

# NON-HOMESTEAD EXEMPTION ISSUES

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## PROPERTY OF THE ESTATE

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### Property that Never Becomes Part of the Estate

- With exceptions, property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.”  
11 U.S.C. § 541(a)(1).
- Texas is a community property state and there is a common misconception about what marital property comes into a bankruptcy estate.

## Property of the Estate - 11 U.S.C. § 541(a)(2)

- § 541(a)(2) provides that property of the estate includes “all interests of the debtor and the debtor’s spouse in community property as of the commencement of the case that is –
  - (A) under the sole, equal, or joint management and control of the **debtor**; or
  - (B) liable for an allowable claim against the **debtor**, or for both an allowable claim against the debtor **and** an allowable claim against the **debtor’s spouse**, to the extent that such interest is so liable.”

## Property of the Estate - 11 U.S.C. § 541(a)(2)

- The issue of **(1)** what interest in community property is under the sole or joint management of the debtor or **(2)** is liable for a claim against the debtor and the debtor’s spouse is an issue of **state law**.
- There are no U.S. Bankruptcy Code provisions which purport to address this issue.

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## Title search: Non-Homestead Exemption Issues

Also available as part of the eCourse

[Consumer Bankruptcy Issues, Part I: Personal Property and Homestead Exemptions](#)

First appeared as part of the conference materials for the  
10<sup>th</sup> Annual Consumer Bankruptcy Practice session  
"Exemptions Issues: That's Mine and I Wanna Keep It!"