

REAL PROPERTY OWNERSHIP AND EXEMPTIONS IN MISSISSIPPI CHAPTER 7 CASES

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I. INTRODUCTION

II. TYPES OF REAL PROPERTY OWNERSHIP - STRATEGIC IMPLICATIONS

A. TENANTS IN COMMON (5 minutes)

Legal Framework: • Each tenant holds separate, undivided interest • No survivorship rights - interest passes to heirs/devisees • Any tenant can petition for partition

Trustee Sale and Proceeds Distribution: • 11 U.S.C. § 363(h): Governs trustee sales affecting co-owners • YES: Non-debtor co-owner receives proportionate share of proceeds • Adjustment Factors: Courts may modify distribution based on:

- Actual ownership percentages (may not be 50/50)
- Who paid mortgage, taxes, improvements
- Unequal contributions to acquisition

Federal: 11 U.S.C. § 363(h) requires balancing test for co-owner protection

Example - "The Bickering Brothers": Facts: Bob Bickerson and his brother Bill own rental property 60/40 as tenants in common. Bob files Chapter 7. Property worth \$200,000, Bob owes \$50,000 in taxes. Analysis: Trustee can sell Bob's 60% interest or entire property under § 363(h). If entire property sold for \$180,000 (TIC discount), Bill gets 40% = \$72,000, trustee gets \$108,000 minus exemptions. Practice Tip: Document Bill's greater financial contributions to justify larger share.

B. JOINT TENANTS WITH RIGHT OF SURVIVORSHIP

Critical Legal Point: Joint tenancy is SEVERED upon bankruptcy filing • Property becomes tenancy in common • Loses survivorship benefit permanently • Exposes debtor's interest to liquidation

Trustee Sale and Proceeds Distribution: • Severance Effect: Joint tenancy converts to 50/50 tenancy in common • Proceeds: Non-filing co-owner entitled to 50% of net proceeds •

Contribution Credits: Courts may adjust for unequal payments/improvements • Strategic Consideration: Co-owner buyout often preferable to trustee sale

Case Law: • Severance Upon Filing: Well-established federal precedent that filing severs joint tenancy • 11 U.S.C. § 363(h): Same protections apply to severed joint tenancy as TIC

Example - "The Gambling Gardeners": Facts: Sally Spendthrift and her sister Susan own \$300,000 home as joint tenants. Sally has gambling debts, files Chapter 7. Susan paid all mortgage payments for 5 years. Analysis: Joint tenancy severed at filing. Trustee can sell Sally's 50% or seek § 363(h) sale. Susan entitled to 50% of proceeds, but may argue for contribution adjustment. Practice Tip: Document Susan's extra payments pre-filing to argue for larger distribution share.

C. TENANTS BY THE ENTIRETY - THE GOLD STANDARD

Mississippi Law Foundation: • Common law recognition preserved • Protection: Individual creditor claims cannot reach entireties property • Federal Recognition: 11 U.S.C. § 541(a)(2) excludes from bankruptcy estate

Trustee Sale and Proceeds: • Individual Filing: NO sale possible - property not in bankruptcy estate • Joint Filing: Property enters estate, subject to homestead exemption only • Maximum Protection: Best ownership structure for married couples

Key Cases:

In re: Vel Marie Dixon, No. 10-51214-KMS (Bankr. S.D. Miss. 2011)

In re Pace, 521 B.R. 124 (Bankr. N.D. Miss. 2014) • Issue: Whether joint debtors can separately claim \$75,000 homestead exemption • Holding: Joint debtors NOT permitted to claim separate homestead exemptions • Practice Tip: Only one \$75,000 exemption per household, regardless of filing status • Strategic Implication: Makes individual filing with entireties ownership even more valuable

In re Botsay, Case No. 20-51440-KMS (Bankr. S.D. Miss. 2022) • Issue: Protection of entireties property in individual spouse filing • Holding: Confirmed Mississippi law protects entireties property from individual creditor claims • Practice Point: Property excluded from bankruptcy estate under § 541(a)(2)

Example - "The Spendthrift Spouses": Facts: Harry Highroller and wife Prudence Penny own \$400,000 home as tenants by the entirety. Harry has \$200,000 in gambling debts, files Chapter 7 alone. Analysis: Entireties property completely protected - spouses treated as one person. Trustee cannot reach any portion of property. No proceeds distribution issues. Practice Tip:

Verify deed language creates true entireties - "Harry and Prudence, husband and wife" may not be sufficient without "as tenants by the entirety" language.

