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**FINAL REPORT
OF THE
SENATE HOMESTEAD EXEMPTIONS FOR
PURPOSES OF BANKRUPTCY STUDY COMMITTEE**

The Honorable Ed Tarver, Chairman
Senator, 22nd District

The Honorable John Wiles
Senator, 37th District

The Honorable David Adelman
Senator, 42nd District

The Honorable Bill Cowsert
Senator, 46th District

The Honorable Renee Unterman
Senator, 45th District

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INTRODUCTION

The Senate Homestead Exemptions for Purposes of Bankruptcy Study Committee was created by Senate Resolution 1289 during the 2008 Legislative Session. The purpose of the Committee is to research the current Georgia homestead exemption for debtors in bankruptcy and receive information regarding possible adjustments to the exemption with adequate, non-discriminatory protections for debtors, creditors and related industries.¹

On October 8, 2008, Lieutenant Governor Casey Cagle appointed the following five members to serve on the Committee: Senator Ed Tarver as Chairman; Senator John Wiles; Senator David Adelman; Senator Bill Cowsert; and Senator Renee Unterman.

STUDY COMMITTEE MEETINGS AND PRESENTATIONS

The Committee convened on November 25, 2008 in Room 108 of the State Capital. Chairman Ed Tarver made opening comments reflecting the main goal of the first meeting of the committee; to examine the conditions and needs related to the current homestead exemption policy by gathering information and informed opinions from all interested and affected parties. Witnesses for the first meeting included bankruptcy scholars from local law schools; debtors' attorneys representing underprivileged and elderly clients; elderly individuals in Chapter 13 bankruptcy desiring to convert to a Chapter 7 bankruptcy while remaining in their homes; a representative from the Atlanta Legal Aid Home Defense Project; representatives from the banking industry and a Chapter 7 Trustee speaking on behalf of the Georgia Chapter 7 Trustees. The goal of the second and final study committee meeting on December 18, 2008 was to receive input from the Georgia mortgage bankers, a Chapter 13 Trustee, entities who are often unsecured creditors and the leadership of the State Bar of Georgia, Bankruptcy Law Section.

BACKGROUND

The United States Constitution authorizes Congress to adopt "uniform laws" on bankruptcy. The federal bankruptcy law has two goals: to obtain fair treatment for creditors and to obtain a fresh start for debtors involved in bankruptcy proceedings.

Chapter 7 and Chapter 13 are the two bankruptcy chapters most often used by individual debtors, who are often referred to as consumer debtors. Other chapters of the Federal Bankruptcy Code provide debt relief for businesses, family farmers, fisherman, municipalities and non-US debtors.

Chapter 7 offers an orderly, court-supervised procedure by which a trustee takes over the assets of the debtor's estate, reduces them to cash and makes distributions to creditors, subject to the debtor's right to retain certain exempt property. In most Chapter 7 cases, the debtor receives a discharge that releases him or her from personal liability for certain dischargeable debts within a few months after the petition is filed.

¹ [HTTP://WWW.LEGIS.GA.GOV/LEGIS/2007_08/SUM/SR1289.HTM](http://www.legis.ga.gov/legis/2007_08/SUM/SR1289.HTM)

In 2005 major changes to federal bankruptcy law passed including a "means test," which is a formula to determine whether or not the consumer would have enough money available to make some minimal payments to creditors in a Chapter 13 bankruptcy plan. An individual must pass the means test to be eligible for Chapter 7 relief.

Chapter 13 allows a person to keep and use all property, whether exempt or not, and to pay some or all debts according to a plan approved by the court. Unlike Chapter 7, the debtor does not receive an immediate discharge of debts. The debtor must complete the payments required under the plan before receiving the discharge. While the differences between Chapters 7 and 13 are relevant to the discussion of Georgia's exemptions, any changes to Georgia's homestead exemption or bankruptcy exemptions in general will not affect the conducting of Chapter 13 proceedings in the Federal Bankruptcy Courts of Georgia.

