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Red Rover, Red Rover, Please Let Me Keep Rover: Pet Exemptions in Chapter 7 Bankruptcy Proceedings

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INTRODUCTION

Many Americans scoff at the idea of being killed, placed in prison, or exiled for not paying a debt, but the idea was not so ridiculous for debtors in Ancient Rome.[1] Similar themes continued through centuries in England, though laws were eventually enacted which marginally improved the position of debtors.[2] Bankruptcy laws have continued to evolve today with the express purpose of rehabilitating the debtor and giving him or her a "fresh start" in post-bankruptcy life.[3] The Supreme Court made their stance on this policy particularly clear in 1934 with their decision in *Local Loan Co. v. Hunt.*[4] The Court held that bankruptcy should give "to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt."[5] In accordance with this goal, a debtor is granted a release from dischargeable debts following bankruptcy.[6] Once a debt is discharged, the debt is no longer collectible against the debtor personally—thus creating a "fresh start" for the debtor.[7]

A Chapter 7 bankruptcy proceeding is a type of liquidation procedure that is supervised by the bankruptcy court system.[8] The trustee converts a debtor's possessions to cash and then distributes the proceeds to creditors, less the administrative costs of sale.[9] The debtor, however, keeps any

* J.D. Washington University in St. Louis School of Law (2018).

1. Vern Countryman, *Bankruptcy and the Individual Debtor – and a Modest Proposal to Return to the Seventeenth Century*, 32 CATH. U. L. REV. 809, 809 (1983) ("[A] treatment under which the debtor who could not pay 'was either killed, made a slave, imprisoned, or exiled.'").
2. *Id.* at 811–12.
3. *Process – Bankruptcy Basics*, U.S. COURTS, http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics (last visited Jan. 31, 2017).
4. 292 U.S. 234 (1934).
5. *Id.* at 244.
6. U.S. COURTS, *supra* note 3. Certain kinds of debts are not dischargeable such as taxes, student loans, and domestic support obligations. 11 U.S.C. § 523 (2016).
7. U.S. COURTS, *supra* note 3.
8. U.S. COURTS, *supra* note 3.
9. UNITED STATES COURTS, *supra* note 3.

property that is exempted under applicable law.[10] Exemption laws have broadened over time thus allowing debtors to keep more of their assets.[11] Some states, such as Florida and Texas, have an unlimited homestead exemption which allow a debtor to keep all equity in their home.[12]

Upon filing for bankruptcy, a debtor must file a schedule listing all of his or her assets with the court.[13] All of the debtor's "legal or equitable interests" become property of the bankruptcy estate. [14] This includes any household pets.[15] It is the trustee's duty to convert the debtor's nonexempt assets into cash that is subsequently distributed to creditors.[16] Therefore, a listed pet is property of the estate and could be liquidated to satisfy unsecured creditors' claims.

The idea of starting life post-bankruptcy without the family pet is a notion many pet owners would find upsetting. Pets are adored by a large portion of Americans.[17] Though legally considered in bankruptcy proceedings to be nothing more than property, [18] pets form an emotional connection with their owners atypical of most other types of property.[19]

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10. UNITED STATES COURTS, *supra* note 3. Some bankruptcy cases may have little or no nonexempt property, called a "no-asset case". UNITED STATES COURTS, *supra* note 3. Unsecured creditors in a no-asset case will likely not receive any payment since there are no assets to liquidate and distribute. UNITED STATES COURTS, *supra* note 3.

11.*See infra* Part

III. EVOLVEMENT OF FEDERAL BANKRUPTCY LAWS AND EXEMPTIONS (discussing the evolvement of exemption laws over time).

12. Kathleen Michon, *Chapter 7 Homestead Exemption,* THEBANKRUPTCYSITE (May 20, 2016), http://www.thebankruptcysite.org/resources/bankruptcy/exemptions/chapter-7-homestead-exemption. *See, e.g.*, TEX. PROP. CODE ANN. § 41.001 (West 2001) (providing an unlimited household exemption for debtors domiciled in Texas); FLA. CONST. art. X, § 4 (West, Westlaw through Nov. 2016 amendments) (providing an unlimited household exemption for debtors domiciled in Florida).

13. 11 U.S.C. § 521(a)(1)(B)(i) (2012).

14. 11 U.S.C. § 541 (2012).

15. Hilla, *infra* note 51.

16. 11 U.S.C. § 704(a)(1) (2012) ("The trustee shall collect and reduce to money the property of the estate . . ..").

17. Herzog, *infra* note 22 ("Two thirds of Americans live with an animal, and according to a 2011 Harris poll, ninety percent of pet owners think of their dogs and cats as members of the family.").

18. Britton, *infra* note 31, at 1 (explaining that pets are chattel).

19. Steven Hoffer, *Study Shows Pet Ownership Has Psychological Benefits,* THE HUFFINGTON POST (Sept. 12, 2011), http://www.huffingtonpost.com/2011/07/13/pets-psychological-benefits-study_n_

897022.html. Studies conducted by Miami University and St. Louis University have shown that emotional benefits of pet ownership are comparable to human friendship. *Id.*

This Note is based on the premise that the emotional bond formed with pets justify them being included in a debtor's "fresh start". Life after bankruptcy should include the adored household pet regardless of potential value upon liquidation. This Note proposes a few ways to allow a debtor to keep his or her pet in a Chapter 7 bankruptcy proceeding. In Part I, this Note details America's affection of household pets and how the public's perception of pets differs from a pet's actual legal status. Next, Part II of this Note reviews the rising prevalence of the bankruptcy system in America and its basic processes. Part III examines how bankruptcy laws have evolved over time with respect to exemptions and notes various types of exemptions that are available to debtors. Part IV details various ways that states handle pet exemptions and provides a state by state review. Part V analyzes the various types of pet exemptions enacted by states and projects what would occur in a hypothetical liquidation involving a high value dog in different states. Finally, Part VI proposes a few solutions which would enable debtors to retain possession of their pets when undergoing Chapter 7 bankruptcy proceedings.

I. PETS IN AMERICA

It has been said that "no matter how little money and how few possessions you own, having a dog makes you rich."[20] Pets are cherished in American society.[21] A majority of Americans own a pet. Ninety percent of dog and cat owners consider their dogs or cats to be family members.[22] Like family members, pets provide a substantial amount of emotional support to their owners.[23] Studies have even suggested that people may

20. Ken Jorgustin, *No Matter How Little Money and Possessions You Own, Having a Dog Makes You Rich*, MODERN SURVIVAL BLOG (Oct. 4, 2012), http://modernsurvivalblog.com/modern-survival-ideology/no-matter-how-little-money-and-possessions-you-own-having-a-dog-makes-you-rich/.