III. HOMESTEAD AND WILDCARD EXEMPTIONS - MAXIMIZATION STRATEGIES

A. HOMESTEAD EXEMPTION STRATEGIC USE

Current Law: Miss. Code Ann. § 85-3-21 • Real Property: Up to \$75,000 equity • Mobile Home: Up to \$30,000 (separate category)

Mississippi Exemption Scheme Confirmation:

In re Knight, Case No. 15-50011-KMS (Bankr. S.D. Miss.) • Issue: Application of Mississippi state exemption scheme in bankruptcy • Holding: Confirmed Mississippi's opt-out status from federal exemptions • Practice Point: Debtors must use Mississippi exemptions, cannot elect federal • Strategic Implication: Makes understanding Mississippi exemption law critical

Critical Holdings from In re Pace: • One Exemption Rule: Only ONE \$75,000 homestead exemption per household • Joint Filing Impact: Married couples filing jointly cannot double the exemption • Practice Implication: Makes entireties ownership and individual filing more valuable

Trustee Sale Impact: • Exemption Applied: Reduces trustee recovery from sale proceeds • Strategic Planning: Pre-filing equity reduction if over exemption limits

Example - "The Naive Newlyweds": Facts: Ned and Nancy Newlywed own \$200,000 home with \$150,000 equity, both file Chapter 7. Pre-Pace Assumption: $\$75,000 \times 2 = \$150,000$ full protection Post-Pace Reality: Only \$75,000 protection, trustee gets \$75,000 Better Strategy: Should have held as entireties, filed individually

B. WILDCARD EXEMPTION ENHANCEMENT

Miss. Code Ann. § 85-3-1 • General: \$10,000 personal property • Age 70+: \$50,000 for ANY property

Strategic Applications: • Stack with homestead for additional real property protection • Senior debtors have significant additional protection • Use for property improvements or repairs pre-filing

Example - "Generous Grandpa George": Facts: George Golden, age 73, owns \$125,000 home with \$125,000 equity. Standard Protection: \$75,000 homestead + \$10,000 wildcard = \$85,000 Senior Enhancement: \$75,000 homestead + \$50,000 senior wildcard = \$125,000 Result: Complete protection of home equity

IV. ADDITIONAL PROPERTY AND HEIR PROPERTY ISSUES

A. NON-HOMESTEAD REAL PROPERTY EXEMPTIONS

Types of Additional Property: • Vacant land • Rental/investment property • Inherited property not used as residence • Commercial property • Recreational property (hunting land, cabins)

Exemption Limitations: • NO homestead exemption available for non-residence property • Wildcard exemption DOES apply to any property type • Strategic use of wildcard for maximum protection

Valuation Challenges: • Rural/undeveloped land often difficult to value • Trustee may abandon low-value property • Consider cost of sale vs. potential recovery

B. HEIR PROPERTY COMPLICATIONS

Definition: • Property passed down through generations without proper probate • Multiple heirs with fractional interests • Often unclear ownership percentages • Common in Mississippi, particularly rural areas

Title Issues: • Clouded title prevents easy sale • Multiple co-owners across generations • Some heirs may be unknown or deceased • Partition actions often required

Bankruptcy Implications: • Trustee may abandon due to title complications • Difficult to value fractional interest in clouded title • Administrative expense of clearing title may exceed value

Strategic Considerations: • Document debtor's actual ownership percentage • Research family history and contributions • Consider quiet title action pre-filing if valuable

"The Messy Matriarch": Facts: Martha Messy inherited unclear interest in family property with 12 other relatives. Property worth \$240,000, but title clouded, no clear ownership percentages. Martha files Chapter 7. Analysis: Trustee likely to abandon due to administrative costs exceeding potential recovery. Unclear title makes sale difficult and expensive. Practice Tip: Document any improvements or tax payments Martha made to establish higher ownership percentage if trustee pursues.

V. FRAUDULENT TRANSFER RISKS AND PRE-PETITION PLANNING

A. LEGAL FRAMEWORK FOR FRAUDULENT TRANSFERS

Federal Bankruptcy Law: • **11 U.S.C. § 548:** Federal fraudulent transfer powers (2-year lookback)
• **11 U.S.C. § 544(b):** Incorporates state fraudulent transfer law • **Mississippi Uniform Fraudulent Transfer Act:** Miss. Code Ann. § 15-3-101 et seq. (3-year lookback)

Two Types of Fraudulent Transfers: • **Actual Fraud:** Intent to hinder, delay, or defraud creditors • **Constructive Fraud:** Transfer for less than reasonably equivalent value while insolvent

B. PRE-PETITION CONVERSION PLANNING - THE DANGER ZONE

Common "Conversion" Scenarios: • Liquidating investments to pay down mortgage • Selling non-exempt assets to buy homestead • Converting joint tenancy to entireties ownership • Using cash to make home improvements • Transferring property between family members

Legitimate vs. Fraudulent Purposes: • **Legitimate:** Ordinary business affairs, family planning, asset protection within legal limits • **Problematic:** Converting large amounts close to filing, unusual transaction timing, attempts to hide assets

