

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA

In re: )  
)  
TEMPORARY DEFERRAL OF )  
RECORDATION REQUIREMENT )  
TO CLAIM HOMESTEAD )  
EXEMPTIONS IN )  
BANKRUPTCY CASES DURING )  
THE COVID-19 OUTBREAK, )  
)

Standing Order No. 20-11

ORDER TEMPORARILY DEFERRING RECORDATION REQUIREMENT TO CLAIM  
HOMESTEAD EXEMPTIONS IN BANKRUPTCY CASES

This Order is being issued in response to the recent outbreak of Coronavirus Disease 2019 (COVID-19) in the United States and the Commonwealth of Virginia. On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic. On March 12, 2020, the Governor declared a state of emergency in the Commonwealth of Virginia due to the continued spread of COVID-19. On March 13, 2020, the President of the United States declared a national emergency as a result of the COVID-19 outbreak. On March 16, 2020, the Chief Justice of the Supreme Court of Virginia declared a judicial emergency in response to COVID-19, temporarily suspending all non-essential, non-emergency proceedings in all circuit and district courts in Virginia. The Centers for Disease Control and Prevention (“CDC”) advises that individuals should engage in “social distancing” to prevent the spread of COVID-19. In addition, persons may be required to self-isolate if they are at high risk of contracting or suffering complications from COVID-19, have a travel history to an area where COVID-19 is widespread in the community, or have been exposed to or diagnosed with COVID-19.<sup>1</sup>

In bankruptcy, a debtor may set apart certain property as exempt pursuant 11 U.S.C. § 522. A debtor in Virginia is limited to state law exemptions, federal nonbankruptcy exemptions, and those set forth in § 522(b)(2). *See* 11 U.S.C. § 522(b)(2); Va. Code Ann. § 34-3.1. To claim a

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<sup>1</sup> *See* Va. Dep’t of Health, <http://www.vdh.virginia.gov/coronavirus/frequently-asked-questions/special-populations-immunocompromised-or-underlying-health-conditions/> (last visited March 27, 2020); <http://www.vdh.virginia.gov/coronavirus/local-exposure/> (last visited March 27, 2020); <http://www.vdh.virginia.gov/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/> (last visited March 27, 2020).

homestead exemption in real or personal property under Virginia law, a debtor must record a duly executed writing in the appropriate county or city, setting apart the property, within five (5) days after the date of the meeting of creditors held under 11 U.S.C. § 341. Va. Code Ann. §§ 34-6, 34-13, 34-14, 34-17. It appears to the Court that a debtor's ability to timely record a writing in the appropriate state court may be impeded by the impact of the COVID-19 outbreak on mobility and access to the courts, potentially jeopardizing a debtor's ability to exempt property in a bankruptcy case. Therefore, the Court finds good cause exists to temporarily waive the requirement under § 34-17 of the Code of Virginia that a debtor set apart real or personal property within five (5) days after the date the § 341 meeting of creditors is held and to deem an exemption timely perfected so long as the debtor claims an exemption on Schedule C and files a duly executed writing in the appropriate county or city, setting apart the property, on or before June 30, 2020, or within five (5) days after the date the § 341 meeting of creditors is held, whichever is later. The Court further finds that good cause exists to allow a party in interest to file an objection to a claim of exemption by the later of July 31, 2020, thirty (30) days after the date the § 341 meeting of creditors is held, or thirty (30) days after any amendment to the list or supplemental schedules is filed.

The Court finds that this temporary accommodation is entirely consistent with legislation recently approved by the Governor of Virginia and due to become effective July 1, 2020, which eliminates the 5-day requirement for the perfection of homestead exemptions set forth in current § 34-17 of the Code of Virginia. *Virginia House Bill 790: Homestead exemption; bankruptcy exemptions*, 2020 Va. Acts ch. \_\_ <http://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB790ER>. Now therefore it is hereby ORDERED effective on April 1, 2020, through and including June 30, 2020, that in bankruptcy cases filed on or after February 1, 2020:

1. An exemption shall be deemed timely perfected for the purpose of satisfying § 34-17 of the Code of Virginia provided that the debtor claims an exemption on Schedule C and files a duly executed writing in the appropriate county or city, setting apart the property, on or before June 30, 2020, or within five (5) days after the date the § 341 meeting of creditors is held, whichever is later.
2. A party in interest may object to a claim of exemption by the later of July 31, 2020, thirty (30) days after the date the § 341 meeting of creditors is held, or thirty (30) days after any amendment to the list or supplemental schedules is filed.

3. All other provisions of Title 34 of the Code of Virginia remain in full force and effect in bankruptcy cases in this Court.

Because the public health emergency continues to evolve, this Order may be modified should future developments so warrant.

It is so ORDERED.

**FOR THE COURT:**

  
FRANK J. SANTORO  
Chief United State Bankruptcy Judge

Dated: March 27, 2020