Federal bankruptcy law governs bankruptcy proceedings, except when Congress has chosen to defer to state law. Exemptions are the one place where bankruptcy law varies from state to state. Congress creates a set of exemptions in the federal code, which are adjusted periodically based on the consumer price index (CPI), but allows each state to opt-out of those exemptions in favor of state exemptions. Sixteen states allow debtors to elect the Federal Bankruptcy Code exemptions. In those states, debtors get their choice between the federal exemptions and those in the laws of their state. For the balance of the states, the state exemptions are the only option available to the debtor. States creating their own exemptions are dependent on their legislatures to recalculate and adjust the bankruptcy exemptions on an as needed basis or provide state statutory provisions for the adjustment of the exemptions. Georgia is one of 34 states that elected to "opt-out" of the federal exemptions. See State Opt Out Table, Appendix A.

Exempt property is not subject to the claims of unsecured creditors and may be kept by an individual, subject to the rights of secured creditors and lien holders. Also, an individual must own an interest in the property to claim the property as exempt. An individual may exempt the equity value interest (the difference between what the property is worth and what is owed on it) in property that remains after liens and other creditors' interests are considered. However, any equity value interest in property above the exemption amount may be subject to the claims of unsecured creditors.

For example, an individual owns a home that he or she lives in. The fair market value of the home is \$150,000 and there is a \$135,000 mortgage on the house. This means that the individual's equity or value that this individual has in the house is \$15,000 ($\$150,000 - \$135,000 = \$15,000$). If a homestead exemption of \$15,000 (or any amount greater than \$15,000) exists, the entire equity in the house may be claimed as exempt.

In regard to personal residences, a possible homestead exemption applies if the debtor has equity in the home. If there is no equity in the house (today's value less costs of sale, less payoff balances on all liens and mortgages), the trustee in a Chapter 7 bankruptcy will abandon the house to the debtor and they can choose to remain in the home if they are able to make the mortgage payments.

BANKRUPTCY EXEMPTIONS IN GEORGIA

In Georgia, debtors in Chapter 7 bankruptcy must generally use the Georgia exemptions; however, special rules apply as to which state or federal exemptions may be used if an individual's domicile has not been continuously located in Georgia for the two-year period prior to filing a bankruptcy petition.

Georgia's bankruptcy exemptions were last modified on July 1, 2001. Prior to being modified by House Bill 373 during the 2001 Session of the General Assembly, the last modification occurred in 1981. The 2001 changes included updating the value of exemptions that debtors will be allowed in bankruptcy proceedings in several different areas to reflect the increase in cost of living since the 1980 Consumer Price Index. Also, the exemptions were modified to be more consistent with federal exemptions. The 2001 Act raised the exemptible amount of a debtors equity in their primary residence from \$5,000 to \$10,000; it also provided that in situations where the title to the property used for this homestead exemption is held in the name of only one spouse, the exemption amount is \$20,000, thereby guaranteeing a maximum \$10,000 to each spouse as a homestead exemption. The 2001 Act also raised: the exemptible value in a motor vehicle from \$1,000 to \$3,500; the maximum exemptible value of any one particular household item from \$200 to \$300; and the aggregate amount of exemptible value in household goods from \$3,500 to \$5,000. The 2001 Act raised the residual exemption amount from \$400 to \$600, plus any amount of the homestead exemption that goes unused up to \$5,000; the exemptible value in awards for a debtors pecuniary loss from \$7,500 to \$10,000; and the amount of exemptible value in tools of the trade and professional books from \$500 to \$1,500. Finally, the 2001 Act added a provision which limits the exemptible cash value of an unmaturred life insurance policy to \$2,000.²

The following is a summary of the Georgia exemptions that can be claimed to exempt both real and personal property in a bankruptcy petition.³

