

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

<b>In re:</b>	:	<b>Case No. 02-0825-WH</b>
<b>JEFFREY D. and</b>	:	
<b>JAMIE E. BAUSBACK,</b>	:	
	:	<b>Chapter 7</b>
<b>Debtors.</b>	:	
	:	

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**ORDER— OBJECTION TO CLAIM OF EXEMPTIONS  
AND RESISTANCE THERETO**

On October 1, 2002, an evidentiary hearing was held on Howard Street Partnership's Objection to Exemption and Debtors' Resistance Thereto. Howard T. Duncan represented Jeffrey D. and Jamie E. Bausback. David L. Stalka represented Howard Street Partnership. Charles L. Smith appeared in his capacity as chapter 7 trustee. At the conclusion of the trial, the court took the matter under advisement upon a briefing schedule. Post-trial briefs have been filed, and the court now considers the matter fully submitted.

The court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and order of the United States District Court for the Southern District of Iowa. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). Upon review of the briefs, pleadings, evidence, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

**FINDINGS OF FACTS**

1. Jeffrey D. and Jamie E. Bausback (hereinafter collectively the Debtors) filed a petition for relief under chapter 7 of title 11, the Bankruptcy Code, on February

25, 2002. Debtors did a short filing and did not submit accompanying schedules.

Debtors filed the schedules on March 11, 2002.

2. On Schedule A – Real Property, Debtors scheduled their “[h]ome residence located at 11 Tower Cir., Council Bluffs, IA,” with a value of \$140,000.00 and securing claims in the amount of \$137,945.57.

3. On Schedule C, Debtors claimed the residence as exempt homestead property pursuant to Iowa Code §§ 499A.18, 561.16, 561.19, & 561.20.

4. Debtors scheduled Bank of America on Schedule D as a creditor holding a claim in the amount of \$137,945.87 that was fully secured by their homestead.

5. Also on Schedule D, Debtors scheduled Security National Bank as holding a claim fully secured by their homestead in the amount of \$66,616.00.

6. On May 2, 2002, Debtors amended Schedules B, C, and D, and on August 28, 2002, Debtors amended Schedules D and F to provide information concerning when they incurred the debts.

7. Prior to filing for bankruptcy protection, Debtors operated a retail business named Thingsville, Inc.

8. On May 23, 1998, Jeffrey Bausback as owner of Thingsville, entered into a five-year lease for property that is owned by Howard Street Partnership (hereinafter Howard Street). The signature, Jeff Bausback, appears on the lease above “Lessee Wild Things a Nebraska Corporation” and “Lessee Jeff Bausback a [sic] Individual.” Neither Jamie Bausback’s name nor her signature appears on the lease.

9. On August 4, 1998, Debtors bought a residence in Omaha, Nebraska, at 516 S. 159 Circle.

10. On September 5, 2000, Thingsville filed for chapter 11 bankruptcy protection in Nebraska, case number BK 00-82007. This case was dismissed on March 20, 2002.

11. On September 27, 2000, Debtors sold their Omaha, Nebraska, residence for \$221,000. The sale netted the Debtors \$68,141.88.

12. On October 24, 2000, the sale of the Omaha residence closed, and Bank of America and Security National Bank were paid \$151,076.13 and \$1,675.27 respectively. The same day, the Debtors acquired a residence in Council Bluffs, 11 Tower Circle. They gave a promissory note for \$72,000.00 to Midlands Mortgage for the balance necessary to purchase the residence.

13. On December 1, 2000, Midlands Mortgage assigned the mortgage loan to Bank of America Mortgage.

14. On December 2, 2000, Thingsville and Jeffrey Bausback stopped all payments due under the lease to Howard Street.

15. On February 21, 2002, Howard Street received a judgment for \$50,218.33 plus interest and costs for breach of contract against Jeffrey Bausback. Howard Street did not name Jamie Bausback in its breach of contract petition, and Howard Street did not receive a judgment against Jamie Bausback.