21. Britton, *infra* note 31 at 16 ("A Gallup Poll showed most pet owners would not trade their pet for even $1 million in cash.").

22. Hal Herzog, *Why People Care More About Pets Than Other Humans*, WIRED (Apr. 13, 2015, 7:00 AM), https://www.wired.com/2015/04/people-care-pets-humans/ ("Two thirds of Americans live with an animal, and according to a 2011 Harris poll, ninety percent of pet owners think of their dogs and cats as members of the family."). *See* Hobart, *infra* note 27 ("Pet owners are sometimes happy to refer to their pets as their 'children,' and studies show that people's brains fire up in response to their pets in a similar manner to the responses for their children.").

23. Herzog, *supra* note 22 ("Forty percent of married female dog owners reported they received more emotional support from their pet than from their husband or their kids.").

show more empathy towards animals than they do to other human beings.[24] Not only do pet owners experience emotional attachment and support from their household pets, but pets also experience an emotional connection to their respective owners.[25] For example, some dogs display depression when their "family" goes through a divorce.[26]

To quantify this emotional connection in dollars and cents, owners are spending more money than ever before on their pets—in 2018 Americans will spend over $70 billion to ensure that their pets are comfortable and happy.[27] In addition to spending money on supporting their pets, people may spend a large amount of money on acquiring the actual pet itself. The cost of some purebred kittens has topped $1,000.[28] Prices of purebred

24. Herzog, *supra* note 22. A 2013 study conducted by the American Sociological Association tested levels of emotional distress of people after hearing uncomfortable stories involving a young puppy dog, adult dog, human infant, and human adult. The lowest level of emotional distress in the participant occurred when the victim in a story involved a human adult. The highest level of emotional distress experienced by the participant involved a story with a human infant, but the puppy was a close second. The adult dog followed in third. Herzog, *supra* note 22. Georgia Regents University conducted a study involving making a choice to save a person or a dog. Forty percent of participants selected the option to rescue a personal pet over a foreign tourist. Herzog, *supra* note 22.

25. Theresa Fisher, *Brain Scans Reveal What Dogs Really Think of Us*, MIC (Nov. 20, 2014), https://mic.com/articles/104474/brain-scans-reveal-what-dogs-really-think-of-us#.pBQDDgGx1. Dogs not only love the humans that take care of them, but they also see them as their family. *Id.* Dogs "rely on humans more than they do their own kind for affection, protection, and everything in between." *Id.* Dogs react similarly to their owners as babies do their parents when they are worried or fearful. *Id.*

26. Cailyn Cox, *Divorce Can Have a Devastating Effect on Your Pets: What You Need to Know*, SHE KNOWS (Mar. 17, 2016, 5:20 PM), http://www.sheknows.com/pets-and-animals/articles/1116181/divor
ce-can-affect-your-pets. Pets show symptoms of separation anxiety and depression when a couple splits up. *Id.*

27. Pet Industry Market Size & Ownership Statistics, AM. PET PRODUCTS ASS'N, https://www.americanpetproducts.org/press_industrytrends.asp (last visited Sep. 12 2018). Pet ownership has gone beyond food and medical care; owners are now paying for "pet-specific climate control, wearable technology, human-grade diets, and intensive care for when owners are on vacation or even just at work." Pamela J. Hobart, *Americans Will Spend $60 Billion on Their Pets This Year, and You'll Be Surprised to See How Those Costs Break Down*, BUSTLE (Sept. 13, 2015), https://www.bustle
.com/articles/110151-americans-will-spend-60-billion-on-their-pets-this-year-and-youll-be-surprised-to-see.

28. Patricia Jacobberger, *Finding the Purrfect Pedigreed Kitten*, THE CAT FANCIERS' ASSOCIATION, http://cfa.org/Owners/FindingAKitten/FindingthePurrfectPedigreedKitten.aspx. The price of a pet quality kitten may cost between $300 and $1,500. The price of a breeder quality kitten may range between $500 and $2,000. The price for a show quality kitten may cost as high as $15,000, but will generally be above $1,000. *Id.*

puppies may range from $500 to $3,000 depending on the dog's breed.[29]

The public's perception of pets differs from the animals' ultimate legal status.[30] Though there may be some discomfort in referring to them as such, the traditional legal view of animals is that they are property no different than other houseware.[31] Regardless of a pet's legal status as chattel, people have drafted custody agreements for pets upon the termination of a relationship,[32] though the courts have been reluctant to enforce these kinds of arrangements.[33] In *Bennett v. Bennett*,[34] for example, a woman sought a change in her dog's custody agreement because her ex-husband was not complying with the terms of visitation.[35] The court instead remanded the case to classify the dog as property subject to the equitable distribution statute.[36] The discomfort to this approach is apparent in *Rabideau v. City of Racine*.[37] The court discussed that labeling a dog as "property" dismissed a substantial value that humans "place upon the companionship that they enjoy with a dog."[38] The court in *Rabideau* specifically differentiated a dog from other kinds of personal property.[39]

Pets are gaining legal rights, however.[40] The Uniform Probate Code and

29. John S. Kiernan, *Cost of Owning a Dog: Averages & Most Expensive Breeds*, WALLETHUB (Sept. 10, 2015), https://wallethub.com/edu/cost-of-owning-a-dog/15563/. The most expensive dog in the world is the Tibetan Mastiff. In 2014, a Tibetan Mastiff puppy was purchased for $2,000,000. *Id.*

30. Britton, *infra* note 31, at 15 ("Public perception of the status of pets is sharply at odds with the legal view.").

31. Ann Hartwell Britton, *Bones of Contention: Custody of Family Pets*, 20 J. AM. ACAD. MATRIM. LAW. 1 (2006) ("Common law regarded animals that were not a source or production of human food as 'an inferior sort of property' with no intrinsic value in the eyes of the law.") (citations omitted).