<u>Property</u>	<u>Limit</u>
Real Property (Homestead; Residence)	\$10,000 (\$20,000 joint case)
Automobiles	\$3,500 in one car (\$7,000)
Jewelry	\$500 (\$1,000)
Furniture; Household; Clothing	\$5,000 (\$10,000)
Prescribed Health Aids	No Limit
Tools of the Trade	\$1500 (\$3,000)
Alimony & Support	As necessary
Life Insurance Proceeds	As necessary
Workers Compensation	100%

² [HTTP://WWW.LEGIS.GA.GOV/LEGIS/2001_02/FULLTEXT/HB373.HTM](http://www.legis.ga.gov/legis/2001_02/fulltext/hb373.htm)

³ [HTTP://WWW.GEORGIBANKRUPTCYBLOG.COM/ARCHIVES/49649-PRINT.HTML](http://www.georgiabankruptcyblog.com/archives/49649-print.html), O.C.G.A. §44-13-100

Wrongful Death Awards	As Necessary
Retirement Accounts	100% for most
Disability; Government Benefits	100%
Wildcard	\$600 per debtor plus the unused amount of the homestead exemption in any property

A complete list of Georgia Exemptions is available in Appendix B.

COMMITTEE FINDINGS

A. Demographics & Statistics

1. Who Files Bankruptcy?

Professor Marjorie Girth of Georgia State University’s College of Law stated prior to this decade, the typical personal bankruptcy petitioners were overwhelmingly married couples in their thirties with children, whose income as wage earners did not keep up with the increased expenses of a growing family or who experienced an unexpected loss of income. In this decade, the demographics of personal bankruptcy petitioners are varied with new identifiable groups joining the pre-existing dominant category. Consumer bankruptcy debtors are now often (1) households headed by a single woman; (2) military personnel whose income and job status have been interrupted by repeated deployments; and (3) senior citizens when their current incomes proved insufficient to manage their debts effectively, possibly because of prescription drug costs that exceed insurance coverage or because the assets on which they had relied upon for their incomes have dramatically lost value.

During Ms. Sarah Bolling of the Atlanta Legal Aid Society’s testimony, she cited to Elizabeth Warren’s 2001 book, *The Fragile Middle Class: Americans in Debt*, which states the following about filers of consumer bankruptcy:

- The average age of a bankruptcy filer is 38;
- Couples filing jointly make-up 44% of all bankruptcy filings;
- Another 30% of the filers are women filing bankruptcy alone;
- Most bankruptcy filers are slightly better educated than the general population;
- Half of all bankruptcy filers have experienced a serious health problem;
- 91% of bankruptcy filers have suffered a job loss, medical event or divorce;
- 40% of bankruptcies result from medical crises, unemployment or divorces;
- 90% of these filers have two car payments, a house payment, and an average of \$2,500 in credit card debt; and
- 10% of filers were delinquent only 5 to 29 days before bankruptcy⁴⁵

⁴ELIZABETH WARREN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2001)

⁵ These numbers have not been recalculated to reflect either the change in the CPI since 2001 (see Appendix C) or the 2005 federal changes, which require a “Means Test” in order to file Chapter 7 Bankruptcy.

2. Georgia's Bankruptcy Statistics & Causes

Nationally, 60% of all cases are filed under chapter 7; whereas, in Georgia the percentage is about 40%. Instead, in Georgia, Chapter 13 cases comprise about 60% of all those filed in 2006 and 2007. Additionally, in Georgia, there were 11.9 bankruptcies per 1000 households in 2006 and 14.6 in 2007. These percentages are more than double the national averages. Georgia has usually been right at or near the top of all states in terms of the total number of Chapter 13 cases filed, and the Northern[®] District of Georgia is almost always in the nation's top three filing districts for Chapter 13 cases.

