

BANKRUPTCY AND DIVORCE

What the Divorce Lawyer (and Judge) Needs to Know About Bankruptcy, BAPCPA and South Dakota Law

**Presented by
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I. *U.S. Bankruptcy Court for the District of South Dakota:*

- A. Website: www.sdb.uscourts.gov:
Check it out. Includes local rules, forms, general information, contacts and practice pointers. Past decisions organized by subject or topic, issuing judge, year made and alphabetic by name.
- B. CM/ECF. Electronic filing :
Mandatory for attorneys. No exceptions. If you have not registered, and you have a document that needs to be filed in a bankruptcy case *and the deadline is today*, you're not going to make it.

II. *Basic Provisions of S. D. Law in Bankruptcy and Divorce.*

A. Exemptions in Property:

- 1) In addition to property absolutely exempt under SDCL 43 45-2, the head of the family may exempt "goods, chattels, merchandise, money, or other personal property not to exceed in the aggregate six thousand dollars in value; and, if not the head of a family, property...of a value of four thousand dollars.
- 2) Head of family can be primary bread winner in household, single individual with a dependent or a single individual providing support under a "domestic support order."
 - A single individual with no dependents is not the head of a family.
 - A married couple consists of one of each for a combined exemption of ten thousand dollars
- 3) Homestead exemption in equity in home is now sixty thousand dollars per family; one hundred seventy thousand dollars for persons seventy years of age or older. SDCL 43-45-3.
- 4) IRAs, pension plans, etc.
- 5) SDCL 43-45-7 defines persons to whom exemptions do not apply and includes debtors who have unpaid child and spousal support obligations.

III. *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)*

Expanding on the Bankruptcy Reform Act of 1994, BAPCPA provides new protections and, hopefully, simplified procedures for domestic relations matters. More notice is provided to domestic support creditors, the provisions of the automatic stay (11 USC § 362) are substantially changed, dischargeability provisions are simplified for support and property settlement questions and support claims receive an elevated priority.

A. **The Automatic Stay, 11 USC § 362(a). What is “stayed” and what is not.**

- 1) The filing of a petition does not operate as a “stay”

“(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)

(A) of the commencement or continuation of a civil action or proceeding

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property *that is not property of the estate*;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver’s license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act . . .”

11 USC § 326(b).

B. Domestic Support Obligations or “DSOs.”

A “domestic support obligation,” or “DSO” is defined in 11 USC § 101(14A):

“(14A) The term “domestic support obligation” means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is

(A) owed to or recoverable by

- (i) a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative; or
- (ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child’s parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of

- (I) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit;

and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.”

In almost every instance the filing of a petition in bankruptcy will have no effect on the continued enforcement of support obligations, including pre-petition orders for income withholding; income tax refund offsets; post-petition modification and enforcement orders, administrative determinations and the like. Nor does the bankruptcy operate as a stay with respect to paternity proceedings, child custody and visitation, domestic violence proceedings, protection orders or criminal proceedings.

Domestic Support creditors can *mostly* ignore bankruptcy proceedings, especially in chapter 7 proceedings.

But, in Chapter 13 cases, and other reorganization bankruptcy's some additional diligence may be warranted.

C. Property of the Estate

When can property in a bankruptcy case be subjected to claims of DSO creditors?

- 1) Defined in 11 USC § 541, for all practical purposes, “property of the estate” includes, as of the petition date, all legal and equitable interests of the debtor.
- 2) In Chapter 7 and Chapter 13 cases, all property claimed by the debtor as exempt reverts to the debtor and is no longer property of the estate upon the expiration of the deadline for creditors or Trustees to object, 30 days after the date first scheduled for the meeting of creditors (whether that meeting under 11 USC § 341 is continued to a later date or not).
- 3) Property of the estate in Chapter 13 cases includes all the property described in § 541 and post-petition earnings. **Post-petition earnings of a Chapter 7 debtor are not property of the estate.** 11 USC § 362(b)(2)(c) does not stay “the withholding of income that is property of the estate or property of the debtor for payment of a

domestic support obligation under a judicial or administrative order or a statute.” Thus in Chapter 13 proceedings, existing orders for withholding are not stayed but more conventional collection actions against that post-petition income are. This should not be too big of a deal because Chapter 13 debtors with past due DSO’s have special rules to comply with as set forth below.

