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HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	WW-06-1435-RKMo
	)		
STEVE JAY CHAPPELL and JULIE	)	Bk. No.	04-18810
LYNN CHAPPELL,	)		
	)		
Debtors.	)		
	)		
MICHAEL P. KLEIN, Chapter 7	)		
Trustee,	)		
	)		
Appellant,	)		
	)		
v.	)	O P I N I O N	
	)		
STEVE JAY CHAPPELL; JULIE	)		
LYNN CHAPPELL,	)		
	)		
Appellees.	)		
	)		

Argued and Submitted on May 23, 2007  
at Seattle, Washington

Filed - July 11, 2007

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Thomas T. Glover, Bankruptcy Judge, Presiding

Before: RIBLET\*, KLEIN and MONTALI, Bankruptcy Judges.

\* Hon. Robin L. Riblet, Bankruptcy Judge for the Central  
District of California, sitting by designation.

1 RIBLET, Bankruptcy Judge:

2  
3 We address whether postpetition appreciation of exempt  
4 property is to be treated the same under the federal exemption  
5 scheme as under a state's exemption scheme. We conclude that  
6 controlling Ninth Circuit authority involving state homestead  
7 exemptions, which holds that the bankruptcy estate is entitled to  
8 postpetition appreciation in excess of the maximum value  
9 permitted to be exempted under the statutory authority invoked by  
10 the debtor, applies with equal force to exemptions taken under  
11 the federal exemption scheme. The factual differences between  
12 existing Ninth Circuit authority regarding state exemptions and  
13 the federal exemption now in question constitute a distinction  
14 without significant difference as to postpetition appreciation.  
15 We thus also conclude that a debtor's entitlement to postpetition  
16 appreciation is limited to the maximum value of the exemption  
17 permitted under the exemption statute invoked.

18 We REVERSE and REMAND.

19  
20 FACTS

21 Appellee debtors, Steve J. and Julie A. Chappell, filed a  
22 Chapter 7 petition on June 30, 2004. Appellant Michael P. Klein  
23 was appointed as Chapter 7 trustee.

24 In Schedules A and D the debtors disclosed ownership of  
25 their residence on Camano Island in Washington, which they valued  
26 at \$350,000<sup>1</sup> and declared to be encumbered by \$328,488.75 in

27  
28 <sup>1</sup> Trustee stipulated to the \$350,000 value as of the date  
(continued...)

1 consensual liens. In Schedule C the debtors claimed the  
2 \$21,511.25 balance of equity as exempt under 11 U.S.C.  
3 § 522(d)(1),<sup>2</sup> the federal residence exemption.

4 The chapter 7 trustee did not object to the claims of  
5 exemption within the 30-day period prescribed by Rule 4003(b), or  
6 at any time thereafter. No party sought to have the subject  
7 residence abandoned pursuant to § 554.

8 The lender moved for relief from the automatic stay in July  
9 2006, claiming a value of the residence of \$350,000 based upon  
10 the debtors' June 2004, schedules.

11 Appellant trustee opposed stay relief on the basis that the  
12 value of the residence had increased to \$550,000. Accordingly,  
13 trustee sought permission to market the residence on the premise  
14 that a sale for that amount would result in net proceeds of  
15 \$140,000, which would suffice to pay all creditors in full and  
16 return a surplus to the debtors.

17 The debtors' response to the lienholder's stay relief motion  
18 expressed an ability and willingness to cure the arrears, but  
19 opposed the trustee's suggestion to market the residence.  
20 Debtors contended that at the time of filing their bankruptcy  
21

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22 <sup>1</sup>(...continued)  
23 of the filing of the Chapter 7 petition.

24 <sup>2</sup> Unless otherwise indicated, all chapter, section and  
25 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
26 1330, and to the Federal Rules of Bankruptcy Procedure, Rules  
27 1001-9036, as enacted and promulgated prior to the effective date  
28 of The Bankruptcy Abuse Prevention and Consumer Protection Act of  
2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"), because the case  
from which this appeal arises was filed before its effective date  
(generally October 17, 2005).

