

ORS 23.240(1)  
Homestead

In Re Meyers

Case # 698-63466-aer7

1/20/99

Radcliffe

Unpublished

Debtor's spouse filed bankruptcy and claimed a \$25,000 homestead exemption which was allowed. Debtor then filed a separate case while the spouse's case was still open. Debtor was not residing with her spouse at the time she filed. A divorce was being contemplated. Debtor claimed an exemption in the same property as the spouse under the provision of ORS 23.240(1) allowing a Debtor to claim through her spouse. Debtor claimed a \$25,000 exemption amount, arguing she was not a member of the same household as her spouse and thus the statute's \$33,000 limit for "two or more members of a household" did not apply. Debtor's Ch. 7 trustee objected claiming Debtor's exemption was limited to \$8,000, the balance of the \$33,000 household maximum as provided for in the statute.

Issue: May a husband and wife each claim a \$25,000 homestead exemption in the same property (an aggregate of \$50,000) when they are not living together at the homestead when their respective bankruptcies are filed?

Holding: Trustee's objection sustained. Aggregate exemption limited to \$33,000 per the statute. The court examined the legislative history of ORS 23.240(1) and found a "family" purpose was contemplated in the household exemption limits. Debtor's sole claim to the exemption arose from her marital relationship. If she had divorced pre-filing she would not have been entitled to claim the exemption. Public policy also dictated that the exemption be so limited. Otherwise, by pre-bankruptcy manipulation, the exemption could be increased beyond the maximum amount envisioned by the legislature. On the facts at bar, Debtor and her spouse were presumed to be members of the same household for purposes of ORS 23.240(1).

The court's holding was without prejudice to the Debtor seeking an equitable division of the \$33,000 aggregate exemption in a dissolution proceeding or otherwise.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
          ) 698-63466-aer7  
KAREN THORNBERG MEYERS, )  
                                  ) MEMORANDUM OPINION  
                                  )  
\_\_\_\_\_  
                                  ) Debtor. )

This matter comes before the court upon the trustee's objection to the debtor's claim of a homestead exemption in certain real property located at 1655 Fircrest Drive, Eugene, Oregon. The trustee maintains that the debtor's exemption claim should be limited to the sum of \$8,000 since her husband, Benjamin R. Meyers, has already been allowed a full \$25,000 homestead exemption in the same property, in a separate bankruptcy proceeding, and that the combined exemptions should not exceed the statutory maximum of \$33,000. The debtor maintains that she is not bound by the \$33,000 limitation contained in O.R.S. 23.240 because she and her husband were not members of the same household when she filed her bankruptcy petition, herein, on June 12, 1998.

1 **FACTS**

2 The facts are largely undisputed. Based upon the memoranda  
3 submitted by the parties, a review of the court's file in this case  
4 and in the case of Benjamin R. Meyers, 697-63375-aer7, the court  
5 finds the following to be the pertinent facts.

6 The debtor and her husband, Benjamin R. Meyers (Meyers) own  
7 the property located at 1655 Fircrest Drive, Eugene, Oregon (the  
8 Fircrest property) as tenants by the entirety. Meyers filed his  
9 Chapter 7 petition on June 10, 1997. In the Meyers case, he  
10 scheduled his ownership interest in the Fircrest property and  
11 claimed a \$25,000 homestead exemption therein. Apparently, he was  
12 living at the Fircrest property at the time. The trustee in the  
13 Meyers case (Meyers trustee) did not object to the claim of  
14 exemption, accordingly, it has been allowed. The Meyers case  
15 remains open.

16 Debtor filed her Chapter 7 petition, herein, on June 12,  
17 1998. She has likewise scheduled her ownership interest in the  
18 Fircrest property and claimed a \$25,000 homestead exemption therein.  
19 At all times material herein, the debtor and Meyers were not living  
20 together. In other words, debtor was not living at the Fircrest  
21 property when she filed her petition or at any time thereafter. At  
22 all times material herein, debtor and Meyers were married. The  
23 debtor has indicated that she is either contemplating or in the  
24 process of obtaining a dissolution of marriage from Meyers. She was  
25 forced from the family home by Meyers.

1 No evidence has been presented that either a parent or child  
2 of the debtor resides at the Fircrest property. Indeed, the  
3 debtor's sole claim to the homestead exemption in the Fircrest  
4 property rests upon the fact that it is the actual abode of and  
5 occupied by her spouse, Meyers.

#### 6 ISSUE

7 The issue to be decided by this court is whether or not a  
8 husband and wife may each claim a \$25,000 homestead exemption in the  
9 same property (an aggregate of \$50,000) when they are not living  
10 together at the homestead when their respective bankruptcies are  
11 filed.

