

Issue: Can a chapter 13 debtor retain post-petition appreciation in the value of the homestead following conversion to chapter 7?

Facts: Chapter 13 debtor's schedules reflect the ownership of real property valued as of the petition date. Debtor claims an exemption in the home. The debtor's chapter 13 plan is confirmed but the case is subsequently converted to chapter 7. The trustee requests that the amount of the debtor's exemption be limited to the previous exemption amount, and that any appreciation in the home's value inure to the benefit of the chapter 7 estate. Debtor argues that any appreciation belongs to the debtor.

Split of Authority:

Some courts have allowed a chapter 13 debtor to retain post-petition appreciation in the value of a homestead following conversion because that result better reflects the legislative intent of §348. *See, e.g., In re Cofer*, 625 B.R. 194 (Bankr. D. Idaho 2021); *Rodriguez v. Barrera (In re Barrera)*, 2020 WL 5869458 (10th Cir. BAP Oct. 2, 2020)(appeal pending); *In re Lynch*, 363 B.R. 101 (9th Cir. BAP 2007 (decided the issue under pre-BAPCPA §348, but still persuasive). These courts rely on the congressional intent to freeze exemptions as of the date of the chapter 13 petition (the "snapshot rule"). Thus, conversion does not change the value of the home or the exemption as they existed on the petition date. The appreciation should not belong to the estate now merely because the case began as a

chapter 13 case and was converted. *Cofer*, 625 B.R. at 201 - 02, citing *Barrera*, *supra*. See also Keith M. Lundin & William H. Brown, *Chapter 13 Bankruptcy*, §316.1, at ¶26 (4th ed. 2004).

Note that §348(f)(1)(A) gives the court discretion, in cases converted because of bad faith, to order that property held at the time of conversion inure to the benefit of the estate in the converted case.

At least one court has ruled that the debtor receives the benefit of appreciation during the chapter 13 but does not receive the benefit of debtor's pay down of secured debt. *In re Wegner*, 243 B.R. 731, 737 (Bankr. D. Nebr. 2000).

Other courts have held that postpetition appreciation inures to the estate upon conversion. See, e.g., *In re Castleman*, 2021 WL 2309994 (Bankr. W.D. Wash. June 4, 2021); *In re Goins*, 539 B.R. 510 (Bankr. E.D. Va. 2015); *In re Peter*, 309 B.R. 792 (Bankr. D. Or. 2004). They reason that the real estate was always property of the estate under §541, and §541(a)(6) provides that all proceeds or profits from such property constitute property of the estate. *Goins*, 539 B.R. at 515; *Castleman*, 2021 WL 2309994 at *5 (post-petition appreciation is not treated as a separate asset from pre-petition property, and therefore inures to the estate); *Wilson v. Rigby*, 909 F.3d 306, 312 (9th Cir. 2018). Courts also rely on §348(f)(1)(A), concluding that the statute does not limit the chapter 7 estate to the equity in the property of the estate as of the petition date. *Peter*, 309 B.R. at 793-95.