ORS 23.240

Under state law, ownership of an interest as a tenant in common is a sufficient ownership or interest to support a claim of a homestead exemption.
In re Fredrick Jerry Keown, 380-02418, February 24, 1981, Hess.

Since exemption statutes are remedial in character, they are to be given a liberal construction.
In re Fredrick Jerry Keown.

In the case of a divorced couple, each owning an interest as a tenant in common, with one party together with a child of the parties occupying the property as a homestead, both parties would be entitled to an exemption of $12,000 or a combined total for both of them of $24,000.
In re Fredrick Jerry Keown

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re	)	
	)	
FREDRICK JERRY KEOWN	)	Case No. 380-02418
	)	
	)	MEMORANDUM OPINION
	)	
Debtor(s).	)	

At the trial of the this matter the debtor appeared in person and by his attorney, Robert Ridgway. The trustee appeared in person. The proceedings were reported by Dorothy Bunker.

The records and files of this case and of the case of In re Winnie Jeanne Keown, No. 380-00824, and the testimony show the following facts.

Prior to February 14, 1980, the debtor herein, Fredrick Jerry Keown, and Winnie Jeanne Keown were husband and wife and were the owners of a double wide mobile home and the real property upon which it was located. On that date a decree was entered by the Circuit Court of the State of Oregon for Umatilla County dissolving the marriage of the parties to be finally effective on April 15, 1980. Among other things the decree provided that the parties were to be owners of the mobile home and the real property as tenants in common of an undivided one-half interest each.

On April 22, 1980 Mrs. Keown filed her petition in bankruptcy in this court. In her schedules she claimed an exemp-

tion in the mobile home and the real property under ORS 23.240 in the amount of $12,000. The trustee objected on the ground that the property was not the actual abode of and occupied by the debtor. After a trial the court entered its memorandum opinion dated December 3, 1980 in which it found that at the time of the filing of the petition in bankruptcy the debtor did not occupy the premises nor did she occupy the premises as her home at the time of trial or at anytime between these two dates but that her absence from the property was only temporary with an intention to reoccupy it as her homestead. Based upon these findings an order was entered approving her claim of homestead to the extent of $12,000.

In his schedules the debtor in the present case claims a homestead in the same property to the extent of $12,000 under ORS 23.240. The trustee filed objections to this claim upon the basis that the combined claims of exemption of Mr. Keown and of Mrs. Keown cannot exceed a total of $12,000 and that because of the approval of the claim of exemption of Mrs. Keown to the extent of $12,000, it would be improper to approve the claim of exemption of Mr. Keown in any sum.

The resolution of this question depends upon the provisions of ORS 23.240 which, in relevant parts provides:

> "* * * When two or members of a household are debtors whose interests in the homestead are subject to sale or execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed $12,000. The homestead must be the actual abode of and occupied by the owner, his spouse or child, but such exemption shall not be impaired by:
> "(a) Temporary removal or temporary absence with the intention to reoccupy the same as a homestead;
> "(b) Removal or absence from the property; or
> "(c) The sale of the property."

Oregon law provides that ownership of an interest as a tenant in common is a sufficient ownership or interest to support a claim of a homestead exemption. Marvin v. Piazza, 129 Or 128, 276 P 680 (1929). Thus it would appear that any number of

tenants in common could each claim a homestead in the amount of $12,000 unless limited by the language of ORS 23.240 which applies to "two or more members of a household."

It would seem clear that in the case of a divorced couple, each owning an interest as a tenant in common, with one party together with a child of the parties occupying the property as a homestead, both parties would be entitled to an exemption of $12,000 or a combined total for both of them of $24,000. The party occupying the property would be entitled to the exemption on the basis that it was his or her actual place of abode. The other party would be entitled to the exemption on the basis that the property was the actual place of abode of his or her child. It could not be said that the two parties each claiming an exemption were "members of a household".

In the present case there was no child of the parties living in the house during the times in question. Whether the $12,000 limitation upon the combined exemption of Mr. and Mrs. Keown is applicable depends upon whether they were members of a household.

The statute does not define the term "household". The parties have not cited any cases defining this term. The court has not found any Oregon cases defining the term other than the cases of Allen v. Multnomah County, 179 Or 548, 173 P2d 475 (1946) and Schehen v. North-West Insurance, 258 Or 559, 484 P2d 836 (1971). The Allen case was concerned with the question of whether the owner of an apartment house could claim an exemption from personal property taxes of furniture owned by him and located in apartments which he was renting to others. The statute provided an exemption from such taxes for "household furniture, domestic fixtures, household goods and effects actually in use as such in homes and dwellings." In defining the word "household" the court stated:

As a noun, the word has been defined as "persons who dwell together as a family". Arthur v. Morgan, 112 U.S. 495, 5 S. Ct. 241, 28 L. ed. 825. "The words 'family' and 'household' are often interchangeably used. A family is a collective body of persons living in one house and under one manager. It consists of those who live with the pater familias." Vaughn v. American Alliance Ins. Co. of New York, 138 Kan. 731, 27 P.(2d) 212.

The Schenen case concerned coverage of an automobile liability insurance policy which excluded coverage when any insured automobile was being operated by any driver other than the named insured or a resident relative member of his household. The court quoted with approval the definition of "household" stated in the Allen case in holding that coverage was not afforded when an accident occurred while the insured automobile was being driven by an adult daughter of the named insured. The evidence showed that the named insured and his daughter did not live together and therefore were not members of a household.

Since exemption statutes are remedial in character, they are given a liberal construction. Blackford v. Boak, 73 Or 61, 143 P 1136(1914); Childers v. Brown, 81 Or 1, 158 P 166 (1916). In the present case the term "household" should receive that construction which will not limit the claim of homestead exemption asserted by a debtor.

In the present case I find that Mr. and Mrs. Keown were not "members of a household" during the times in question. In legal contemplation they were unrelated and therefore were not members of a family. In addition they were not living together. As the term "household" has been defined by the Oregon Supreme Court the limitation upon homestead exemptions applicable to members of a household is not applicable to Mr. and Mrs. Keown. Mr. Keown is therefore entitled to claim a homestead exemption in the property to the extent of $12,000.

DATED: February 24, 1981

/S/ HENRY L. HESS, JR.

Bankruptcy Judge

cc: Wade Bettis
Robert Ridgway

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