D. DSOs. Domestic Support obligations and support claims under BAPCPA; payment and collection issues.

- 1) Child support, alimony and claims by governmental units in the nature of support are DSOs.
- 2) DSOs enjoy a *first* priority in distributions by Trustees under repayment plans or Chapter 7 property liquidations. (subject to Trustee’s expense of administration 11 USC § 507(a)(1)).
- 3) Assets normally exemptible from other creditors can lose that exempt status to DSOs.
- 4) Chapter 13 plans (and 11 and 12) can be confirmed only if debtor is in compliance with post-petition DSOs.
- 5) Failure to pay DSOs in Chapter 13s is “cause” for dismissal or conversion to Chapter 7.
- 6) DSO arrearages must be provided for in full as a first priority in Chapter 13 or 12 cases unless the holder of the claim agrees to a different treatment. 11 USC § 1322(a)(2); 1222(c)(2). Interest is allowed on arrearages if state law permits *and* debtor’s disposable income is sufficient to pay all other claims in full. Generally, a Chapter 13 debtor who is paying arrears in accordance with a judicial order or administrative proceeding (a DSO) is in compliance with the code.
- 7) So too, a Chapter 7 debtor who is in compliance with a DSO will not have his otherwise exempt assets liquidated by a Trustee.
- 8) Trustees must give special notices to DSO creditors, including, name, address and telephone numbers of debtor’s employer.
- 9) Chapter 12 and 13 debtors must certify that all post-petition DSO payments are current in order to receive a discharge after completion of plan payments.
- 10) Pre-petition payments to a DSO creditor are not avoidable or recoverable preferential transfers. 11 USC § 547(c)(7).

E. Non-Dischargeability of DSOs and Property Settlement Agreements.

- 1) All DSO claims are non-dischargeable. Period. No discussion. 11 USC § 523(a)(5).
- 2) Property settlements, hold harmless provisions, debt assumptions in Chapter 7 are also non-dischargeable but questions remain.

Under previous law, debtors could discharge these obligations to a former spouse if there was no ability to pay the debt and the benefit of receiving the discharge outweighed the detriment to the former spouse. A very fact specific inquiry. I am not aware of any debtor successfully prevailing in South Dakota.

Under previous law, the non-debtor spouse needed to timely file a complaint or adversary proceeding before the discharge date to preserve the non-dischargeability issue.

Not any more. No need to file anything or be concerned about any deadline in Chapter 7 proceedings.

- 3) 11 USC §523(a)(15) now provides as follows:
A discharge in bankruptcy does not discharge an individual debtor

“from any debt....

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.”

So, paragraph 5 covers DSO non-dischargeability and paragraph 15 refers to property and debt settlement obligations.

Thus,

- a) an obligation to pay a sum of money in lump or installments is non-dischargeable.
- b) An agreement to pay for or assume certain debts or hold harmless the other spouse from collection of those debts is non-dischargeable.

- c) *But* is an obligation of one spouse to pay the mastercard debt actually “a debt to a spouse, former spouse, or child of the debtor” as described by the statute, or is it something else? At least one commentator has suggested otherwise. But no reported cases have been found to support that interpretation. Such an argument is probably a loser in South Dakota but we should consider adding language to a debt division along the following lines:
- “In the event Plaintiff fails to timely pay the obligations assumed by her as set forth in this agreement then that obligation shall in like manner be owed to Defendant directly (‘as additional support’, ‘as additional property division’).”
- d) Need to enforce a property settlement or hold harmless provision after the obligor has received a discharge? State Court has concurrent jurisdiction to determine non-dischargeability under 11 USC § 523(a)(15).
- e) Whether a debt is “in the nature of alimony, maintenance or support” and is, in fact, a DSO is a matter of federal law for a bankruptcy court to make an independent determination. The Court may consider the following:
- the intent of the parties at time of divorce.
 - amount and type of property division
 - number or frequency of payments
 - waiver of alimony or maintenance
 - tax treatment; ability to modify.

