2002	\$ 104,154	\$ 5,000	5%	\$ 7,500	7%	\$ 111,002	\$ 17,430	16%	\$ 34,860	31%
2003	\$ 107,506	\$ 5,000	5%	\$ 7,500	7%	\$ 121,255	\$ 17,430	14%	\$ 34,860	29%
2004	\$ 112,092	\$ 5,000	4%	\$ 7,500	7%	\$ 134,461	\$ 18,450	14%	\$ 36,900	27%
2005	\$ 119,239	\$ 5,000	4%	\$ 7,500	6%	\$ 151,603	\$ 18,450	12%	\$ 36,900	24%
2006	\$ 128,140	\$ 5,000	4%	\$ 7,500	6%	\$ 164,644	\$ 18,450	11%	\$ 36,900	22%
2007	\$ 134,566	\$ 5,000	4%	\$ 7,500	6%	\$ 164,845	\$ 20,200	12%	\$ 40,400	25%
2008	\$ 131,256	\$ 5,000	4%	\$ 7,500	6%	\$ 148,612	\$ 20,200	14%	\$ 40,400	27%
2009	\$ 125,048	\$ 5,000	4%	\$ 7,500	6%	\$ 131,895	\$ 20,200	15%	\$ 40,400	31%
2010	\$ 123,406	\$ 5,000	4%	\$ 7,500	6%	\$ 131,788	\$ 21,630	16%	\$ 43,260	33%
2011	\$ 118,991	\$ 5,000	4%	\$ 7,500	6%	\$ 124,084	\$ 21,630	17%	\$ 43,260	35%
2012	\$ 118,545	\$ 5,000	4%	\$ 7,500	6%	\$ 123,496	\$ 21,630	18%	\$ 43,260	35%
2013	\$ 124,499	\$ 5,000	4%	\$ 7,500	6%	\$ 134,639	\$ 22,975	17%	\$ 45,950	34%
2014	\$ 132,053	\$ 5,000	4%	\$ 7,500	6%	\$ 144,876	\$ 22,975	16%	\$ 45,950	32%
2015	\$ 137,580	\$ 5,000	4%	\$ 7,500	5%	\$ 152,213	\$ 22,975	15%	\$ 45,950	30%

Source: Freddie Mac House Price Index, State and National 1975-Current, retrieved on September 4, 2015

Appendix E. Homestead Exemption in Tennessee Bankruptcy (Public Chapter 326, Acts of 2015)-Panel Discussion

The Commission heard testimony from:

- Henry E. Hildebrand III, Chapter 13 Trustee
Middle District of Tennessee, United States Bankruptcy Court
- Robert H. Waldschmidt, Chapter 7 Trustee
Law Office of Robert H. Waldschmidt
- Tom Lawless, Certified Creditor Rights Specialist
Lawless and Associates, P.C.
- Maria Salas, Certified Consumer Bankruptcy Specialist
Salas Law Group, PLLC, Tennessee Bar Association
- Tim Amos, Executive Vice President/General Counsel
Tennessee Bankers Association
- Keith Slocum, Board Certified Bankruptcy Specialist
Harlan, Slocum, and Quillen
- Steve Hodgkins, President
Home Builders Association of Tennessee

Mr. HILDEBRAND began by giving a brief overview of the bankruptcy process. He explained that exemptions can be divided into three categories and that they make up only a part of the bankruptcy process: (1) exemptions for entire items, (2) exemptions based on dollar amounts that may be applied to personal property, and (3) exemptions for certain items up to a specific dollar amount, including homestead exemptions.

Mr. WALDSCHMIDT explained his perspective and experience as a trustee in dealing with Chapter 7 debtors. He sells property in only 5% of all cases, the rest being no-asset cases. When a debtor does have equity, the trustee must take into account the administrative costs of selling the home. Equity of \$2,000 would most likely not lead him to sell the home because it would not provide a meaningful return for the creditors. He expressed concern about the complexity of the current homestead exemptions and gave the example of a woman who could see her allowable exemption change at least eight times over her lifetime because of changes in marital status, parental status, and age: from \$5,000 to \$7,500 to \$50,000 to \$25,000 to \$5,000 to \$12,500 to \$20,000 to \$25,000. He said that Tennessee has the most convoluted system of homestead exemptions in the country.

Mr. LAWLESS suggested that all bankruptcy exemptions be reduced to two unified exemptions: a large exemption for Chapter 13 and a much smaller one for Chapter 7. This exemption scheme would encourage debtors to repay their debt in Chapter 13. Mr. LAWLESS and Mr. HILDEBRAND both said that some debtors abuse the system by converting nonexempt assets into exempt assets before filing by, for example, paying down their mortgages. Ms. SALAS said that although the Commission is being directed to study the homestead exemption, the Tennessee Bar Association wants the Commission to consider all exemptions.