1 petition there was no equity in the residence beyond consensual  
2 liens and their claimed exemption and, thus, the trustee was not  
3 entitled to the postpetition appreciation. Furthermore, debtors  
4 argued that the trustee's failure to object to the debtors'  
5 claims of exemption raised a presumption that there was no equity  
6 above the exemption at the time of filing. The debtors requested  
7 a hearing regarding the value of the residence prior to it being  
8 listed for sale.

9 In August 2006, appellant trustee filed a Motion to  
10 Determine that Non-exempt Equity in the Debtors' Residence was an  
11 Asset of this Estate. After hearings held in September 2006, the  
12 bankruptcy court ordered that the subject residence was deemed  
13 exempt from administration by the trustee. Based on a finding of  
14 the \$350,000 value at the time of the petition, the bankruptcy  
15 court concluded that because the value of the property was equal  
16 to or less than the sum of the secured obligations and the  
17 exemption claimed, the residence was withdrawn from  
18 administration pursuant to § 522(l) at the expiration of the time  
19 to object to exemptions and there was no remaining interest in  
20 the residence for the trustee to administer.

21 This timely appeal ensued.  
22

#### 23 JURISDICTION

24 The bankruptcy court had subject-matter jurisdiction  
25 pursuant to 28 U.S.C. § 1334 over this core proceeding under 28  
26 U.S.C. § 157(b) (2) (A). We have jurisdiction under 28 U.S.C.  
27 § 158.  
28

1 ISSUES

2 (1) Whether the postpetition increase in value in the  
3 residence beyond the debtors' exemption remained part of the  
4 bankruptcy estate and therefore subject to administration by the  
5 Trustee.

6 (2) Whether the debtors' federal residence exemption claim  
7 sufficiently distinguishes this case from binding Ninth Circuit  
8 case law holding that debtors are not entitled to the  
9 postpetition appreciation in their residences beyond the amount  
10 of their homestead exemptions under state law.

11  
12 STANDARDS OF REVIEW

13 We review the scope of a statutory exemption de novo, as a  
14 question of law. Gonzalez v. Davis (In re Davis), 323 B.R. 732,  
15 734 (9th Cir. BAP 2005), citing Bloom v. Robinson (In re Bloom),  
16 839 F.2d 1376, 1378 (9th Cir. 1988). The determination of a  
17 homestead exemption based on undisputed facts is a legal  
18 conclusion interpreting statutory construction which is reviewed  
19 de novo. Wiget v. Nielsen (In re Nielsen), 197 B.R. 665, 667  
20 (9th Cir. BAP 1996), citing Nadel v. Mayer (In re Mayer), 167  
21 B.R. 186, 188 (9th Cir. BAP 1994). Whether property is included  
22 in a bankruptcy estate is a question of law also subject to de  
23 novo review. Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th  
24 Cir. BAP 2000), citing Ramsay v. Dowden (In re Cent. Ark. Broad.  
25 Co.), 68 F.3d 213, 214 (8th Cir. 1995).

26  
27 DISCUSSION

28 We are guided by basic principles of bankruptcy law. Upon

1 the commencement of a voluntary chapter 7 case, all of a debtor's  
2 legal and equitable interests in property on that date become the  
3 property of the bankruptcy estate. § 541(a). The appointed  
4 chapter 7 trustee serves as the official representative of the  
5 estate. § 323(a). The trustee is required to collect and reduce  
6 to money the property of the estate for which such trustee  
7 serves, and to close the estate as expeditiously as is compatible  
8 with the best interests of parties in interest. § 704(1).

9 Section 522 governs the allowance of exemptions in  
10 bankruptcy. Under § 522(b)(1) and (2) a debtor has the option to  
11 choose between those exemptions provided under federal bankruptcy  
12 law under § 522(d), or alternatively, to choose those exemptions  
13 made available under state and federal nonbankruptcy law.

14 Section 522(b)(1) also gives the individual states the ability of  
15 legislatively "opting-out" of the federal bankruptcy exemption  
16 scheme, in which case a debtor's exemptions are entirely  
17 dependent on the state of the debtor's domicile. Washington is  
18 not a state that has prohibited its domiciliaries from electing  
19 the federal exemptions. 4 ALAN N. RESNICK & HENRY J. SOMMER, EDS.,  
20 COLLIER ON BANKRUPTCY ¶ 522.01, p. 522-16 n.2 (15th ed. rev. 2007).  
21 Thus, the debtors here were entitled to claim, and did, in fact  
22 claim, federal exemptions. Pursuant to § 522(d)(1), debtors  
23 claimed an exemption in their residence in the amount of  
24 \$21,511.25.