F. Dischargeability issues and exceptions in Chapter 13

Non-DSO domestic obligations and property settlements are dischargeable in Chapter 13. 11 USC § 1328(a)(2).

Consider filing an adversary proceeding to object to discharge within the deadline of 60 days after the date first scheduled for the meeting of creditors if the obligation can be characterized as arising from fraud or breach of a fiduciary obligation. This would be pretty rare.

G. Property of the estate, debtors who are owed money or property and the truly miserable marriage and divorce of Jack and Jill.

- a) Jack and Jill have been divorced three years now. Jill has run up debts she can't pay because Jack has failed to pay child support. Jill files for Chapter 7 bankruptcy. As of the petition date, Jill is owed back child support of \$15,000.00. Her claim for child support far exceeds any exemption she can claim under SDCL 43-45-4, personal property.

Under South Dakota law, the child support *is not property of the estate* and the Chapter 7 Trustee has no claim against that sum for collection and payment to Jill's general unsecured creditors. Instead, Jill holds the child support claim in trust for her children and has no legal or equitable interest in that claim under 11 USC § 541, Property of the Estate. If and when she can collect, the money is hers.

- b) Jill also has a claim for a property settlement in the lump sum amount of \$30,000.00, payable in three installments of \$10,000.00 per year. Jack hasn't paid any of that either. The money owed to her is property of her bankruptcy estate, and the Chapter 7 Trustee is charged with collecting it for distribution to her creditors.
- c) Jill does not file bankruptcy but Jack does. Both Jack's DSO obligation to Jill for child support and property settlement obligation are non-dischargeable debts. The bankruptcy Trustee will distribute any assets he collects from Jack's bankruptcy estate and distribute it to Jill as a first priority.
- d) Jack decides to convert his Chapter 7 case to Chapter 13. Jack's repayment plan must provide for full payment to Jill on the child support (DSO) but the property settlement portion is dischargeable. Jill can and should file a Proof of Claim in Jack's Chapter 13 as a priority creditor. Jill's lawyer thinks she may have an argument that the \$30,000.00 payable to her at \$10,000.00 per year is, in fact, a DSO and, therefore, non-

dischargeable too. See part E.3) e), above. Be that as it may, if Jack does not stay current on his post petition DSOs, he will not receive a discharge *at all* after the conclusion of his scheduled plan payments.

Jill's lawyer also knows that she needs to carefully review Jack's proposed Chapter 13 Plan and file an Objection if the Plan fails to comply with the code. A confirmed Chapter 13 Plan is binding on creditors and might include an unlawful provision.; See, United Student Aid Funds, Inc. Vs. Espinosa, 130 S. Ct. 1367, 559 U.S. _____(2009). Espinosa's Plan was confirmed even though it purported to discharge a non-dischargeable student loan. While the Court held that lawyers must not include Plan provisions that are clearly contrary to law and could be sanctioned for doing so and that the Bankruptcy Court should not confirm such a Plan the Court, nevertheless, held the student loan was discharged because the creditor failed to object despite having the opportunity to do so. Due process is notice and opportunity to be heard. If you get notice and do nothing, you might lose.

H. Timing is everything, usually. When should divorce counsel advise client to talk to a bankruptcy attorney and who should file and when?