Mr. AMOS argued that while the homestead exemption amounts of \$5,000 and \$7,500 are low, debtors have access to several large exemptions, specifically the personal property exemption of \$10,000 and the exemptions for the family Bible, pensions, etc.

Mr. SLOCUM said he rarely sees people try to game the system. He explained that many people want to pay back their debt but are unable to withstand aggressive debt collection efforts. These debtors use the system to help repay their debts and end the collection efforts. He agreed that a single number would be better but said that nothing should be taken away from the categories of individuals over 62 or individuals with minor children.

Mr. HODGKINS explained that the low homestead exemption in Tennessee is pushing people, including some of his friends, to move to Florida and Texas, which have unlimited homestead exemptions, to protect their assets. He said that bankers use the system to collect money when they could negotiate with debtors upfront and place a lien on the homes. Further, he argued that the unlimited exemptions in Florida and Texas have not made credit difficult to get or caused interest rates to increase there. He said that the Home Builders Association of Tennessee wants people to invest in Tennessee and feel safe in their investment.

Chairman NORRIS and Representative CARTER asked how Tennessee's homestead exemption compared to the federal homestead exemption and whether allowing the federal exemption would be an option to consider. The panelists explained that the federal homestead exemption is a single number, but the filer may use up to \$11,500 of an unused portion of the exemption on other property. Mr. WALDSCHMIDT said the federal set of exemptions is extremely high. Senator YARBRO asked whether members of the panel think Tennessee's homestead exemption should be lower than the federal. Mr. WALDSCHMIDT explained that setting an exemption amount is a balancing act between fairness to debtors and creditors; Ms. SALAS said that the exemptions that need to be considered for increases are those for those under the age of 62 without minor children.

Mayor WATERS asked why Tennessee has the highest bankruptcy filings in the country. Mr. HILDEBRAND explained that people use the system to help them repay their debt, which explains why Chapter 13s are so high. Mr. AMOS agreed and added that because of the efficiency of the system, creditors are more willing to go along with repayment plans. Ms. SALAS added that Tennessee has the highest divorce rate in the country and that this is a leading factor. Mayor HUFFMAN asked what effect medical bills have on the filing rate in Tennessee. The panelists responded that this is a major factor. Mr. WALDSCHMIDT said that

medical bills often do not show up on the filing forms because people use credit cards to pay for nearly everything but explained that he did his own study of the cases that he worked, and medical bills ranked at the top of reasons people file. Mr. HILDEBRAND said that a Harvard study had found medical bills to be the number one reason for filing. He added that while medical bills may push someone into filing, that could be the result of a lack of coverage or a loss of a job. Mr. HUFFMAN followed up by asking how Tennessee ranks when looking at just Chapter 7 filings. Mr. WALDSCHMIDT said that Tennessee is somewhere in the middle.

Representative PARKINSON asked how people determine which chapter to file. Mr. HILDEBRAND explained that it is up to the debtor but that judges in Tennessee are very willing to accept Chapter 13 repayment plans and that bankruptcy lawyers often encourage people to repay their debt in a Chapter 13. Ms. SALAS explained that people often use the system to help them repay their debt, which greatly influences their filing decision. Other factors include the age of the debtor, job, eligibility, and last time filing bankruptcy. Ms. ROEHRICH-PATRICK asked how eligibility for filing Chapter 7 is determined. Ms. SALAS explained that a filer would have to pass a means test and that generally the filer must fall below the median household income for their family size.

Several alternatives were proposed by the panelists including creating a uniform exemption and creating different exemptions for Chapter 7 and Chapter 13. Chairman NORRIS asked whether any other states currently operate under a uniform exemption. Mr. LAWLESS responded that other states have gone to a more level, transparent, and fair system and have a single homestead exemption but there are no states that have one exemption that covers anything up to a set dollar amount. Creating separate exemptions for Chapter 7 and Chapter 13 would also be a new concept not used by any other state.

When asked by Senator MCNALLY what a good number would be for a uniform exemption, the panelists all said they would not be able to agree on a number. Senator MCNALLY asked what would happen if we had no exemptions. Ms. SALAS responded that individuals with disabilities or people out of work would be forced to give up their furniture, Bibles, clothes, houses, etc. She said it would not be good to get rid of exemptions. The number of Chapter 7 filings would also drop to nearly zero.