32. Sharon L. Peters, *Who Gets Custody of the Dog Is Complicated, 'Hotly Contested'*, USA TODAY (May 28, 2008, 3:15 AM), http://usatoday30.usatoday.com/life/lifestyle/2008-05-27-dogs-divorce_N.ht
m. After a woman and her boyfriend broke up, they drafted a joint-custody agreement to share custody of their pit bull. *Id.*

33. *See* Bennett v. Bennett, 655 So.2d 109 (Fla. Dist. Ct. App. 1995).

34. *Id.*

35. *Id.* at 110.

36. *Id.* at 111. An Iowa appellate court held that "a dog is personal property and while courts should not put a family pet in position of being abused or uncared for, [they] do not have to determine the best interests of a pet." Britton, *supra* note 31 (citing *In re* Marriage of Stewart, 356 N.W.2d 611 (Iowa Ct. App. 1984)).

37. 627 N.W.2d 795 (Wis. 2001).

38. *Id.* at 798.

39. *Id.* "A companion dog is not a living room sofa or dining room furniture. This term inadequately and inaccurately describes the relationship between a human and a dog." *Id.*

40. Elizabeth A. Hornbrook, *Barking Up the Wrong Tree: Pet Care Expenses in Bankruptcy*, AM.

Uniform Trust Code include provisions that allow pet owners to ensure that trust funds are used for the benefit of their specified pet or pets.[41] In addition to the statutory changes, more and more courts are feeling the tension regarding the rights of animals. In a New York State case involving the habeas corpus rights of chimpanzees, Judge Fahey rejected in his concurrence the paradigm of classifying a party as a "person" or a "thing".[42] He further notes that "[t]he evolving nature of life makes clear that chimpanzees and humans exist on a continuum of living beings."[43] Though an animal is not a person, "there is no doubt that it is not merely a thing".[44]

II. AMERICANS IN FINANCIAL NEED

Just as pet ownership is common in America, so is handling economic hardship.[45] Americans often turn to the bankruptcy system for assistance in overcoming financial difficulties.[46] Bankruptcies are common. In 2015, there were 844,495 bankruptcy filings.[47] Most of these petitions are filed by individuals.[48] About 70% of consumer bankruptcy cases are Chapter 7 liquidation proceedings as compared to a Chapter 13 reorganization proceeding.[49]

Chapter 7 liquidation requires a debtor to list all assets and liabilities on

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BANKR. INST. J., Apr. 2014, at 56.

41. *Id.*

42. Nonhuman Rights Project, Inc. v. Lavery, 31 N.Y.3d 1054, 1059 (2018) (Fahey, J., concurring).

43. *Id.*

44. *Id.* at 7.

45. Jane C. Timm, *American Dream? 80% Will Experience Economic Hardship*, MSNBC (July 29, 2013, 10:33 AM), http://www.msnbc.com/morning-joe/american-dream-80-will-experience-some. ("Four out of five Americans will live near poverty, without work, or relying on welfare at least once during their lives, according to a new survey from Associated Press.").

46. Bill Fay, *What Happens When You File Bankruptcy?*, DEBT.ORG, https://www.debt.org/bankruptcy/ (last visited Aug 12, 2018).

47. *Id.* The number of filings was close to 1.6 million in 2010. *Id.* As the economy has improved, the number of filings has decreased by 50% through 2016. *Id.*

48. *Id.* ("97% of them (819,760) were filed by individuals").

49. *Just the Facts: Consumer Bankruptcy Filings, 2006 – 2017,* U.S. COURTS, http://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017 (last visited Aug. 13, 2018) (stating that 68% of consumer bankruptcy petitions were filed under chapter 7 during a 12 year period, and 32% was filed under Chapter 13).

schedules that are filed with the court.[50] Pets are considered assets that must be listed on the debtor's schedules even if the pet's value is minimal.[51] The debtor also fills out a schedule which lists property that he or she wishes to exempt from liquidation under applicable law.[52]

The trustee appointed to administer a Chapter 7 bankruptcy case has a number of responsibilities.[53] A trustee converts nonexempt property into cash that is then distributed to the unsecured creditors.[54] Not all nonexempt property is liquidated, however. The trustee also has the power to abandon property.[55] A trustee exercises this power when a certain item has no value or benefit to the estate due to being fully exempt under exemption laws or fully encumbered by a secured creditor's lien.[56] The trustee will exercise this power if it is beneficial to the estate to do so. A sale is not beneficial to the estate if a particular item holds no economic value or requires a substantial cost to maintain. In these circumstances a trustee may choose to abandon the item.[57] Following the liquidation of nonexempt and non-abandoned assets in a Chapter 7 bankruptcy case, a debtor is discharged from personal liability from their debts.[58] Therefore, a debtor begins the Chapter 7 process holding his or her assets (both exempt and nonexempt) and a straining amount of debt. He or she ends the Chapter 7 process retaining his or her exempt assets, losing his or her nonexempt assets, and being released from dischargeable debts.

50. 11 U.S.C. § 521(a)(1)(B) (2012).
51. Bankruptcy Federal Judiciary Official Form B106A/B, U.S. COURTS, http://www.uscourts.gov/sites/default/files/form_b106ab.pdf (last updated Dec. 2015) (*see* Question 13).
52. Bankruptcy Federal Judiciary Official Form C106C, U.S. COURTS, http://www.uscourts.gov/sites/default/files/form_b_106c.pdf (last updated Apr. 2016).
53. 11 U.S.C. § 704 (2012) (specifying the duties of a trustee).
54. 11 U.S.C. § 704(a)(1) ("The trustee shall collect and reduce to money the property of the estate . . ..").
55. 11 U.S.C. § 554 (2012) ("After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.").
56. BRIAN A. BLUM, BANKRUPTCY AND DEBTOR/CREDITOR 298 (6th ed. 2014).
57. *Id.*
58. *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics (last visited Feb. 4, 2017). *See also* 11 U.S.C. § 727 (2012) ("The court shall grant the debtor a discharge, unless . . ..").