## DISCUSSION

This matter comes before the court on Howard Street's Objection to Exemptions. Howard Street initially objected to a number of exemptions claimed by Debtors. However, at a telephonic hearing held on July 19, 2002, Howard Street's counsel indicated that Howard Street withdrew all of its objections except that to Debtors' homestead. Howard Street asks the court to disallow Debtors' homestead exemption of their Council Bluffs residence. It argues that its claim predates Debtors' acquisition of their Council Bluffs home, and therefore falls within the exception provided by Iowa Code § 561.21(1).

Debtors respond that they had an existing homestead in Nebraska before incurring any obligation to Howard Street. When they sold the Nebraska homestead, they immediately used the proceeds to purchase their new homestead in Council Bluffs. Accordingly, they argue that Howard Street's claim does not qualify as an antecedent debt, and they are entitled to exempt their homestead pursuant to Iowa Code §§ 561.16 & 561.20.

At the outset, the court notes that the parties raised and briefed numerous issues including a potential claim against the homestead by Debtors' uncle, Donald Erway, the validity of the assignment of Security National Bank's lien against the homestead, and the chapter 7 trustee's ability to avoid liens in order to free up equity for the benefit of the estate. The court agrees with Debtors that these matters are not before the court at this time. The only matter properly before the court is whether Debtors may exempt their interest in their homestead from the bankruptcy estate.

The filing of a bankruptcy petition creates an estate comprised of all "legal and equitable interests of the debtor in property..." 11 U.S.C. § 541(a)(1). Congress intended the scope of § 541(a) to be broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); N.S. Garrott & Sons v. Union Planters Nat. Bank of Memphis, (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985).

The Bankruptcy Code permits a debtor to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b). Section 522(b)(1) permits the states to "opt out" of the federal exemption scheme and require the debtor to use the exemptions provided by state law. Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Therefore, Iowa law will govern the scope of the exemptions in this case.

The following Iowa Code sections are relevant to the matter before the court:

Iowa Code §561.1:

The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

Iowa Code § 561.16:

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For the purposes of this section, "*household unit*" means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Iowa Code § 561.20

Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

Iowa Code § 561.21

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution....

Iowa Code § 597.17

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the debts of each other contracted after marriage; nor are the wages, earnings, or property of either, nor is the rent or income of the property of either, liable for the separate debts of the other.

The Iowa courts “generally hold that to secure the benevolent purposes of the homestead laws they should be broadly and liberally construed in favor of the beneficiaries of the legislation,” Millsap v. Faulkes, 20 N.W.2d 40, 42 (Iowa 1945). “Regard should be had to the spirit of the law rather than its strict letter.” Id. The courts recognize that the state receives social benefits and public welfare “by having families secure in their homes.” In the Matter of Property Seized from Bly, 456 N.W. 2d 195, 199 (Iowa 1990). Iowa’s policy is to “jealously safeguard” the homestead. Id. “Loss of homestead exemption is not favored.” Schaffer v. Campbell, 199 N.W. 334, 338 (Iowa 1924). Homestead laws should and do receive a liberal interpretation. Dalton v. Webb, 50 N.W. 58, 59 (Iowa 1905). However, such interpretation should remain within the spirit of the legislative purpose.

In this matter, Debtors seek to transport a Nebraska homestead exemption to Iowa, and expand its limited scope to an unlimited exemption. This they may not do. The Iowa Supreme Court has long since decided that the homestead exemption law is not extraterritorial. Rogers v. Raisor, 14 N.W. 317, 318 (Iowa 1882). “The laws of each state ... apply only to homesteads acquired and held under its own laws and within its territorial jurisdiction.”

The case of Dalton v. Webb, 50 N.W. 58 (Iowa 1891) is directly on point. In that case, the creditor held a claim against the debtor prior to debtor’s acquisition of a Nebraska homestead. The debtor sold the Nebraska homestead and used part of the proceeds to purchase a homestead in Iowa. The creditor executed on the judgment for his claim and levied on the Iowa homestead. Dalton v. Webb, 50 N.W. at 58-59. The district court determined that the homestead was exempt and not liable for the debt. Id. at 59. In reversing the district court, the Iowa Supreme Court stated, “At best but \$800 of the \$1,350 from the Nebraska land were ever the proceeds of a homestead, and under the rule announced [in Rogers v. Raisor] that part lost its character as homestead property, and is no longer entitled to exemption.” Id.