Mr. AMOS said the Commission should not recommend allowing the federal exemptions or indexing for inflation because of states' rights issues and periodic changes leading to further uncertainty for lenders. Mr. LAWLESS agreed. Senator YARBRO said the current system already sounds convoluted and that there must be a way to index for increases in inflation without causing too much instability.

Senator MCNALLY and Mayor BICKERS both asked what effect increasing exemptions would have on businesses and consumers. Mr. WALDSCHMIDT said that unsecured creditors must absorb any debt not repaid when exempt property is not sold. Mr. LAWLESS added that businesses build this into their cost of doing business, and as such, we all end up paying for it. Mr. AMOS said that any significant change in the homestead exemption would cause banks to change their lending practices, though a small or moderate increase would likely not have an

effect. Mr. HILDEBRAND warned the Commission against believing that any reform of bankruptcy exemptions would have any significant effect on the filing rate. Many believed the 2005 reform would lower the rate, but several studies have shown it had no major effect on the filing rate.

DRAFT

Appendix F. United States Department of Justice Summary of Bankruptcy Chapters²⁷

The Bankruptcy Code appears in title 11 of the United States Code, beginning at 11 U.S.C. 101. Its principal chapters (7, 11, 12, 13 and 15) are briefly outlined below:

Chapter 7

Chapter 7 bankruptcy is a liquidation proceeding [sale of nonexempt assets by a trustee] available to consumers and businesses. Those assets of a debtor that are not exempt from creditors are collected and liquidated (reduced to money) [sold], and the proceeds are distributed to creditors. A consumer debtor receives a complete discharge from debt under Chapter 7, except for certain debts that are prohibited from discharge by the Bankruptcy Code.

Chapter 11

Chapter 11 bankruptcy provides a procedure by which an individual or a business can reorganize its debts while continuing to operate. The vast majority of Chapter 11 cases are filed by businesses. The debtor, often with participation from creditors, creates a plan of reorganization under which to repay part or all of its debts.

Chapter 12

Chapter 12 allows a family farmer or a fisherman to file for bankruptcy, reorganize its business affairs, repay all or part of its debts, and continue operating.

Chapter 13

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. To be eligible for Chapter 13 relief, a consumer must have regular income and may not have more than a certain amount of debt, as set forth in the Bankruptcy Code.

Chapter 15

Chapter 15 provides debtors, creditors, and other parties in interest involved in insolvency cases in foreign countries a mechanism by which they can assert their rights. Generally, a chapter 15 case is supplementary to a primary case or proceeding commenced in a debtor's home country. One of the primary goals of this chapter is to encourage cooperation and communication between the courts of the United States and parties in interest and foreign courts and parties in interest in cross-border cases.

²⁷ <http://www.justice.gov/ust/bankruptcy-fact-sheets/overview-bankruptcy-chapters>.

Appendix G. Comparison of Chapter 7 and Chapter 13

	Chapter 7	Chapter 13
Type of Bankruptcy	Liquidation	Reorganization
Who Can File?	Individuals and Business Entities	Individuals Only (Including Sole Proprietors)
Eligibility Restrictions	Disposable Income Must Be Low Enough to Pass the Chapter 7 Means Test	Cannot Have More Than \$383,175 of Unsecured Debt or \$1,149,525 of Secured Debt
How Long Does It Take to Receive a Discharge?	Typically Three to Five Months	Upon Completion of All Plan Payments (Usually Three to Five Years)
What Happens to Property in Bankruptcy?	Trustee Can Sell All Nonexempt Property to Pay Creditors	Debtors Keep All Property But Must Pay Unsecured Creditors an Amount Equal to Value of Nonexempt Assets
Allows Removing Unsecured Junior Liens from Real Property Through Lien Stripping?	No	Yes (If Requirements Are Satisfied)
Allows Reducing the Principal Loan Balance on Secured Debts Through a Loan Cramdown?	No	Yes (If Requirements Are Satisfied)
Benefits	Allows Debtors to Quickly Discharge Most Debts and Get a Fresh Start	Allows Debtors to Keep Their Property and Catch Up on Missed Mortgage, Car, and Nondischargeable Priority Debt Payments
Drawbacks	Trustee Can Sell Nonexempt Property. Does Not Provide a Way to Catch Up on Missed Payments to Avoid Foreclosure or Repossession.	Must Make Monthly Payments to the Trustee for Three to Five Years. May Have to Pay Back a Portion of General Unsecured Debts.

Source: NOLO Retrieved on September 21, 2015 from <http://www.nolo.com/legal-encyclopedia/what-is-the-difference-between-chapter-7-chapter-13-bankruptcy.html>