- 1) Where husband and wife are clearly heading for bankruptcy, if at all possible, complete the divorce first and let them each file their own case.
 - a) Divorce counsel may work together to fashion a Stipulation that acknowledges that both parties are filing bankruptcy and that neither assumes sole responsibility for their joint debts. This stipulation should contain no "hold harmless" clause.
 - b) Advantage. Each of them might be able to claim head of household status for a combined exemption of \$12,000.00 (\$6,000.00 each). Each might qualify for Chapter 7 because their separate income levels and separate household expenses make them able to satisfy the means test for Chapter 7 eligibility.

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- c) Disadvantage. If one qualifies for Chapter 7 and the other does not, the Chapter 13 filer will be paying his or her disposable income to the marital unsecured creditors under a five year plan and is not likely to be very happy about that.
- 2) Where husband and wife are clearly cooperative and amicable, they can file bankruptcy together first, discharge their debts and then complete the divorce, dividing any remaining nondischargeable debts or reaffirmed secured loans.
 - a) Advantage. One bankruptcy case instead of two, less expense.
 - b) Disadvantage. If they don't qualify for Chapter 7 and must file a three or five year Chapter 13 Plan, they are stuck with each other on that mutual obligation. Bankruptcy lawyer cannot, effectively, represent both parties without running into potential conflicts of interest later on; jobs change, support and custody issues change, romance, subsequent marriage, death and disaster.
 - 3) What if all the debts are in the name of one spouse only? Bankruptcy by the spouse with the debt can be filed before or after the divorce but if filed while the divorce is pending it may delay that divorce proceeding. There are many variables to consider, including the non-contractual liability of one spouse on credit card debt where she is only an authorized user rather than the account owner. Always investigate which spouse is *contractually* the debtor.

I. Jurisdictional overlays and conflicts in concurrent proceedings.

Although State Court divorce decisions are usually left undisturbed, the Bankruptcy Court may at times alter or modify that result depending on the impact on a debtor's case.

- 1) Bankruptcy filings occurring for one party in the midst of a divorce proceeding delay the resolution of the divorce.

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- a) Even though State Courts are not stayed and their jurisdiction is not compromised with respect to the entry of a Final Decree of Divorce, or temporary or final DSOs, the State Court may not issue a final Order dividing property if one of those parties is in bankruptcy and that property is currently property of the estate. (Exempt property ceases to be property of the estate in accordance with part III. B. (2), above).
 - b) Bankruptcy Court will *not* grant relief from stay to permit State Court to make a final division of marital property. The theory or argument that the final determination of the legal and equitable interests of the parties in marital property must first be determined under state law by the State Court has been rejected in this jurisdiction. See, In re Wolk, Bankr. No. 09-50082, in the appendix.
 - c) Bankruptcy Court may issue an Order Modifying the Stay but will reserve the right to alter or change the State Court's property division if unlawful, the result of collusion, etc. And no, this is not a federal court sitting in review of a State Court decision. Jurisdiction over property owned jointly or solely by the debtor is exclusive to the federal court. No State Court may issue a property division that removes from property of the bankruptcy estate property that can be used to pay debtor's creditors.
 - d) Trustee can intervene in the State Court proceeding. Wouldn't that be fun?!
 - e) Any decision made by the divorce court after the bankruptcy discharge of one of the parties, is a *post-petition obligation*, arising after the bankruptcy filing date and is a new and therefore non-dischargeable debt.

- 2) Bankruptcy filings occurring for one party in the midst of a divorce proceeding may result in the bankruptcy trustee administering and selling jointly owned property before the divorce court has a chance to divide it equitably.
- 3) Bankruptcy filings occurring for one party after a final divorce judgment may cause the non-filing ex-spouse to lose property she thought she was awarded in the divorce. Follow up promptly. Any divorce decree awarding an interest in real or personal property must be immediately followed up by execution and recording of deeds or titles if not done contemporaneously. See, In Re Claussen, Bankr. No. 05-41815, Adv. No. 06-4046, in the appendix.
- 4) Trustees may look into a Debtor's prior property division and use the Bankruptcy code's avoidance powers to recapture property awarded to the other spouse under theories of fraudulent conveyances, etc. 11 USC § 548, 544. A property division made with the intent to hinder, delay or defraud creditors is not safe from attack. Trustees are not particularly active in this area, partly because most property divisions are pretty fair on their face and often involve property that would be exempt anyway.