There are a number of reasons, identical to the reason for Chapter 13 filings, why the total filings are high in this state:

(1) Georgia has non-judicial foreclosure that enables the lender to foreclose in about 30-35 days of declaring the loan in default and accelerating the balance. Georgia typically is in the top five states for the number of foreclosures. This drives up the total number of bankruptcy cases and Chapter 13 as well.⁶ This is the method most often employed by those wanting to keep their homes or simply delay having to vacate the home. If a debtor wants to keep the home, they usually file Chapter 13. If they change their minds later, the case might be converted to Chapter 7 or simply dismissed.

(2) The Northern District of Georgia, in particular, has been a high employment district until recently and regular income is required for eligibility under Chapter 13.⁷

(3) The Northern District of Georgia attracts many entrepreneurs who run small businesses, which are sole proprietorships- that experience cash flow problems and file bankruptcy, usually Chapter 13 if they want to continue to operate, and Chapter 7 if they are closing the business.⁸

(4) Chapter 13 attorneys in the Northern District of Georgia are paid far more for filing a Chapter 13 case than a Chapter 7: \$5,000 versus an average of around \$1,250. This gives the attorney an incentive to try for Chapter 13.⁹

3. Asset v. Non-Asset Cases

Assets in a bankruptcy estate may be real estate, personal injury claims, vehicles, promissory notes, or almost anything that has value. If a Chapter 7 trustee determines there is an asset to be liquidated with equity over and above the secured debt and exemption, the trustee proceeds to liquidate it through the appropriate means. The administration of an asset case may take anywhere from six months to several years, depending upon the nature of the asset, whether litigation is required and the complexity of the case in general.

⁶ Statements regarding non-judicial foreclosure being a cause of Georgia's high rate of bankruptcy were made by Professors Laura Spitz and Marjorie Girth, Attorney Sarah Bolling, Attorney Howard Rothbloom, Chapter 7 Trustee Neil Gordon and Chapter 13 Trustee Nancy Whaley.

⁷ Testimony of Chapter 7 Trustee Neil Gordon

⁸ Id.

⁹ Testimony of Chapter 7 Trustee Neil Gordon & Chapter 13 Trustee Nancy Whaley.

If there are no assets to be liquidated, the Chapter 7 trustee files a "Report of No Distribution," and their involvement with the case ends. The vast majority of filings are these "no asset" cases. In most circumstances, the Chapter 7 trustees are paid \$60.00 per case, sometimes less or none, depending on whether the debtor paid the filing fee to the Clerk of Court. Because of the exemption scheme in Georgia¹⁰, only a small fraction of the Chapter 7 cases filed in Georgia contain assets (not necessarily a home) that a trustee can liquidate for the benefit of creditors who are then paid by the trustee from the proceeds he or she has collected. The Georgia Chapter 7 trustees estimate that somewhere around 2-5% of all the cases filed are asset cases.

In Georgia, there were 40,290 Chapter 7 cases filed in 2006. Asset cases where funds were distributed and closed during that same period were approximately 1,130, a figure which illustrates the small number of asset cases. Other states with different exemption schemes may have different percentages of asset cases. The Georgia Chapter 7 trustees provided some numbers comparing some of the divisions in Region 21 of the U.S. Trustee system, which contains Georgia and Florida. The difference in asset case percentages is clear in the comparison of the numbers for asset cases closed in Florida compared to the Georgia numbers. In Orlando alone the number of asset cases closed between July 1, 2007 and June 30, 2008 was 2392 compared to 449 in Atlanta, because of the difference in the state exemption schemes.¹¹

B. Comparison of Exemptions

A majority of the states have opted out of the federal exemptions and have embraced markedly different policies for determining the extent of a debtor's fresh start. The diverse policies have produced disparate treatment of the homestead exemption in federal bankruptcy.¹² Homestead exemptions range from \$5,000 to an unlimited amount. The largest homestead exemptions exist in Kansas, Florida, Iowa, and Texas, which provide an unlimited dollar value homestead exemption. States with a \$5,000 homestead exemption include Alabama, Maryland, Ohio, Tennessee, and Virginia. See Appendix D.