III. EVOLVEMENT OF FEDERAL BANKRUPTCY LAWS AND EXEMPTIONS

Bankruptcy has evolved into a system that is meant to provide a "fresh start" for the debtor.[59] Exemptions are key to a "fresh start" by ensuring that a Chapter 7 debtor "is not left destitute and dependent upon the public purse after distribution of his assets to creditors".[60] Exemptions "preserve the debtor's access to property that is essential to 'life and livelihood,' . . .." and "further one or more of the following social policies '(1) To provide the debtor with property necessary for his physical survival; (2) To protect the dignity and the cultural and religious identity of the debtor; (3) To enable the debtor to rehabilitate himself financially and earn income in the future; (4) To protect the debtor's family from the adverse consequences of impoverishment; (5) To shift the burden of providing the debtor and his family with minimal financial support from society to the debtor's creditors.'"[61]

At its European beginning, most bankruptcy laws were enacted to favor the creditor and provided for limited exemptions.[62] Congress adopted its first bankruptcy legislation with the enactment of the Bankruptcy Act of 1800.[63] The act allowed assets of the merchant debtor to be liquidated in satisfaction for the debt and enabled the debtor to keep a certain percentage of their belongings.[64] Protection for debtors was limited under

59. Lee Robert Bogdanoff, *Exemptions Under the Bankruptcy Code: Using California's New Homestead Law As A Medium for Analysis*, 72 CAL. L. REV. 922, 924 (1984) (citing H.R. REP. NO.95-595, at 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087).

60. *Id.*

61. The Honorable William Houston Brown, *Political and Ethical Considerations of Exemption Limitations: The "Opt-Out" as Child of the First and Parent of the Second*, 71 AM. BANKR. L.J. 149, 163 (1997);
Norwest Bank Nebraska, N.A. v. Tveten, 848 F.2d 871, 875 (8th Cir. 1988) (citing *In re* Ellingson, 63 B.R. 271 (Bankr. N.D. Iowa 1986)).

62. Countryman, *supra* note 1, at 809. Early Italian bankruptcy laws were not passed for the good of the debtor, but instead enabled a creditor to take possession of debtor's property to fulfill outstanding claims. Countryman, *supra* note 1, at 809.

63. Bankruptcy Act of 1800, ch. 19, 2 Stat. 19 (repealed 1803).

64. *Federal Court Records: Part 03*, NATIONAL ARCHIVES, http://www.archives.gov/publications/m
icrofilm-catalogs/fed-courts/part-03.html (last visited Feb. 4, 2017).

the Act because it could only be initiated by a creditor.[65] The exemptions permitted in the enactment were "necessary apparel, bedding, and a percentage of the estate keyed to the amount of creditor distribution."[66] Bankruptcy legislation passed in 1841 provided for more exemptions which enabled debtors to retain household goods and other necessities worth up to $300.[67] Subsequent legislation in 1867 allowed for further exemptions that reflected relevant events by exempting "military arms, uniforms, and equipment."[68] Unlike the laws passed before it, the bankruptcy legislation passed in 1898 did not include federal exemptions.[69] A debtor could only exempt what his or her state specified as exempt.[70]

The Bankruptcy Reform Act of 1978,[71] "the Code", was a comprehensive overhaul of prior federal bankruptcy legislation.[72] With the enactment of the Code, many wondered what the fate of exemptions would be.[73] Specifically, should there be state exemptions or a uniform federal scheme of exemptions?[74]

The Code answered this question in a way that some consider to be two statutes in one.[75] The first component allows the debtor to choose between exemptions laid out by the Code and those provided by the debtor's state of domicile.[76] The Code lays out its exemptions in section 522(d).[77] This section articulates twelve categories of exemptions that include real

65. *Id.*
66. *Property Exemptions*, NATIONAL BANKRUPTCY REVIEW COMMISSION, http://govinfo.library.unt.
edu/nbrc/report/05ccons.html (last visited July 13, 2018).
67. *Id.*
68. *Id.* The 1867 Act allowed debtors to exempt property under federal bankruptcy exemptions and their state law exemptions. *Id.*
69. *Id.*
70. *Id.*
71. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as amended at 11 U.S.C. §§ 101-1522 (2012)).
72. Don J. Miner, *Business Reorganization Under the Bankruptcy Reform Act of 1978: An Analysis of Chapter 11*, 1979 BYU L. REV. 961, 961 (1979) ("The Reform Act clarifies, simplifies, and modernizes the previous law, which has been unable to deal with the vast twentieth-century changes in the amount and treatment of debt.").
73. *Id.*
74. *Id.*
75. Bogdanoff, *supra* note 59, at 925.
76. 11 U.S.C. § 522(b) (2012).
77. *Id.* at § 522(d).

property, jewelry, and motor vehicle, among others.[78] The second part of the Code's exemption provision allows for a state to offer only the state exemption to its debtors. [79] Debtors in these states cannot choose federal exemption provisions.[80] All but 16 states have opted out under §522(b).[81] Thus, a debtor in any state has access to state provided exemptions, but only in sixteen states may a debtor choose between using the exemptions provided federal or state law.

The Code explains which state's exemptions should be used by a debtor in section 522.[82] The exemptions that states offer their debtors vary greatly.[83] Some states provide for various religious items to be exempt and other states create exemptions based on the lifestyle that is typical for the state.[84] Many states offer a homestead exemption that allows debtors to exempt home equity up to a certain amount.[85] Some states allow a debtor to keep an unlimited amount of equity for a homestead exemptions,[86]

78. *Id.*
79. *Id.* This provision is frequently called the "opt-out provision."
80. *Id.*
81. *Federal and State Bankruptcy Exemptions*, REAL WORLD LAW, P.C., http://www.realworldlaw.c
om/stateoptout.html (last visited Feb. 4, 2017). The states that did not opt out of federal exemptions are: Arkansas, Connecticut, District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and Wisconsin. *Id.*
82. 11 U.S.C. § 522(b) (2012). This provision is useful if a debtor moved states prior to filing a bankruptcy petition. If a debtor lived in one state in the two years (730 days) preceding filing, that state is to be used for exemption purposes. If the debtor's domicile has not been in a single state during the 730-day period, then the debtor's domicile in the majority of the 180 days prior is the state that should be used. *Id.*
83. Lowell P. Bottrell, *Comfortable Beds, A Church Pew, A Cemetery Lot, One Hog, One Pig, Six Sheep, One Cow, A Yolk of Oxen or A Horse, and Your Notary Seal: Some Thoughts About Exemptions*, 72 N.D. L. REV. 83, 90 (1996) ("Most states provide a hodge podge of different exemptions which the debtor may claim.").
84. *Id. See* ALA. CODE § 6-10-5 (1993) (exempting a pew in a church or other place of worship and any interest in a cemetery); CONN. GEN. STAT. ANN. § 52-352b(c) (West 1995) (exempting a burial plot for the debtor and his or her immediate family); MINN. STAT. § 550.37(5) (2016) (exempting $13,000 in farm equipment when a debtor is principally engaged in farming); N.D. CENT. CODE § 28-22-04(3) (1991) (providing a $4,500 exemption for livestock and farm implements).
85. Michon, *supra* note 12. The lien to a home remains intact in the exemption process. *Id.* Equity is the difference between the sale price of the home and the remainder that is paid off to lienholders. *Id.* Homestead exemptions allow for a debtor to retain a set portion of the equity as specified by state law. *Id.*
86. *See* TEX. PROP. CODE ANN. § 41.001(a) (West 2001) (providing an unlimited household exemption for debtors domiciled in Texas); FLA. CONST. art. X, § 4 (West, Westlaw through Nov.