J. Ethical concerns

Rules 1.7 and 1.8 Conflict of Interest and Rule 1.9 Duties to Former Clients.

Lawyers should be mindful of the potential conflicts arising from trying to help divorcing clients through bankruptcy proceedings. The lawyer who files a joint bankruptcy for a married couple and thereafter seeks to represent one of those parties in a divorce will have a conflict of interest and must defer to other counsel. Likewise, bankruptcy lawyers cannot and should not get in the middle of the divorce dispute if filing a joint bankruptcy case. Counsel must make sure, in writing that the clients understand bankruptcy counsel represents their interests *jointly* in the bankruptcy case and only in that case. If the parties are too antagonistic and unwilling to share and disclose information necessary to completely and honestly prepare the sworn statements required of them in the bankruptcy

case then a joint filing with one lawyer is not feasible.

If it is likely that a divorcing couple will not be able to file a bankruptcy jointly without it being a multi year repayment plan then they should file separate bankruptcies with separate counsel to avoid the inevitable conflicts that will arise in the future.

There is no confidentiality entitlement on financial information for bankruptcy filers. Because bankruptcy relief is contingent *by law on the full disclosure under oath* of income, expenses, assets, debts and prior property transfers, all such information is public record. Married couples who are less than truthful or cooperative with each other in their divorce have no business filing a joint bankruptcy case. Bankruptcy counsel's entire file is subject to discovery and disclosure to the court and trustees.

If subsequent to the divorce you discover that your former client has filed for bankruptcy and has hidden assets or failed to disclose information material to his case you may be under an ethical obligation to first advise your former client to correct the deficiencies and then to advise his bankruptcy counsel of the problem. Prior ethics opinions in this state have been issued on this subject.

Appendix

Relevant decisions from the the United States Bankruptcy Court, District of South Dakota, provided by Kay Cee Hodson, Clerk for the Honorable Charles M. Nail, Bankrutpcy Judge.

October 27, 2010. MEIER, RYAN EUGENE & REBECCA ANN. Case No. 10-40346, Chapter 7. Issue: Whether Debtors, who were married but separated on the petition date, were both the head of a family within the meaning of S.D.C.L. § 43-45-4 and were thus both entitled to claim \$6,000.00 exempt under that statute? Ruling: No. Because they were still married on the petition date, Debtors and their children comprised a single family, within the plain and ordinary meaning of that word. Debtor-wife's monthly income was greater than Debtor-husband's monthly income. She was thus the head of the family and was entitled to claim \$6,000.00 exempt under S.D.C.L. § 43-45-4. Debtor-husband was entitled to claim only \$4,000.00 exempt under that statute

September 17, 2009. WOLK, THEODORE STEPHEN. Bankr. No. 09-50082, Chapter 7 (Bench Ruling, September 17, 2009). Issue: Whether Debtor's estranged spouse was entitled to relief from the automatic stay to permit the state court to equitably divide the parties' marital property, including property of the bankruptcy estate? Ruling: No. The filing of Debtor's chapter 7 petition created a bankruptcy estate over which the bankruptcy court has exclusive jurisdiction. The chapter 7 trustee has a duty to liquidate all property of the bankruptcy estate and distribute the proceeds in the manner specified in the bankruptcy code, which would include a distribution to Debtor's creditors but would not include a distribution to Debtor's estranged spouse (who would not have a claim against Debtor until the state court entered a final decree). Granting Debtor's estranged spouse the relief requested would thus violate several provisions of the bankruptcy code, including §§ 541, 704, and 726. However, Debtor's estranged spouse

did not need relief from the automatic stay to proceed with the divorce, request an order for domestic support, or seek an equitable division of any property that was not property of the estate (e.g., exempt property, post-petition earnings, property excluded from the estate, property abandoned by the chapter 7 trustee, and any surplus under § 726(a)(6)). In addition, while Debtor's estranged spouse could not seek an equitable division that would involve a distribution in kind of any property that was property of the estate, the Court did not find anything in the bankruptcy code that would prevent the state court from taking the value of that property into account in crafting an equitable division of property between the parties. Finally, whatever claim Debtor's estranged spouse may ultimately have against Debtor following their divorce would be a post-petition claim and would not be discharged in, or otherwise affected by, Debtor's bankruptcy.