The following is a comparison of property exemptions in states surrounding Georgia:

ALABAMA:

- Homestead exemption: not exceeding \$5,000 in value and 160 acres in area
- Unlimited cemetery lots
- Personal property: \$3,000
- Partnership property: unlimited
- Life insurance: entire cash value, and all proceeds paid upon death
- Crime victims compensation: unlimited
- Disability insurance: up to \$250 a month
- Annuity contracts: up to \$250 a month
- Unemployment compensation benefits: unlimited
- Workers compensation benefits and employees contributions: unlimited

¹⁰ O.C.G.A. Section 44-13-100,

¹¹ BARBARA STALZER, THE BANKRUPTCY PROCESS, EXEMPTIONS AND THE ROLE OF THE CHAPTER 7 TRUSTEE FOR THE SENATE BANKING STUDY COMMITTEE ON GEORGIA'S HOMESTEAD EXEMPTION FOR BANKRUPTCY PURPOSES (2008), See Appendix E.

¹² RYAN P. RIVERA, REAL PROPERTY, PROBATE AND TRUST JOURNAL (SPRING 2004).

FLORIDA:

- Homestead exemption: 160 acres of contiguous land and improvements thereon outside a municipality; within a municipality one-half (1/2) acre of contiguous land. There is no dollar limit to the amount that can be exempted, although the Bankruptcy Code changes limit the Florida exemption in certain cases to a cap of \$125,000.
- Life insurance policies: cash surrender value is exempt; proceeds of a life insurance policy are generally exempt from the claims of the insured's creditors. Various benefits such as crime victims' compensation, public assistance, veterans and disability income are all unlimited exemptions.
- Partnership property: exempt
- Motor vehicles: not to exceed \$1,000.
- Professionally prescribed health aides: unlimited for debtor and dependents.
- Personal property: not to exceed \$1,000.
- Educational benefits: pre-purchase contracts for the payment of college registration and dormitory costs that are paid out of the pre-paid post secondary education expense trust fund are exempt.
- Workers compensation benefits: unlimited.
- Funeral, direct consumer protection trust fund monies are exempt.
- Annuity contracts: cash surrender value or proceeds of an annuity contract are exempt.
- Wild card exemption (personal property) : \$1,000

NORTH CAROLINA

- Homestead: \$18,500 \$37,000 joint. In certain circumstances, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed \$37,000.
- Motor vehicle: \$3,500.
- Tools of trade: \$2,000.
- Household furnishings: household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for personal, family, or household use up to \$5,000 for the debtor plus \$1,000 for each dependent, not exceeding \$4,000 in total, for the dependents.
- Burial plots up to \$18,500, in lieu of homestead.
- Health aids: unlimited.
- Motor vehicle: Up to \$3,500.
- Personal injury recoveries.
- Wrongful death recoveries.
- Wild Card: \$5,000 less any amount claimed for homestead or burial exemption, of any property

SOUTH CAROLINA:

- Homestead exemption: \$50,000, joint 100,000 (effective on 7/1/ 2007).
- Motor vehicle: \$1,200.
- Personal property: \$2,500.
- Jewelry: \$500.

- Cash and other liquid assets: \$1,000.
- Tools of the trade: \$750.
- Unmatured life insurance contract: unlimited.
- Dividend interest or loan value of unmaturred life insurance contract: \$4,000.
- Professionally prescribed health aides: unlimited.
- Debtor's right to receive property traceable to an award under a victim's reparation law, for personal injury, life insurance payments which insure the life of an individual upon whom the debtor was dependent, unlimited.
- All proceeds in cash surrender value from an individual life insurance policy with the benefit of the insured's spouse, children or dependents, all proceeds of group life insurance policies, all benefits from accidental disability insurance contracts, workers compensation, public aid and assistance, crime victims reparation and partnership property.