while other states do not offer a homestead exemption at all.[87] The Code provides a homestead exemption, [88] which the Judicial Conference of the United States updates to account for inflation. [89] The current value of the Code's homestead exemption is $23,675.[90]

The Code, along with several other states, contains a wildcard exemption.[91] Wildcard exemptions allow a debtor to select a specified dollar-amount of assets they would like to protect from liquidation, regardless of the type of property.[92]

Because of the dollar cap on exemptions, the valuation of a specific item is often relevant in examining the exemptions of an estate.[93] Given a $1,200 vehicle exemption, a debtor will argue that the car's value is equal or less than $1,200 in order to retain the entire vehicle (assuming that there are no liens on the vehicle). A creditor will argue that the car's value is higher than $1,200 in order to force a sale.[94] Section 522 of the Code clarifies that fair market value at the date of filing of petition should be used in valuation, not liquidation value.[95] Fair market value is the price "at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both

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2016 amendments) (providing an unlimited household exemption for debtors domiciled in Florida). Some believe that there has been abuse within the unlimited homestead exemption. Barry A. Nelson & Kevin E. Packman, *Florida's Unlimited Homestead Exemption Does Have Some Limits,* 77 FLA. B. J., 60 (2013) Bowie Kuhn, Major League Baseball Commissioner, reportedly bought a million dollar estate in Florida to protect his assets before filing for bankruptcy. *Id.*

87. *Homestead Exemptions Across the States,* THE TEXAS POLITICS PROJECT, https://texaspolitics.ute xas.edu/archive/html/cons/features/0406_01/homestead.html# (last visited Feb. 4, 2017). Maryland, New Jersey, and Pennsylvania do not have a homestead exemption. *Id.*

88. 11 U.S.C. § 522(d) (2012).

89. 11 U.S.C. § 104 (a) (2012).

90. 81 Fed. Reg. 8748 (Feb. 22, 2016).

91. *See* Fla. Const. art. X, § 4 (West, Westlaw through Nov. 2016 amendments) (noting that Florida's wildcard provision can only be used if the debtor does not use Florida's homestead exemption); S.C. CODE ANN. § 15-41-30 (2017) (providing a wildcard exemption up to $5,000 for unused exemptions in other specified categories); 11 U.S.C. § 522(d) (2012) (allowing for a wildcard provision of $1,250 plus any unused portion of the homestead exemption capped at $11,850).

92. Ronald J. Lundquist, *A Debt to Modernity*, 72 BENCH & B. MINN. 20, 23 (2015).

93. Steven L. Pottle, Note, *Bankruptcy Valuation Under Selected Liquidation Procedures*, 40 VAND. L. REV. 177, 180 (1987).

94. *Id.*

95. 11 U.S.C. § 522(a) (2012).

having reasonable knowledge of relevant facts."[96]

There are situations where an asset would be partially exempt—such as when an asset is worth more than the exemption value.[97] A television is partially exempt if there is an exemption for $1,200 for a television and the debtor's television is worth $1,400.[98] In this case, the trustee can still sell the asset.[99] If the trustee sells the asset to another party, the debtor will get the exemption amount and the remaining balance will go towards paying the creditors and the administrative costs of sale.[100]

IV. PET EXEMPTIONS

States vary on their treatment of pets in exemptions. States that have an exemption exclusively for pets but with a value limitation include: Alaska, Arizona, Michigan, New York, and Oregon.[101] States with a specific pet exemption without a value limitation include: Louisiana, Texas, and Virginia.[102] Though Texas does not provide a value cap for exempt pets, there are limits on the aggregate value of exemptions for all personal property – including pets.[103] Other states place pet exemptions in a grouping with other kinds of personal property with value limits on the individual item or in aggregate.[104] If a debtor uses the Code's set of

96. *Undivided Interest in Property Valuation Made Simple,* 64 PRAC. TAX STRATEGIES 51*,* 51 (2000).

97. Brian Hemphill, *Bankruptcy Exemptions*, MCCORD & HEMPHILL ATTORNEYS AT LAW (Aug. 6, 2012), http://ourbendlawyer.com/bankruptcy-exemptions/.

98. *Id.*

99. *Id.*

100. *Id.*

101. ALASKA STAT. § 09.38.020 (2016) (limiting pet exemptions to $1,000); ARIZ. REV. STAT. § 33-1125 (West 2014) (limiting pet exemptions to $800); MICH. COMP. LAWS ANN. § 600.5451 (West 2012) (limiting pet exemptions to $500); N.Y. C.P.L.R. 5205 (MCKINNEY 2011) (limiting pet exemptions to $1,000); OR. REV. STAT. § 18.345 (2015) (limiting pet exemptions to $1,000).

102. LA. STAT. ANN. § 13:3881 (West 2014); TEX. PROP. CODE. ANN. § 42.002 (West 2001); VA. CODE ANN. § 34-26 (West 2016).

103. TEX. PROP. CODE ANN. § 42.002 (West 2001). Domestic pets are exempt as long as the personal property aggregate value is not more than $100,000 for a family and $50,000 for a single adult. *Id.* at PROP. § 42.001.