25 "[T]he critical date for determining exemption rights is the  
26 petition date." Goswami v. MTC Dist. (In re Goswami), 304 B.R.  
27 386, 391-92 (9th Cir. BAP 2003), citing White v. Stump, 266 U.S.  
28 310, 313 (1924) and Harris v. Herman (In re Herman), 120 B.R.

1 127, 130 (9th Cir. BAP 1990). “[E]xemptions . . . are determined  
2 on the date of bankruptcy and without reference to subsequent  
3 changes in the character or value of the exempt property[.]”  
4 Culver, LLC v. Chiu (In re Chiu), 266 B.R. 743, 751 (9th Cir. BAP  
5 2001), aff’d, 304 F.3d 905 (9th Cir. 2002), citing Herman, 120  
6 B.R. at 130.

7 Section § 522(l) provides that, “[u]nless a party in  
8 interest objects, the property claimed as exempt on [the  
9 exemption schedule] is exempt.” § 522(l). A trustee cannot  
10 contest the validity of a claimed exemption after expiration of  
11 the 30-day period established by Rule 4003(b), even where the  
12 debtor has no colorable basis for claiming the exemption. Taylor  
13 v. Freeland & Kronz, 503 U.S. 638 (1992).

14 It is undisputed that the appellant trustee here did not  
15 timely object to the debtors’ claims of exemption.

16  
17 I

18 Debtors contend that they claimed as exempt the “aggregate”  
19 or entire interest in their residence under § 522(d)(1), thereby  
20 withdrawing the entire fee from bankruptcy administration. The  
21 debtors rely upon Taylor, Owen v. Owen, 500 U.S. 305 (1991), and  
22 Allen v. Green (In re Green), 31 F.3d 1098 (11th Cir. 1994).

23 In making their “aggregate”-interest-in-the-fee argument,  
24 Debtors ignore two important facts. First, nothing in the  
25 debtors’ Schedule C demonstrates an intent to claim to an  
26 “aggregate” or entire interest. The value of their claimed  
27 exemption is stated simply as “\$21,511.25,” the arithmetic  
28 difference between the value of the residence and the consensual

1 liens. As reasoned in Hyman v. Plotkin (In re Hyman), 967 F.2d  
2 1316, 1319 n.6 (9th Cir. 1992), because the time to object to  
3 claimed exemptions is relatively short, "it is important that  
4 trustees and creditors be able to determine precisely whether a  
5 listed asset is validly exempt simply by reading a debtor's  
6 schedules." Any ambiguity in the schedules is to be construed  
7 against the debtor. Id.

8 Second, debtors ignore the dollar limit imposed by  
9 § 522(d)(1).<sup>3</sup> As the trustee concedes, the maximum exemption  
10 available under § 522(d)(1) is \$36,900 (plus any available "wild  
11 card" amount under § 522(d)(5)).<sup>4</sup> Hence, the debtor's exemption  
12 claim did not exceed the maximum amount available to them.

13 Taylor is not controlling here. In Taylor, the debtor  
14 claimed as exempt proceeds from a lawsuit and a claim for lost  
15 wages, listing the value as "unknown." No dollar limit was

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16 <sup>3</sup> Section 522(d)(1) provides:

17  
18 The following property may be exempted under  
19 subsection (b)(1) of this section:

20 (1) The debtor's aggregate interest, not to exceed  
21 \$18,450 in value, in real property or personal property  
22 that the debtor or a dependent of the debtor uses as a  
23 residence, in a cooperative that owns property that the  
24 debtor or a dependent of the debtor uses as a  
25 residence, or in a burial plot for the debtor or a  
26 dependent of the debtor.

27 <sup>4</sup> The maximum allowable residence exemption for an  
28 individual debtor is \$18,450 under § 522(d)(1), plus the  
additional \$975 catchall exemption pursuant to § 522(d)(5),  
effective April 1, 2004. See Revision of Certain Dollar Amounts  
in the Bankruptcy Code Prescribed under Section 104(B) of the  
Code, 69 Fed. Reg. 8482 (Judicial Conference of the United States  
Feb. 24, 2004), 2004 WL 329158. The dollar limitation applies  
separately with respect to each debtor in a joint case.  
§ 522(m).