TENNESSEE:

- Homestead: \$5,000 to \$25,000, depending upon age; aggregate exemption for jointly owned property cannot exceed \$7500.00.
- Family cemeteries and plots: limited to one acre.
- Personal property: \$4,000 (including money and funds on deposit with a bank).
- Personal clothing and family memorabilia: unlimited.
- Insurance benefits: health, accident or disability insurance proceeds are fully exempt.
- Life insurance: cash surrender value is exempt. If the insured dies with any sum of money payable at the time of death is also exempt.
- Workers compensation: unlimited.
- Criminal victims reparations (\$5,000.00), personal injury (\$7500.00) and wrongful death payments (for death of person upon whom debtor is dependent) (\$10,000), with a \$15,000 aggregate limit, are exempt.
- Payment for loss of future earnings: to the extent reasonably necessary for the support of the Debtor and any dependents.
- Trade implements: \$1,900.
- Health care aides: unlimited.
- Liquid assets, stocks or bonds are exempt only to the extent of the amount of any obligations owed by the Debtor pursuant to any final court order or judgment for child support and those funds must be immediately deposited into a court by the debtor.
- Partnership property: not liable for individual debts.¹³

Professor Laura Spitz of Emory University's Law School explained that the Georgia exemptions track the language of the federal exemptions, but the values for the Georgia exemptions are lower than the federal exemptions. The federal exemptions are adjusted periodically based on the CPI.¹⁴ The reason that some states choose to do the exemptions in a way that tracks the federal

¹³ BARBARA STALZER, THE BANKRUPTCY PROCESS, EXEMPTIONS AND THE ROLE OF THE CHAPTER 7 TRUSTEE FOR THE SENATE BANKING STUDY COMMITTEE ON GEORGIA'S HOMESTEAD EXEMPTION FOR BANKRUPTCY PURPOSES (2008)

¹⁴ See Appendix C.

language, but provide different amounts is because state legislatures decide that they are best able to determine the economic needs and conditions of creditors and debtors in their individual states relative to cost of living figures, property values and other state laws governing commercial transactions.

When Georgia exemptions were recalculated in 2001, the federal and Georgia exemption amounts were very similar with the exception of Georgia having a much higher amount for automobiles, \$3,500.¹⁵ At that time, both sets of exemptions contained a \$10,000 homestead exemption for single debtors and a \$20,000 homestead exemption for joint debtors. Although the federal homestead exemptions based on the CPI have since been adjusted to \$20,200 for single debtors and \$40,400 for joint debtors, all of Georgia's exemptions have remained unchanged. A link between O.C.G.A. §44-13-100 and 11 U.S.C. §104 could allow the General Assembly to avoid revisiting the amount of exemptions as frequently, and could avoid the unintentional "erosion" of exemption amounts by inflation.

Attorney Sarah Bolling of the Atlanta Legal Aid Society addressed the recent changes in the South Carolina laws, which are similar to legislation proposed by Senator Tarver during the 2008 Session prior to the decision to conduct the study committee. South Carolina raised their homestead exemption from \$5,000 to \$50,000 for single debtors, and \$100,000 for joint debtors. Ms. Bolling provided the Committee with a statistical chart showing a 7% increase in bankruptcy filing between the 3rd and 4th quarter of 2006 when South Carolina implemented the revised homestead exemption. Since that time, South Carolina has seen 47% increase in the number of bankruptcy filings. However, due to economic conditions bankruptcy filings have increased in every state since 2006. Even with Georgia's relatively low homestead exemption we have experienced a 67% increase in the number of bankruptcy filings.

Attorney Terry Leiden stated the homestead exemption should be increased across the board in Georgia, not just for bankruptcy purposes. Mr. Leiden referred to his January 2008 letter supporting Senator Tarver's legislation which explains that South Carolina amended its homestead exemption to allow homeowners to protect \$50,000 of equity in real estate. The primary rationale for the increase in the exemption, among many others, was protection of military families and dependents. The increased exemption also had the residual effect of making the state of South Carolina attractive to retirees, whose purchase of a residence is their most significant financial investment.¹⁶

Florida's unlimited bankruptcy homestead exemption was mentioned multiple times during both meetings of the Committee. Trustee Neil Gordon explained that in Florida, the results of bankruptcy are very different than in Georgia. Trustees do not sell homesteads, but they collect enormous amounts of personal property for sale. Florida's \$1,000 exemption allows them to intercept even small tax refund and bank balances. He cited instances of moving vans going from

¹⁵ Senator Wiles pointed out that Georgia's exemption amount of \$3,500 is still higher than the federal amount for automobiles of \$3,225.