104. ARK CONST. art IX §§ 1–2 (West, Westlaw through July 2018 amendments) (exempting $200 worth of personal property); CAL. CIV. PROC. CODE § 703.140 (West 2017) (exempting $600 worth of personal property); D.C. Code Ann. § 15-501 (West 2016) (exempting $425 per item and $8,625 in aggregate value); FLA. CONST. art. X, §4 (West, Westlaw through Nov. 2016 amendments) (exempting $1,000 of personal property), GA. CODE ANN. § 44-13-100 (West 2016) (exempting $300 in value per item and $5,000 in total value); IDAHO CODE ANN. § 11-605 (West 2016) (exempting $750 in value

exemptions, animals can qualify for an exemption under §522(d)(3) which exempts a specified list of miscellaneous household goods and personal property items.[105] The exemption limits the value of a particular exempted item to $400.[106]

A majority of states do not recognize household pets or animals at all in their exemption laws.[107] Even further, some states explicitly mention that animals can be exempted but exclusively for farming purposes.[108] Such an exemption effectively eliminates any possible exemption for household pets, as courts generally interpret such exemptions to indicate the

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for one item and $7,500 in total value); ME. REV. STAT. ANN. tit. 14, § 4422 (2014) (exempting $200 per item); MD. CODE ANN., CTS. & JUD. PROC. § 11-504 (West 2014) (exempting $1,000 in aggregate value); MISS. CODE. ANN. § 85-3-1 (West 2016) (exempting $10,000 in aggregate value); MO. REV. STAT. § 513.430 (West 2016) (exempting $3,000 in aggregate value); MONT. CODE ANN. § 25-13-609 (West 2015) (exempting $600 in value per item and $4,500 in aggregate value); N.J. STAT. ANN. § 2A:17-19 (West 2016) (exempting $1,000 in aggregate value); N.C. GEN. STAT. ANN. § 1C-1601 (West 2016) (exempting $5,000 in aggregate value for the debtor plus $1,000 per each dependent); OHIO REV. CODE ANN. § 2329.66 (West 2016) (exempting $525 in value per item and $10,775 in aggregate value); S.C. CODE ANN. § 15-41-30 (West 2012) (exempting $4,000 in aggregate value); UTAH CODE ANN. § 78B-5-506 (West 2016) (exempting $1,000 in aggregate value); VT. STAT. ANN. tit. 12, § 2740 (West 2016) (exempting $2,500 in aggregate value); W. VA. CODE § 38-10-4 (2016) (exempting $400 in value per item and $8,000 in aggregate value); WIS. STAT. ANN. § 815.18 (West 2016) (exempting $12,000 in aggregate value).

105. 11 U.S.C. § 522 (2012) ("The debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.").

106. *Id.*

107. ALA. CODE § 6-10-6 2016); COLO. REV. STAT. ANN. § 13-54-102 (West 2015); DEL. CODE ANN. tit. 10, § 4902 (West 2016); HAW. REV. STAT. ANN. § 651-121 (LexisNexis 2016); 735 ILL. COMP. STAT. ANN. 5/12-1001 (West 2012); IND. CODE ANN. § 34-55-10-2 (West 2012); IOWA CODE § 627.6 (2016); KAN. STAT. ANN. § 60-2304 (West 2016); KY. REV. STAT. ANN. § 427.010 (West 2016)(exempting livestock); MASS. GEN. LAWS ANN. ch. 235, § 34 (West 2011)(exempting farm livestock); MINN. STAT. ANN. § 550.37 (West 2016)(exempting livestock); NEB. REV. STAT. ANN. § 25-1556 (West 2016); NEV. REV. STAT. ANN. § 21.090 (LexisNexis 201); N.H. REV. STAT. ANN. § 511:2 (West 2015); N.M. STAT. ANN. §42-10-2 (West 2016); N.D. CENT. CODE § 28-22-02 (2015); OKLA. STAT. tit. 31, § 1 (2016); 42 PA. STAT. AND CONS. STAT. ANN. § 8124 (West 2001); 9. R.I. GEN. LAWS ANN. § 9-26-4 (West 2014); S.D. CODIFIED LAWS § 43-45-2 2016); TENN. CODE ANN. § 26-2-104 (West 2016); WASH. REV. CODE ANN. § 6.15.010 (West 2018); WYO. STAT. ANN. § 1-20-106 (West 2016).

108. *See* COLO. REV. STAT. § 13-54-102 (West 2016)("[I]n the case of every debtor engaged in agriculture as the debtor's principal occupation, including but not limited to farming, ranching, and dairy production; the raising of livestock or poultry; all livestock, poultry, or other animals."); CONN. GEN. STAT. ANN. § 52-352d (West 2014)("The farm animals and livestock feed which are reasonably required by a farm partnership in the course of its occupation shall be exempt."); MASS. GEN. LAWS ANN. ch. 235, § 34 (West 2011)("2 cows, 12 sheep, 2 swine and 4 tons of hay.").

legislature intent to not exempt other animals.[109]

V. ANALYSIS

Due to both the large number of pet owners and the large amount of bankruptcy filings, this Note assumes that many people who file for bankruptcy are also pet owners.[110] Pet owners must list all assets when they file for bankruptcy—including their pets.[111] A trustee is entitled to liquidate all assets on a schedule that are not exempt or encumbered by a lien.[112] In states where a debtor cannot exempt a pet, or the value of the pet is greater than the amount exempted, a trustee can sell a pet and the proceeds will be distributed to creditors. A family's ability to keep their beloved pet is dependent on the exemption laws of the particular state of the debtor's domicile.[113]

For analysis purposes, suppose Rover, a beloved family dog, is worth $1500 due to his superior breeding. Rover's family experiences financial hardship and files for Chapter 7 bankruptcy in order to discharge their debts.[114] The family lists Rover on their schedule of assets and accurately states his value as $1500.[115] Rover's fate in the liquidation proceeding depends on the bankruptcy exemptions of the family's state of domicile.

A. Specific Pet Exemption with Designated Value Restriction

If Rover's family lives in a state similar to Alaska, domestic pets are

109. *In re* Canutt, 264 F. Supp. 919, 921 (D. Or. 1967).
110. *See* Herzog, *supra* note 22; Fay, *supra* note 46.
111. *See* Hilla, *supra* note 51 ("All assets must be listed in your bankruptcy petition, and even a family pet is an asset, or personal property.").
112. 11 U.S.C. § 704(a)(1) (2012).
113. 11 U.S.C. § 522(b) (2012) (discussing which state's exemptions should be used for a particular debtor).
114. *See* 11 U.S.C. § 727 (2012). For simplicity, this Note assumes one set of exemptions. Married couples may be eligible for two sets of exemptions in certain circumstances, but that analysis is outside the scope of this Note. *See Bankruptcy for Married Couples: Filing Options,* THEBANKRUPTCYSITE, https://www.thebankruptcysite.org/resources/bankruptcy/filing-bankruptcy/bankruptcy-married-couples-filing-options (last visited Sep. 6, 2018).
115. *See* Hilla, *supra* note 51.

explicitly and exclusively mentioned with a cap on value.[116] The Alaska statute specifies that pets are exempt up to $1000.[117] Since Rover is worth more than $1000, the trustee could decide for him to be liquidated. $1000 would go to the debtor and the remaining $500 less costs of sale would be distributed to the unsecured creditors.[118]

B. Specific Pet Exemption with no Designated Value Restriction

In a state like Virginia, the exemption specifies that pets "not kept or raised for sale or profit" are exempt from liquidation.[119] Rover is a dog, so he qualifies as a pet that can be exempt. His fair market value is not important when using Virginia's specific exemption. As long as he is not used for profit or sale, he will not be liquidated and will remain with the debtor's family during property liquidation.