#### 12 DISCUSSION

13 The Oregon homestead exemption statute provides in pertinent  
14 part as follows:

15 O.R.S. 23.240(1) A homestead shall be exempt from sale  
16 on execution, from the lien of every judgment and from  
17 liability in any form for the debts of the owner to  
18 the amount in value of \$25,000, . . . When two or more  
19 members of a household are debtors. . . their combined  
20 exemptions under this section shall not exceed  
21 \$33,000. The homestead must be the actual abode of  
22 and occupied by the owner, or the owner's spouse,  
23 parent or child. . . . (Emphasis added)

24 The trustee maintains that even though the family or  
25 household relationship between debtor and her husband may be  
26 dysfunctional or lack harmony, the combined entitlement to a  
homestead exemption is still as a household. He maintains that  
there is no language in the statute that suggests a possible  
exemption of \$50,000 in the same property for a husband and wife,  
whether living together or apart.

1 Debtor maintains that she is entitled to claim her own  
2 \$25,000 homestead exemption in the Fircrest property in addition to  
3 that claimed by her husband, since they are not members of the same  
4 household. She notes that she has not engaged in any fraudulent  
5 conduct or otherwise attempted to manipulate the amount of the  
6 exemption in bad faith.

7 Debtor relies upon an unpublished decision, In re Keown, Case  
8 #380-02418-H7 (Bankr. D. Or. 2/24/81) (unpublished) (Hess, J.) and a  
9 number of Oregon cases which have held that the phrase "members of a  
10 household" refers to people who dwell together under one roof. See  
11 Grange Insurance Association v. Stumpf, 140 Or.App. 577, 915 P.2d  
12 1033 (1996) and Farmers Insurance Company of Oregon v. Stout, 82  
13 Or.App. 589, 728 P.2d 937 (1987).

14 The facts in the Keown case are distinguishable from the case  
15 at bar. There, the Keowns had completed a dissolution of marriage  
16 proceeding prior to the filing of their bankruptcy proceedings. A  
17 decree had been entered by the state court providing that they were  
18 to be the owners of a mobile home and the real property on which it  
19 was situated as tenants in common, each with an undivided  $\frac{1}{2}$  interest  
20 therein. In the bankruptcy proceeding involving Mrs. Keown, she  
21 claimed the homestead exemption in the subject property on the basis  
22 that, while she did not occupy the premises as her home on the date  
23 of her filing, her absence was only temporary and she intended to  
24 reoccupy it as her homestead. Subsequently, in the bankruptcy of  
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1 Mr. Keown, he likewise attempted to claim the amount of the  
2 available homestead exemption.<sup>1</sup>

3 As in this case, the trustee objected on the basis that since  
4 the full exemption had already been allowed to Mrs. Keown, it would  
5 be improper to allow any amount in the bankruptcy proceedings  
6 involving Mr. Keown. The court allowed the second exemption, citing  
7 a number of cases defining "members of a household" as being those  
8 who live together as a family and concluded that ". . . Mr. & Mrs.  
9 Keown were not 'members of a household' during the times in  
10 question. . . . [T]hey were unrelated and therefore were not members  
11 of a family. In addition they were not living together." In re  
12 Keown, Case #380-02418-H7 (Bankr. D. Or.  
13 2/24/81) (unpublished) (Hess, J.) p.4.

14 Here, the debtor and Meyers were still married at the time  
15 debtor filed her bankruptcy petition. Indeed, her sole claim to the  
16 homestead exemption appears to rest upon the language in the statute

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18 <sup>1</sup>At the time of the Keown bankruptcies, O.R.S. 23.240 provided in relevant  
part that:

19 A homestead shall be exempt from sale on execution, from the lien of  
20 every judgment and from liability in any form for the debts of the  
21 owner to the amount in value of \$12,000, except as otherwise provided  
22 by law. When two or more members of a household are debtors whose  
23 interest in the homestead are subject to sale on 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, parent or  
child, but such exemption shall not be impaired by:

24 (a) Temporary removal or temporary absence with the intention to  
25 reoccupy the same as a homestead;

26 Although it is not clear, it appears that Mr. Keown claimed the exemption on  
the basis that it was his actual abode.

1 providing that ". . .The homestead must be the actual abode of and  
2 occupied by. . .the owner's spouse,. . . ." In other words, had she  
3 divorced Meyers prior to the filing of her bankruptcy petition, she  
4 would have no claim to a homestead exemption in the Fircrest  
5 property under Oregon law. The Oregon cases relied upon by debtor  
6 are not cases interpreting O.R.S. 23.240.