1 specified. The parties agreed that the debtor did not have the  
2 right to exempt more than a small portion of the proceeds under  
3 either state law or the federal exemptions. After expiration of  
4 the 30-day period under Rule 4003(b), and subsequent to learning  
5 that the lawsuit had been settled for a substantial sum, the  
6 trustee filed a complaint demanding turn over of the settlement  
7 proceeds. The United States Supreme Court held that the trustee  
8 was precluded from contesting the claim of exemption after the  
9 Rule 4003(b) 30-day period had expired, even though the debtor  
10 had no colorable basis for claiming the exemption. Taylor, 503  
11 U.S. at 643-44.

12 Unlike Taylor, the debtors here claimed an exemption in a  
13 specified amount. The basis for their exemption claim in their  
14 residence was valid under § 522(d)(1). The trustee does not  
15 contest the validity of a claim of exemption up to the amount  
16 permitted by § 522(d).

17 Equally unavailing is the debtors' reliance upon Green,  
18 where the debtor claimed as exempt a lawsuit, listing the value  
19 as one dollar. Importantly, the trustee in Green conceded that  
20 listing the lawsuit at a one dollar value indicated that its  
21 value was contingent, not that it had an actual present value of  
22 one dollar. Green, 31 F.3d at 1098-99. The Eleventh Circuit  
23 determined that the facts before it were materially the same as  
24 those in Taylor. The Circuit concluded that because the debtor  
25 had exempted the full value of her lawsuit, and because the  
26 trustee did not object to her claim of exemption, the debtor was  
27 entitled to the entire settlement fund. Green, 31 F.3d at 1101.

28 Thus, both Taylor and Green are factually distinguishable in

1 that in each instance the debtors expressed an intent to claim  
2 the entire proceeds of an asset in an undetermined and  
3 unspecified amount as exempt. In the present case before this  
4 Panel, the debtors exempted a specific amount, \$21,511.25, under  
5 a colorable basis, and gave no indication of an intent to claim  
6 any more than that specific amount.

7 Relying on Owen, a 1991 United States Supreme Court case  
8 which preceded Taylor, the debtors posit that the effect of  
9 exempting property from the estate is to withdraw that property  
10 from the estate and administration by the bankruptcy trustee.  
11 Owen, however, is not helpful to the debtors' position. The  
12 United States Supreme Court in that case addressed a rather  
13 narrow issue of judicial lien avoidance, specifically whether a  
14 judicial lien could be avoided when the state (in that case,  
15 Florida) defined the exempt property so as specifically to  
16 exclude the property encumbered by the judicial lien.<sup>5</sup> In  
17 explaining elementary bankruptcy principles, the Court stated in  
18 dicta that an "exemption is an interest withdrawn from the estate  
19 (and hence from the creditors) for the benefit of the debtor."  
20 Owen, 500 U.S. at 308.

21 In clarifying a debtor's ability to avoid a lien under  
22 § 522(f), the Court observed that most of the federally listed  
23 exemptions at § 522(d) are explicitly restricted to the "debtor's  
24 aggregate interest" or the "debtor's interest" up to a maximum  
25 amount, noting that the federal homestead exemption at that time

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27 <sup>5</sup> In Owen, the judgment lien sought to be avoided was a  
28 pre-existing lien. Florida law provided that pre-existing liens  
were an exception to Florida's homestead exemption.

1 allowed the debtor to exempt "[t]he debtor's aggregate interest,  
2 not to exceed \$7,500 in value, in . . . a residence." Owen, 500  
3 U.S. at 310.

4 Of particular importance here is the Court's acknowledgment  
5 in Owen that, at least for purposes of impairment of exemptions,  
6 federal and state exemptions are to be given equivalent  
7 treatment. "Nothing in the text of § 522(f) remotely justifies  
8 treating the two categories of exemptions differently." Owen,  
9 500 U.S. at 313.