C. Personal Property Exemptions that Include Pets

Rover's family may live in a state that includes pet exemptions along with other types of personal property. Some states, along with the Code, place limits on what one item can be worth and other states place a limit on total aggregate value of exemptible personal property.[120] If Rover's family lived in Washington D.C., the exemption statute includes pets with household furnishings, musical instruments, appliances, and household goods with an aggregate value restriction of $8625.[121] Rover's family could select to exempt him, but they would then be left with $7125 to exempt necessary furnishings, appliances, household goods, etc. necessary to begin the "fresh start" of post-bankruptcy life. Idaho, in particular, would not allow for the exemption of Rover. Idaho's exemption statute exempts "up to $7500 of household appliances and furnishings, pets,

116. ALASKA STAT. § 09.38.020 (2016).
117. *Id.*
118. Bankruptcy Exemptions, *supra* note 97 (discussing that proceeds equal to the exemption from partially exempt property sold to a third party must be paid to the debtor).
119. VA. CODE ANN. § 34-26 (West 2016).
120. *See* GA. CODE ANN. § 44-13-100 (West 2016) (exempting $300 in value per item and $5,000 in total value); MD. CODE ANN., CTS. & JUD. PROC. § 11-504 (West 2014) (exempting $1,000 in aggregate value).
121. *See* D.C. CODE ANN. § 15-501 (West 2016).

instruments, heirlooms, and items of sentimental value, up to $750 of value per item".[122] Rover's family could not exempt him because he is worth double the per item value limit. The Code provides for an exemption of $12,625 worth of personal property, but places a limit on $600 per any particular item.[123] Rover is worth more than $600, so he could be liquidated with proceeds distributed to creditors.[124]

D. States without a Pet Exemption

If Rover's family lives in one of the majority of states that does not have an exemption for pets or animals, they will not be able to exempt him through a specific pet exemption.[125] A few states specifically list various farm animals as an exemption, but do not include pets.[126] If Rover's family lives in a state with an exemption where other animals are specifically mentioned, pets are not included thus preventing Rover from being exempted through a specific exemption.[127]

America has a deep devotion to animals—financially and emotionally.[128] America has also experienced a shift in exemption laws that allow for the debtor to retain more and more. The first bankruptcy laws only allowed a debtor to retain "necessary apparel, bedding, and a percentage of the estate keyed to the amount of creditor distribution."[129] Subsequently passed legislation increased the exemptions available to the debtor.[130] Exemptions today are meant to provide for a fresh start for the

122. *See* IDAHO CODE § 11-605 (2016).
123. 11 U.S.C. § 522 (2012).
124. *See* NATIONAL BANKRUPTCY REVIEW COMMISSION, *supra* note 97 (discussing that proceeds equal to the exemption from partially exempt property sold to a third party must be paid to the debtor).
125. *See*, *e.g.*, DEL. CODE ANN. tit. 10, § 4902 (West 2016); HAW. REV. STAT. ANN. § 651-121 (LexisNexis 2016).
126. *See* CONN. GEN. STAT. ANN. § 52-352d(b) (West 2014) ("The farm animals and livestock feed which are reasonably required by a farm partnership in the course of its occupation shall be exempt."); MASS. GEN. LAWS ANN. ch. 235, § 34 (West 2011) ("2 cows, 12 sheep, 2 swine and 4 tons of hay.").
127. *In re* Canutt, 264 F. Supp. 919 (D. Or. 1967) (holding that an exemption that enumerates specific animals effectively eliminates the exemption of others).
128. *See* Britton, *supra* note 31; Herzog, *supra* note 22; Hobart, *supra* note 27.
129. NATIONAL BANKRUPTCY REVIEW COMMISSION, *supra note* 66.
130. NATIONAL BANKRUPTCY REVIEW COMMISSION, *supra note* 66. The Bankruptcy Acts of 1841 and 1867 allowed for more exemptions such as household goods, military arms, and equipment. NATIONAL BANKRUPTCY REVIEW COMMISSION, *supra note* 66.

debtor.[131] Homestead exemptions today allow for a debtor to keep a set amount of equity in their home. Texas and Florida allow for an unlimited homestead exemption.[132] If a debtor in these states has a $1,000,000 in home unencumbered by a lien or mortgage, they are entitled to keep the entire house even if there is no other exemptible property to be distributed to debtors.[133] Debtors regularly shift assets around to take advantage of these generous homestead exemptions.[134] Exemption laws have been expanding greatly to give the debtor a "fresh start" as evidenced by large or unlimited homestead exemptions that have been enacted by some states. Certain states are willing to allow debtors to exempt a potentially unlimited amount of equity in their home. Absent an exemption, the equity would have been in the pockets of unsecured creditors. The amount of equity in a homestead is likely to be higher than equity in a pet. Therefore, allowing debtors to keep their household pets would continue with the trend of expanding exemptions available to debtors.