Timing Considerations: • **Safe Harbor:** Generally 2+ years before financial distress • **Gray Area:** 6 months to 2 years before filing - depends on circumstances • **Red Zone:** Within 6 months of filing - high scrutiny expected

C. CASE LAW AND ENFORCEMENT

Federal Standards: • **Badges of Fraud:** Unusual timing, inadequate consideration, family transfers, debtor retaining control • **Burden of Proof:** Trustee must prove by preponderance of evidence • **Intent Analysis:** Look at totality of circumstances

Mississippi State Law: • **Miss. Code Ann. § 15-3-105:** Transfers to insiders (family members) presumed fraudulent if debtor insolvent • **Miss. Code Ann. § 15-3-106:** Transfers without reasonably equivalent value • **Remedies:** Avoidance and recovery of property or value

D. PRACTICAL EXAMPLES AND RED FLAGS

Example 1 - "Panicking Patricia": *Facts:* Patricia Panic receives \$75,000 inheritance. Knowing she has \$100,000 in credit card debt, she immediately pays \$70,000 toward her mortgage principal 3 weeks before filing Chapter 7. *Legal Issue:* Constructive fraudulent transfer - converted non-exempt cash to exempt homestead equity while insolvent *Trustee Action:* Can recover \$70,000 as fraudulent transfer, claim it wasn't reasonably equivalent value *Practice Tip:*

Example 2 - "Transferring Tommy": *Facts:* Tommy Trouble owns \$300,000 home individually. Facing lawsuits, he quick-claims deed to wife Wendy for \$1, then they file joint Chapter 7 claiming entireties protection. *Fraudulent Transfer Issues:* Transfer for nominal consideration, intent to hinder creditors, timing suspicious *Trustee Powers:* Can avoid transfer under § 548,

recover property for estate *Better Approach*: Should have done "strawman" deed years earlier with proper consideration

VI. DETAILED CASE STUDIES AND PROBLEM ANALYSIS

Case Study 1: Joint Tenancy Severance Surprise *"The Clueless Co-owners"*: Facts: Charlie Clueless and cousin Carl own \$250,000 lake house as joint tenants. Charlie files Chapter 7, thinking Carl gets the house through survivorship. Reality Check: Joint tenancy severed at filing - no survivorship protection Trustee Action: Can sell Charlie's 50% interest or entire property under § 363(h) Proceeds: Carl entitled to 50% of net proceeds Practice Lesson: Educate clients that filing destroys survivorship benefits

Case Study 2: The Pace Decision Impact *"The Presumptuous Pacers"*: Facts: Pete and Patty Pacer, married couple with \$150,000 home equity, both filing Chapter 7 (pre-Pace strategy) Old Assumption: Each spouse could claim \$75,000 = \$150,000 total protection Post-Pace Reality: Only \$75,000 total homestead protection, trustee gets \$75,000 Better Strategy: Should have restructured as entireties ownership and filed individually

Case Study 3: Heir Property Nightmare *"The Complicated Clan"*: Facts: Clara Complicated inherited 1/15 interest in 200-acre family farm from great-grandmother. Property worth \$300,000 total, Clara's interest = \$20,000. No probate ever done, 14 other heirs scattered across multiple states. Clara files Chapter 7. Title Issues: Clouded title, some heirs deceased, unknown current ownership Trustee Analysis: Administrative costs (title search, quiet title action, partition) would exceed \$20,000 recovery Result: Trustee abandons property back to Clara Practice Lesson: Complex heir property often not economical for trustee to pursue

Case Study 4: The Conversion Catastrophe *"The Desperate Debtor"*: Facts: Derek Desperate receives \$200,000 life insurance payout in January. Knowing he has overwhelming business debts, he pays off \$150,000 mortgage in February and files Chapter 7 in March. Trustee Investigation: Discovers life insurance payout, immediate mortgage payoff, quick bankruptcy filing Fraudulent Transfer Analysis: Constructive fraud - converted non-exempt life insurance to exempt homestead while insolvent, no reasonably equivalent value to creditors Result: Trustee recovers \$150,000, Derek loses home anyway plus faces potential discharge denial Practice Lesson: Timing and amount of conversion created obvious fraudulent transfer - should have used smaller amounts over extended period for legitimate home improvements instead of lump sum mortgage payoff

VII. MODERN VALUATION AND AI TOOLS (5 minutes)

A. VALUATION STRATEGY FOR EXEMPTION PLANNING

Pre-Filing Assessment: • Use Zillow, Redfin for quick estimates • Check tax assessor values (typically 70-80% of market) • AI Enhancement: Compare multiple sources quickly

VII. CONCLUSION AND Q&A