10 In view of the United States Supreme Court's accord of  
11 equivalence of treatment to federal and state exemptions, we  
12 disagree with the debtors' contention that by claiming a federal  
13 residence exemption they were entitled to an "aggregate" interest  
14 in the entirety of their residence.

15 To do otherwise would stand the bankruptcy system on its  
16 head. The purpose of bankruptcy is the payment of creditors  
17 through the marshaling and liquidation of the debtor's nonexempt  
18 assets, while providing the debtor with "a fresh start." See  
19 Sherwood Partners, Inc. v. Lycos, Inc., 394 F.3d 1198, 1203 (9th  
20 Cir. 2005). If the federal residence exemption of § 522(d)(1)  
21 were construed to exempt the entirety of the residence fee, if  
22 any, debtors would ever choose their state's exemption scheme,  
23 limited as it likely would be to a specific dollar cap.<sup>6</sup> The  
24 plain meaning of legislation is conclusive, except when literal  
25 application "will produce a result demonstrably at odds with the

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26  
27 <sup>6</sup> See Hyman, 967 F.2d at 1319 n.3, for the Ninth  
28 Circuit's discussion of the various forms of state homestead  
laws.

1 intentions of its drafters." United States v. Ron Pair Enters.,  
2 Inc., 489 U.S. 235, 242 (1989), quoting Griffin v. Oceanic  
3 Contractors, Inc., 458 U.S. 564, 571 (1982). We find no  
4 significant reason why Congress would have intended that the  
5 federal residence exemption be treated differently than that  
6 accorded homestead exemptions under state law.

## 7 8 II

9 Debtors' approach is also impermissible under controlling  
10 Ninth Circuit authorities. Ninth Circuit precedent requires  
11 postpetition appreciation in property of the estate to inure to  
12 the benefit of the estate. Vu v. Kendall (In re Vu), 245 B.R.  
13 644, 647-48 (9th Cir. BAP 2000), citing Alsberg v. Robertson (In  
14 re Alsberg), 68 F.3d 312, 314-15 (9th Cir. 1995); Hyman, 967 F.2d  
15 at 1321; and Schwaber v. Reed (In re Reed), 940 F.2d 1317, 1323  
16 (9th Cir. 1991). In each of these cases the debtors claimed  
17 California homestead exemptions.

18 The development of the Ninth Circuit's analysis of  
19 limitations on the homestead exemption began with Reed where the  
20 Court held that the filing of a "no asset" report by the trustee  
21 did not constitute abandonment of the debtor's homestead and the  
22 resulting reversion in the debtor of the entire residence. The  
23 trustee was able to withdraw his "no asset" report, sell the  
24 residence and capture postpetition appreciation for the benefit  
25 of the estate pursuant to § 541(a)(6). The debtor was limited to  
26 an exemption in \$45,000 of the sales proceeds, the amount he had  
27 originally scheduled.

28 A year after Reed, and subsequent to the issuance of Taylor

1 by the United States Supreme Court, the Ninth Circuit again  
2 addressed the issue in Hyman. There the debtors unsuccessfully  
3 asserted they were entitled to an exemption in their entire  
4 homestead as the trustee had not objected. Citing Reed the Court  
5 observed that this position had already been rejected. The Court  
6 noted that while the debtors' schedule of exempt property listed  
7 "homestead," it also listed a value of the exemption of \$45,000.  
8 It concluded:

9       Based on this information, the Hymans did not  
10       sufficiently notify others that they were claiming  
11       their entire homestead as exempt property; their  
12       schedule only gave notice that they claimed \$45,000 as  
13       exempt, which is the proper amount of their homestead  
14       allowance . . . . Thus, the trustee had no basis for  
15       objecting, and could well have suffered the bankruptcy  
16       judge's ire had he objected to the \$45,000 exemption to  
17       which the Hymans were clearly entitled.

18 Hyman, 967 F.2d at 1319 (citation omitted).

19       Similarly, the Court rejected the debtors' claim for  
20       postpetition appreciation of the residence, again citing to Reed  
21       and its holding that postpetition appreciation inures to the  
22       bankruptcy estate, not the debtor. Hyman, 967 F.2d at 1321,  
23       citing Reed, 940 F.2d at 1323.