7 The Oregon law providing for a homestead exemption has been  
8 in existence for quite some time. Prior to its amendment in 1975,  
9 the statute provided in pertinent part as follows:

10 O.R.S. 23.240(1) - A homestead shall be exempt from  
11 sale on execution, from the lien of every judgment and  
12 from liability in any form for the debts of the owner  
to the amount in value of \$7,500, . . .

13 At that time, the language concerning "members of a household" did  
14 not appear in the statute.

15 The statute was amended in 1975 to provide as follows:

16 O.R.S. 23.240(1) - A homestead shall be exempt from  
17 sale on execution, from the lien of every judgment and  
18 from liability in any form for the debts of the owner  
19 to the amount in value of \$12,000,. . .When two or  
20 more members of a household are debtors whose interest  
in the household are subject to sale on execution, . .  
their combined exemptions under this section shall  
not exceed \$12,000.

21 Thus, the 1975 amendments had the effect of raising the allowable  
22 exemption, but making it explicit that only one exemption would be  
23 allowed per household.

24 One of the primary proponents of the 1975 amendments to the  
25 statute was Richard Forester, a Deputy Director of Legal Aid  
26 Service. In a letter dated March 1, 1975, he wrote to John

1 DeWenter, Administrative Assistant, Senate Committee on the  
2 Judiciary indicating:

3 VII. On homestead exemptions we give the Committee  
4 the optional language sections depending upon whether  
5 they choose family use or single but cumulative  
6 exemptions. It was the general consensus of those  
7 consulted that a family purpose exemption of one  
8 exemption per homestead should be applied rather than  
9 allowing combining the exemptions by the judgment  
10 debtors. I for one feel that more debtors will be  
11 protected by the family purpose doctrine if the  
12 exemption is increased than by a single exemption  
13 which would leave the exemption substantially where it  
14 is now.

15 Exhibits S.B. 229, Senate Judiciary Committee, 1975 Session,  
16 at p.57.

17 In short, the legislative intent was to provide for "a family  
18 purpose exemption" rather than allowing cumulative exemptions by  
19 each judgment debtor. Although the statute now permits a household  
20 exemption which is larger than the individual exemption, the idea of  
21 the family purpose exemption is still clearly applicable by the  
22 terms of the present statute.<sup>2</sup> Here, the debtor's sole claim to the  
23 exemption arises from the marital relationship. The legislative  
24 intent is clear that the maximum household exemption is all that  
25 should be allowed.

26 Finally, as a matter of public policy, the position urged by  
the debtor lacks merit. She seeks to rely upon a fortuitous set of  
circumstances to increase the exemption beyond that envisioned by  
the legislature. On the one hand, she argues her entitlement to the

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<sup>2</sup>Over the years, both the individual and household amounts have been  
increased. In 1981, the amounts were increased to \$15,000 and \$20,000  
respectively. 1981 c.903 §4a. They were increased again in 1993 to the current  
\$25,000 and \$33,000. 1993 c.439 §2.



1 exemption by virtue of her status as the wife of the occupant of the  
2 Fircrest property. On the other hand, she maintains she is not part  
3 of the same household with Meyers and should therefore have a  
4 complete, separate, and additional exemption.

5 If this view were to prevail, the opportunity for creative  
6 pre-bankruptcy planning would be obvious. Frequently, divorce  
7 proceedings and bankruptcy proceedings are closely intertwined.  
8 Debtors should not be given the opportunity to increase their  
9 homestead exemptions beyond the maximum amount envisioned by the  
10 Oregon Legislature by the timing of divorce and bankruptcy  
11 proceedings. Based upon the facts presented in this case, the  
12 debtor and Meyers must be presumed to be members of the same  
13 household for the purpose of claiming the homestead exemption.

14 Based upon the foregoing, this court concludes that the  
15 trustee's objection to the homestead exemption should be sustained.  
16 The exemption should be allowed in the amount of \$8,000.<sup>3</sup> This  
17 opinion contains the court's findings of fact and conclusions of  
18 law; they shall not be separately stated, an order consistent  
19 herewith shall be entered.

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22 ALBERT E. RADCLIFFE  
23 Bankruptcy Judge

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25 <sup>3</sup>The parties have stipulated that the allowance of \$25,000 for Meyers and  
26 \$8,000 as to the debtor is not binding between the parties; they are free to seek  
an equitable division of the \$33,000 aggregate exemption as part of the  
dissolution of marriage proceedings or otherwise.