February 13, 2009. PERRY, MARYBETH. Case No. 06-50237, Chapter 7. Issue: Whether a claim for unpaid child support was property of the estate within the meaning of 11 U.S.C. § 541 and was thus subject to turnover pursuant to 11 U.S.C. § 542? Ruling: No. Under South Dakota law, Debtor held the child support payments as trustee for her children. Debtor did not have an equitable interest in the child support arrearage. Thus, the arrearage was not property of the estate and was not subject to turnover.

March 23, 2007. CLAUSSEN, PATRICIA M. and RONALD (Trustee Lovald v. Claussen), Case No. 05-41815, Adv. No. 06-4046, Chapter 7. Issue: Whether Debtor and her former husband's temporary reallocation of equity in their marital home pursuant to a property settlement in their pre-petition divorce was subject to the case trustee's hypothetical lien under 11 U.S.C. § 544(a)(1) where the equity transfer was not recorded with the county register of deeds? Ruling: The case trustee's hypothetical lien under § 544(a)(1) on the equity in the marital home was superior to the former husband's temporary interest received in the pre-petition divorce where the divorce decree and attendant property settlement were not recorded with the county register of deeds and where no provision of the divorce decree and attendant property settlement constituted a money judgment owed by Debtor to her former husband that became a statutory judgment lien on the marital home.

BUCARO, PATRICIA A. (bench ruling - April 9, 2007). Case No. 05-10326, Chapter 7. Issue: Whether Debtor, who lived with her 16-year old daughter and an adult male who earned more than Debtor but was not related to either Debtor or her daughter by blood or marriage, was "the head of a family" for

the purposes of S.D.C.L. § 43-45-4? Ruling: Yes. The adult male who lived with Debtor and her daughter was a member of Debtor's household, but he was not a member of her family. Debtor's family consisted of Debtor and her 16-year old daughter. Debtor was the sole breadwinner for her family and was thus the head of her family for the purposes of S.D.C.L. § 43-45-4.

WILSEY, ROGER M., Bankr. No. 07-50230, Chapter 7 (bench ruling, December 13, 2007). Issue: Whether Debtor, who lived with an adult female who was not related to him by blood or marriage, was "the head of a family" for the purposes of S.D.C.L. § 43-45-4? Ruling: No. The adult female who lived with Debtor may have been a member of Debtor's household, but she was not a member of his family. Consequently, Debtor may have been the head of a household, but he was not the head of a family, and he was not entitled to claim the \$6,000 head of family exemption under S.D.C.L. § 43-45-4. See *In re Bucaro*, Bankr. No. 05-10326, bench ruling (Bankr. D.S.D. Apr. 9, 2007).

December 14, 2006. BOHN, DAWN MARIE (bench ruling). Bankr. No. 06-40175, Chapter 7. Issue: Whether Debtor could claim her right to receive up to \$10,000 when her ex-husband sells her former homestead exempt as proceeds under S.D.C.L. § 43-45-3? Ruling: No. For there to be proceeds, there must have been a sale, and no sale had taken place. However, Debtor's right to payment was personal property within the meaning of S.D.C.L. § 2-14-2(19) and could be claimed exempt under S.D.C.L. § 43-45-4, up to the amount of her remaining personal property exemption. The balance of the \$10,000 and Debtor's interest in the former homestead itself remained property of the estate and were thus subject to the trustee's administration.