24       Alsberg consistently followed Hyman, holding that the  
25       bankruptcy estate held the interest in the debtor's residence at  
26       all times after the filing of the Chapter 11 petition, and  
27       concluding that the estate was therefore entitled to any  
28       postpetition appreciation in the value of the residence. As was  
29       the case in Reed and Hyman, the debtor in Alsberg also claimed  
30       the California \$45,000 homestead exemption. Debtor similarly  
31       argued that he was entitled to any postpetition appreciation in  
32       value. In that case, the residence had a value of \$259,000 as of

1 the petition date, encumbered by a mortgage of \$225,125 as well  
2 as tax liens of \$86,000. As a chapter 11 debtor-in-possession,  
3 Alsberg entered into an agreement to sell the residence for  
4 \$380,000. After conversion of the case to chapter 7, the chapter  
5 7 trustee obtained court approval for the sale which resulted in  
6 net proceeds of \$115,000. Not until after the sale did the  
7 debtor file an exemption schedule claiming an exemption of  
8 \$45,000. The debtor moved to compel the trustee to abandon all  
9 of the proceeds of sale, arguing, as the debtors do here, that  
10 because the mortgage balance and the \$45,000 homestead exemption  
11 exceeded the value of the residence at the time of filing, the  
12 residence was effectively removed from the bankruptcy estate at  
13 the time of filing.

14 The Ninth Circuit affirmed the determination that the estate  
15 had an interest in the residence upon filing the bankruptcy and  
16 maintained that interest through the time of the sale, stating,  
17 "the argument that a homestead exemption operates to remove the  
18 residence itself from the bankruptcy estate 'is now deemed  
19 foreclosed in this circuit,'" although noting that all cases  
20 considering the argument relied upon provisions of the California  
21 statutory homestead exemption. Alsberg, 68 F.3d at 314-15 n.2,  
22 citing Bernard v. Coyne (In re Bernard), 40 F.3d 1028, 1030 n.2  
23 (9th Cir. 1994). Thus the estate was entitled to any  
24 appreciation in the value and the debtor was allowed only the  
25 \$45,000 homestead exemption.

26 In Vu, a chapter 11 case converted to chapter 7 nearly seven  
27 years after filing, the bankruptcy court simultaneously heard the  
28 debtors' motion to compel the trustee to abandon their residence

1 and the trustee's motion to sell the residence. While the  
2 trustee sought authorization to sell the residence for \$1.9  
3 million, the debtors maintained that the value of the property as  
4 of the filing date was \$1.1 million, subject to \$1.3 million in  
5 encumbrances in addition to a homestead claim of \$75,000. The  
6 bankruptcy court granted the trustee's sale motion and denied the  
7 debtors' motion to compel abandonment.

8 Citing Alsberg, Hyman and Reed, the Panel in Vu acknowledged  
9 that the Ninth Circuit has consistently held without limitation  
10 that, under § 541(a)(6), the estate is entitled to postpetition  
11 appreciation.

12 Given the clear Ninth Circuit precedent holding without  
13 limitation that appreciation inures to the benefit of  
14 the estate, we decline to adopt an approach at odds  
15 with both that general principle and the purpose behind  
16 the strong-arm clause. Thus, under § 541(a)(6),  
postpetition appreciation is property of the estate  
without regard to whether there is equity in the  
property as of the petition date.

17 Vu, 245 B.R. at 649.

18 Notwithstanding that Reed, Hyman and Alsberg were decided by  
19 the Ninth Circuit in the context of California homestead  
20 exemption law, as we noted in Vu, the estate's entitlement to  
21 postpetition appreciation is not premised upon the applicable  
22 exemption scheme. Rather, it is based upon § 541(a)(6). Vu, 245  
23 B.R. at 647-48, citing, Alsberg, 68 F.3d at 314-15; Hyman, 967  
24 F.2d at 1321; and Reed, 940 F.2d at 1323.<sup>7</sup>

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25  
26 <sup>7</sup> In Alsberg, Hyman, Reed and Vu the debtors claimed the  
27 maximum amount allowable by the California exemption scheme. In  
28 our case, the debtors limited their exemption to the difference  
between the value stated and the consensual liens, which was an  
(continued...)