Applying the rule in this matter, the court determines that the proceeds from the sale of Debtors’ Nebraska homestead lost the character as homestead property when they were used to purchase a residence in Iowa, and Iowa Code 561.20 does not extend the homestead exemption to those proceeds. Debtors established their right to an Iowa homestead after they purchased the residence in Council Bluffs on October 24, 2000, and began to occupy it as a homestead. See In re Streeper, 158 B.R. 783, 788 (Bankr. N.D.

Iowa 1993) (homestead is "acquired" when the homestead right attaches by actual use and occupation of the property as a homestead); Elston & Green v. Robinson, 23 Iowa 208 (1867) (same); Harris v. Carlson, 205 N.W. 202, 204, 201 Iowa 169 (1925) ("Actual occupation of premises as home, except in cases of temporary absence, is required to support claim of "homestead," and mere use or cultivation is insufficient ....").

Howard Street's claim is based on the lease contract entered into by Thingsville and Jeffrey Bausback on May 23, 1998. The lease provides that the Lessee will pay the Lessor a sum of \$162,000.00, in the amounts of \$2,500.00 per month for the first year and \$2,750.00 per month for the following four years. On December 2, 2000, Thingsville and Jeffrey Bausback stopped making lease payments. On February 21, 2002, Howard Street received a judgment for \$50,218.33 plus interest and costs for breach of contract against Jeffrey Bausback.

Debtors argue that the operative date for the § 561.21(1) exception to exemption is the date of the judgment entry. Howard Street argues that it is the contract date.

The plain language of the statute precludes a finding that the entry of a judgment is necessary to come within the antecedent debt exception. Section 561.21(1) expressly states that "the homestead may be sold to satisfy debts" contracted prior to its acquisition. See Bills v. Mason, 42 Iowa 329, 332 (Iowa 1876); Hale v. Heaslip, 16 Iowa 451, 452-53 (Iowa 1864); In re Nehring, 84 B.R. 571, 576 (Bankr. S.D. Iowa). The date of entry of judgment is not pertinent to the exception. Accordingly, the court finds that Howard Street's claim existed prior to Debtors' acquisition of their Iowa homestead, and Jeffrey Bausback may not claim the homestead exempt as to Howard Street's claim.



However, the courts' analysis does not end at this point. The evidence before the court shows only that Thingsville and Jeffrey Bausback entered into the lease agreement; Jamie Bausback did not. Jamie is not liable to Howard Street for a claim based on the lease. See generally Iowa Code 597.17 (spouses are not liable for the debts of the other contracted after marriage except as specified). Accordingly, Jamie may claim her homestead exemption.

This court has previously recognized that homestead rights are indivisible, and one spouse's homestead rights may not be severed from those of the other. In re Tyree, 116 B.R. 682, 684 (Bankr. S.D. Iowa 1990) citing Francksen v. Miller, N.W.2d 375, 377 (Iowa 1980) and Decorah State Bank v. Zidlicky, 426 N.W.2d 388, 391 (Iowa 1988).

The Iowa Supreme Court explained the rationale thusly:

There can be no splitting of homestead rights. The very nature of the doctrine makes such a result intolerable. It is just as destructive of family security to lose half of the homestead as all of it. Therefore, if Elizabeth's homestead interest is not subject to execution, neither is Irwin's.

Merchants Mutual Bonding Co. v. Underberg, N.W.2d 19, 21 (Iowa 1980).

In this matter, Jamie is not liable to Howard Street on the lease, and there is no other basis for her liability presented in the record. Hence, Jamie's homestead interest is not subject to the pre-acquisition debt exception of § 561.21. Her homestead interest would not be subject to execution under Iowa law, and consequently, neither is Jeffrey's. Accordingly, their homestead is beyond the reach of Howard Street and Trustee, notwithstanding the fact that Jeffery is liable to Howard Street on a debt antecedent to his acquisition of his Iowa homestead interest.

**ORDER**

IT IS ACCORDINGLY ORDERED that Howard Street's objection to Debtors' claim of exemption is OVERRULED and DENIED.

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RUSSELL J. HILL, JUDGE  
U.S. BANKRUPTCY COURT