



## AG-VISOR BLOG

### The Wisconsin Homestead Exemption

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Farmers may have wondered how a neighbor or someone else filing bankruptcy can keep his or her house. The answer is exemptions.

Exemptions are assets that can be kept from unsecured creditors. The Wisconsin Legislature didn't want debtors on the street with no assets so it created exemptions.

The Wisconsin homestead exemption allows a debtor to exempt as much as \$75,000 of equity in a homestead that the debtor occupies. If a person owns a \$275,000 homestead and has a \$200,000 mortgage, then \$75,000 of equity in the homestead is fully exempt. Married couples -- with some exceptions -- can stack exemptions and protect \$150,000 of equity in a house during bankruptcy.

The Wisconsin homestead exemption also includes as many as 40 acres. But bankruptcy filers aren't guaranteed 40 acres. Rather the statute limits the homestead exemption to a dwelling and as much land surrounding it as is reasonably necessary to use the dwelling as a home. Farmers might ask what surrounding land is reasonably necessary for use of a dwelling as a home. One example is land on which a well and septic system are located. Those are necessary.

What about a garden, or a field of corn or soybeans? One court ruled the land must provide the primary source of food for a debtor. So if food is purchased at a grocery store, an acre garden or 5-acre corn field probably doesn't qualify as part of a homestead.

What if there are trees cut for firewood? Can wooded land be claimed as a homestead exemption? A bankruptcy court has ruled firewood must be the primary fuel source for heating a homestead. So unless a wood-burning stove is the main source of heat, wooded land probably wouldn't qualify for a homestead exemption.

One of the requirements for claiming a homestead exemption is that a debtor must actually own the homestead. A homestead titled to a limited-liability company doesn't qualify for a homestead exemption. The individual debtor doesn't own the homestead; a limited-liability company owns it.

#### **Marital property plays role**

Married couples must be aware of non-marital property. Wisconsin is a marital-property state. Generally assets owned prior to marriage are considered individual property. Imagine a situation in which a married couple lives on a homestead titled in the husband's name before marriage. His wife's name was never put on the title. Instead the real estate remains titled only in her husband's name.

The real estate is the husband's individual property. His wife doesn't have any ownership interest. So that married couple doesn't qualify for two homestead exemptions totaling \$150,000 but only one \$75,000 exemption. That's because only the husband owns the real estate and only he can claim a homestead exemption.

A bankruptcy court has also ruled that payment of real estate taxes and insurance with marital funds wasn't sufficient to transform individually held real estate into marital property. Paying taxes and

insurance are simply maintenance items that don't increase equity in real estate. But if there is a mortgage on real estate paid with marital property then the real estate might be transformed into marital property -- but only to the extent of mortgage-principal reduction.

Facts in individual bankruptcy situations and possible use of Wisconsin homestead exemptions are extremely important.

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