1 We are bound by the Ninth Circuit precedent established by  
2 Reed, Alsberg and Hyman, as well as our prior decision in Vu.  
3 See, e.g., Salomon N. Am. v. Knupfer (In re Wind N' Wave), 328  
4 B.R. 176, 181 (9th Cir. BAP 2005) ("we regard ourselves as bound  
5 by our prior decisions") and Ball v. Payco-Gen. Am. Credits, Inc.  
6 (In re Ball), 185 B.R. 595, 597 (9th Cir. BAP 1995) ("We will not  
7 overrule our prior rulings unless a Ninth Circuit Court of  
8 Appeals decision, Supreme Court decision or subsequent  
9 legislation has undermined those rulings."). This precedent is  
10 directly applicable to the facts before this panel, regardless of  
11 the fact that the debtors here elected the federal residence  
12 exemption.

13 We regard as persuasive two factually similar bankruptcy  
14 decisions which applied the reasoning of the Hyman line of cases  
15 to federal residence exemption claims under § 522(d)(1). In re  
16 Heflin, 215 B.R. 530 (Bankr. W.D. Mich. 1997) and In re Bregni,  
17 215 B.R. 850 (Bankr. E.D. Mich. 1997).

18 In both Helfin and Bregni, debtors claimed federal residence  
19 exemptions in property which had no equity beyond the value of  
20 the claimed exemptions at the time of filing the petitions. In  
21 Heflin, debtor's motion to compel abandonment was denied where  
22 debtor claimed a federal exemption of \$15,579 and the property  
23

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24 <sup>7</sup>(...continued)  
25 amount substantially less than the maximum exemption available.  
26 While postpetition appreciation in value of property inures to  
27 the benefit of the estate, the estate's interest in the  
28 appreciation must be limited by the ability of the debtors to  
obtain the maximum value of their federal exemptions. As was  
conceded by the trustee at oral argument, the debtors are jointly  
entitled to up to \$36,900 (plus any available wildcard amount).



1 increased in value postpetition from \$16,000 to \$40,000. The  
2 Heflin court noted that while Hyman involved the California  
3 homestead exemption as opposed to the federal residence  
4 exemption, the general principle was the same: Where the debtor  
5 claims a specific dollar amount as exempt, the debtor is bound by  
6 that amount and, in absence of an amendment, cannot claim that  
7 the entire property is exempt. Heflin, 215 B.R. at 534. Rather,  
8 the debtor's residence and catchall exemptions were limited to  
9 \$15,579 as explicitly listed in the debtor's Schedule C.<sup>8</sup>

10 In Bregni, the debtors, married but living separately, and  
11 having filed separate chapter 7 petitions, each scheduled a  
12 jointly owned condominium and claimed respective \$15,000  
13 exemptions pursuant to the federal residence exemption provision  
14 of § 522(d)(1). Subsequent to sale, Mrs. Bregni moved to compel  
15 the trustee to abandon all of the proceeds, reasoning that  
16 because the trustee did not object to her exemption claims, he  
17 was time-barred from claiming any interest in the proceeds. She  
18 also claimed that any increase in the value of the property since  
19 the filing belonged to her, not to the estate.

20 The bankruptcy court denied the motion to compel  
21 abandonment, observing that "the debtor's property remains  
22 property of the estate to the extent its value exceeds the  
23 statutory amount which the debtor is permitted to exempt."  
24 Bregni, 215 B.R. at 852, quoting First of Am. Bank v. Gaylor (In  
25 re Gaylor), 123 B.R. 236, 239 (Bankr. E.D. Mich. 1991). The  
26

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27 <sup>8</sup> In Vu, we cited Heflin with approval. Vu, 245 B.R. at  
28 648 n.7.

1 court agreed with the reasoning of both Hyman and Heflin as to  
2 the issue of the estate's entitlement to any postpetition  
3 appreciation in value, finding that Mrs. Bregni was limited to  
4 her \$15,000 exemption claim.<sup>9</sup>

5 We find Bregni and Heflin persuasive in determining the  
6 matter before us.

7  
8 III

9 The debtors here are in large part the "victims" of their  
10 own inaction. Their chapter 7 petition was filed on June 30,  
11 2004. The record reveals they took no action to extricate their  
12 property from the estate until two years later when the secured  
13 creditor sought relief from the automatic stay and the trustee  
14 expressed his intent to sell. During this period of a rising  
15 market the debtors could have moved for abandonment pursuant to  
16