¹⁶ Senator Wiles went on to explain that in 2001, the law was changed in order to prevent both spouses from being forced in to bankruptcy. The idea behind the change in the law was because sometimes when people marry late in life they can be in an extremely good or extremely bad situation from 50 years of different financial habits. Senator Wiles also explained that the federal mandate in 2005 forced a doubling of minimum payments, which placed a heavy burden on individuals with credit card debt that was not caused by Georgia's Legislature.

debtor home to debtor home collecting the furnishings and other personal property for the trustee to sell, and returning \$1,000 to the debtor.

C. Effects of Georgia's Homestead Exemption on Consumers

1. Testimony by Attorneys Representing Debtors Facing Home Loss

Attorney Sarah Bolling of the Atlanta Legal Aid Society's Home Defense Project
Attorney Howard Rothbloom of Marietta, Consumer Debtor Attorney

Mr. Rothbloom explained the process for home valuation. He places the value of the home on the worksheets required for filing bankruptcy in Chapter 7 cases after determining what the homeowner paid for the home at the time of purchase, tax assessment value and the assessment of comparable homes in the area. He further explained that in a Chapter 7 case, the debtor records the value of their home, then the Chapter 7 Trustee sends a real estate agent to evaluate the home. The Trustee can possibly object to the value recorded by the debtor. In a Chapter 13 scenario, the debtor records the value of the home on the schedule with no opposing party, only the threat of federal perjury charges if they are dishonest.

When Mr. Rothbloom evaluates a home he considers a 10% cost of sale for the trustee. If there is non-exempt equity that could be used, the Chapter 7 trustee will sell the home. The massive 2005 changes to the federal bankruptcy code forces the debtors to pass a means test that prevents abuse of the Chapter 7 process. It is now much harder for debtors to qualify for Chapter 7 relief. An increase in the homestead exemption would help people who qualify for Chapter 7, but are forced into Chapter 13 because of the large amount of equity in their home. These debtors have difficulty making their payments to the bankruptcy court for the non-exempt equity, therefore allowing them to keep their home. Typically, this is a low income individual and filing Chapter 7 would not be an abuse. This would also help debtors who do not pass the means test and are forced into Chapter 13, who cannot afford to repay the non-exempt equity to the bankruptcy court, and forced to sell their home due to lack of ability to make the payments. This scenario often applies to elderly and low-income individuals, especially widows and widowers who would have qualified for a higher exemption prior to the death of a spouse. Also, the neighborhood, children of the debtors and the taxpayers benefit by keeping low-income individuals in their homes. Individuals who lose their homes are more likely to require public assistance.

Ms. Bolling followed Mr. Rothbloom's testimony by describing her elderly clients at Atlanta Legal Aid who paid their mortgage for years, did not take out a second mortgage and have built up substantial equity. Often Ms. Bolling's client's live solely on Social Security and occasionally have a small pension.

A client of Ms. Bolling's who would benefit from raising the homestead exemption gave permission for the facts of his case to be shared with the Committee. Mr. Smith is a 76 year old veteran of the Korean War. He worked in trucking and purchased a home in 1975. His home had a 30-year mortgage which is fully paid. His income is \$902 a month and he has \$42,000 of unsecured debt due to everyday expenses and medical bills since his retirement 10 years ago. Legal Aid advised him that he was not able to file bankruptcy in Georgia because Chapter 7 would allow the trustee to seize his home as an asset of the bankruptcy estate. In a Chapter 13