17  
18 <sup>9</sup> We note that Olson v. Anderson (In re Anderson), 357  
19 B.R. 452 (Bankr. W.D. Mich. 2006) declined to follow Heflin and  
20 Bregni and precluded the trustee from compelling a sale of  
21 hunting land claimed as exempt under § 522(d)(5). In Anderson,  
22 the debtors' Schedules A and C both described their asset and  
23 their claimed exemption as:

24 1/2 interest in old cabin. The debtors own a 1/2  
25 interest in an old cabin that may have a total value of  
26 about \$30,000.

27 The debtors [sic] 1/2 interest would be \$15,000.00.

28 Anderson, 357 B.R. at 457.

29 The facts in Anderson are, therefore, more akin to those of  
30 Taylor in that the debtors sought to exempt their entire interest  
31 in the asset, regardless of its value. On this basis we find  
32 Anderson distinguishable and not inconsistent with our  
33 determination here.

1 § 554(b).<sup>10</sup> Such a motion would either have forced the trustee  
2 to sell before he might otherwise have preferred or allowed the  
3 debtors to withdraw the property from the estate entirely as  
4 being "of inconsequential value and benefit to the estate."<sup>11</sup>

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6 <sup>10</sup> Section 554 provides:

7 (a) After notice and a hearing, the trustee may abandon  
8 any property of the estate that is burdensome to the  
9 estate or that is of inconsequential value and benefit  
10 to the estate.

11 (b) On request of a party in interest and after notice  
12 and a hearing, the court may order the trustee to  
13 abandon any property of the estate that is burdensome  
14 to the estate or that is of inconsequential value and  
15 benefit to the estate.

16 (c) Unless the court orders otherwise, any property  
17 scheduled under section 521(1) of this title not  
18 otherwise administered at the time of the closing of a  
19 case is abandoned to the debtor and administered for  
20 purposes of section 350 of this title.

21 (d) Unless the court orders otherwise, property of the  
22 estate that is not abandoned under this section and  
23 that is not administered in the case remains property  
24 of the estate.

25 <sup>11</sup> A similar observation was made by the Court in Hyman,  
26 967 F.2d at 1321 n.11. See also, Carey v. Pauline (In re  
27 Pauline), 119 B.R. 727 (9th Cir. BAP 1990) (upholding trial court  
28 order requiring chapter 7 trustee to market residence within 60  
days or it would be deemed abandoned); and In re Rolland, 317  
B.R. 402, 409 n.11 (Bankr. C.D. Cal. 2004), stating:

Because post-petition appreciation in the value of  
estate property accrues to the benefit of the estate, a  
motion to compel an abandonment may be an appropriate  
remedy for debtors who believe they are being  
prejudiced by a trustee's undue delay in administering  
estate assets.

(continued...)

1 CONCLUSION

2 There is no issue as to the debtors' entitlement to the  
3 claimed residence exemption amount of \$21,511.25, since it is  
4 undisputed that the Appellant trustee did not object to the  
5 debtors' claimed exemptions. Moreover, the trustee concedes that  
6 they jointly were entitled up to \$36,900 (plus any available wild  
7 card amount). To the extent the debtors claim an exemption in a  
8 greater amount, they did not provide sufficient notice of such  
9 claim to the trustee and creditors.

10 The residence became an asset of the bankruptcy estate upon  
11 the filing of the petition. Because there was no abandonment and  
12 the case has not been closed, the residence remains property of  
13 the estate, subject to the unopposed exemption up to the maximum  
14 amount permitted by § 522(d). Under well-settled Ninth Circuit  
15 law, any postpetition appreciation in value in the residence in  
16 excess of the maximum amount permitted by the exemption statute  
17 invoked inures to the benefit of the estate. The use of federal  
18 exemptions does not work to change that result. Accordingly, the  
19 residence remains subject to administration by the trustee.  
20 REVERSED and REMANDED for further proceedings consistent with  
21 this opinion.

22  
23  
24  
25  
26  
27 <sup>11</sup>(...continued)  
28 Rolland, 317 B.R. at 409 n.11, citing Hyman, 967 F.2d at 1321  
n.11.