Typically, in most bankruptcy situations, pets don't have much value.[135] A trustee will likely use their abandonment power under section 554.[136] Though liquidation by the trustee may be an uncommon event, there is potential for a debtor to lose a pet. Abandonment under section 554 of the Code requires notice and a hearing.[137] It could be found in a hearing that a pet has substantial financial value that could be distributed to creditors. A debtor beginning the bankruptcy process cannot be sure that they will be able to keep their pet, and it is precisely that problem that needs to be addressed. While debtors do have the option of using a wildcard provision to exempt their pets if their state has one, debtors will likely have other

131. See Bogdanoff, *supra* note 59 ("The debtor is given adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start").
132. *See* TEX. PROP. CODE ANN. § 41.001(a) (West 2001) (providing an unlimited household exemption for debtors domiciled in Texas); FLA. CONST. art. X, § 4 (West, Westlaw through Nov. 2016 amendments) (providing an unlimited household exemption for debtors domiciled in Florida).
133. Michon, *supra* note 12.
134. Barry A. Nelson & Kevin E. Packman, *Florida's Unlimited Homestead Exemption Does Have Some Limits, Part I,* 77 FLA. B. J., Jan. 2003, at 60.
135. Hilla, *supra* note 51 ("Most of the time, for common family pets, that value is pretty much zero."). Most pet owners typically do not need to worry about their pet being liquidated. Hilla, *supra* note 51.
136. 11 U.S.C. § 554 (2012).
137. *Id.*

assets that are crucial to the idea of a fresh start.[138] A debtor should not be forced to choose between exempting a family heirlooms or a family pet. Using the wild card provision as a catch all may result in an uncomfortable, upsetting decision for debtors.

VI. PROPOSAL

This Note offers a few suggestions to allow a debtor going through Chapter 7 bankruptcy liquidation to keep their household pet regardless of fair market value. One method of accomplishing this goal is to consider pets to be members of the family – not property. Debtors would not need to list pets on their schedules of assets. A second manner of allowing debtors to keep their household pets is to not bring pets into the bankruptcy estate under section 541, though they would still need to be listed on a schedule of assets. A third proposal suggests a possible pet exemption that could be adopted by each state. A final suggestion involves amending section 522(d) of the Code to exempt all household pets at the federal level.

A. Do Not Include Pets as Assets in Bankruptcy Schedules

The simplest solution to the problem of losing a pet in Chapter 7 bankruptcy is to not include them in the bankruptcy schedule of assets at all. Debtors must list all assets on Official Form 106A/B.[139] Question 13 of Section 3 on the form specifically asks for a debtor to list non-farm animals, and lists "dogs, cats, birds, horses" as examples. [140] This question on the form should be removed. Question 14 asks for a debtor to list "any other personal and household items" that are not already listed.[141] This question would need to be altered with a specific directive to exclude

138. *See* Fla. Stat. Ann. §222.25(4) (West 1998). The Code allows for a wildcard provision of $1,225 plus any unused portion of the homestead exemption capped at $11,500. 11 U.S.C. § 522(d)(5) (2012).
139. Fed. R. Bankr. P. 9009; Bankruptcy Federal Judiciary Official Form B106A/B, U.S. COURTS, http://www.uscourts.gov/sites/default/files/form_b106ab.pdf (last updated Dec. 2015).
140. Bankruptcy Federal Judiciary Official Form B106A/B, U.S. COURTS, http://www.uscourts.gov/si
tes/default/files/form_b106ab.pdf (last updated Dec. 2015).
141. *Id.*

household pets. Many people consider pets to be part of their family.[142] It is not a requirement to list members of the family such as children as assets.

To accomplish this task, action must be taken by the Judicial Conference of the United States ("the Conference"). The Conference is tasked with making policy decisions for the federal courts.[143] Further, Official Bankruptcy Forms must be approved by the Conference.[144] Therefore, the Conference must approve a change to strike question 13 of Part 3 from Official Form 106A/B which describes all personal and household items.

The definition of pets would need to be constrained to prevent abuse. Pets should be defined similarly to the Virginia pet exemption: "[a]ll animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit".[145] The phrase *other pets* can encompass other animals whose owners have an emotional attachment to the animal. This can be determined on a case-by-case basis by the courts. Courts have used this approach before when determining what counts as a pet for pet exemption purposes.[146] Courts have emphasized the importance of a special relationship between the debtor and the animal and take into consideration any profit derived from the animal.[147] The court could consider various other factors in its analysis such as: duration of animal ownership, financial investment in the animal other than original expenditure, uniqueness of type of animal as pet, as well as any other individual circumstance.

The section of the Virginia exemption statute that discusses pets "kept

142. *See* Herzog, *supra* note 22.

143. *Governance and the Judicial Conference*, U.S. COURTS, http://www.uscourts.gov/about-federal-courts/governance-judicial-conference (last visited Aug. 28, 2018).

144. *Permitted Changes to Official Bankruptcy Forms*, U.S. COURTS, http://www.uscourts.gov/rules-policies/about-rulemaking-process/permitted-changes-official-bankruptcy-forms (last visited Aug. 28, 2018).

145. VA. CODE ANN. § 34-26(5) (West 2016).

146. *See In re* Gallegos, 226 B.R. 111 (Bankr. D. Idaho 1998) (holding that a horse qualified as a pet because a special relationship existed between the debtor and horse and because the horse was not used for anything put personal use). *But see In re* Cass, 104 B.R. 382 (Bankr. N.D. Okla. 1989) (holding that a horse did not qualify for a pet exemption due to it being used as a profitable stud animal).

147. *Compare In re* Gallegos, 226 B.R. at 111 *with In re* Cass, 104 B.R. at 382.

or raised for sale or profit" should be construed strictly in this proposal.[148] Animals that bring in any money per year are not considered pets for bankruptcy purposes. The purpose behind allowing a debtor to keep a household pet is because there is an emotional attachment between the pet and the debtor similar to the connection one feels to a family member—not to benefit the debtor financially.[149]

However, this proposal may face criticism due to the traditional view of animals as property under the law. Animals are considered to be no different than a sofa.[150] It is well settled law that animals are property. Part 3 of Form 106A/B asks for all personal and household items.[151] To ensure that no item is forgotten, question 14 asks a debtor to list "any other personal and household items" a debtor "did not already list. . .." Since the law has classified animals as property, albeit with some hesitation, the Conference may not wish to change the form to exclude pets.

B. Do Not Bring Pets into the Bankruptcy Estate

One way of accomplishing the goal of allowing debtors to keep their pets without changing their legal status as property is to exclude pets from entering the bankruptcy estate under section 541.[152] Section 541(b) defines what is not property of the estate. [153] A provision could be added to this section thus preventing household pets from being property of the bankruptcy estate.

As compared to the preceding section, this suggestion would be accomplished by Congressional action instead of by the Conference. A pet would be listed on the schedules of Form 106A/B, but that would be the end of any inquiry into a debtor's pets—the pets would not enter the bankruptcy estate for potential distribution. This would function just as any interest a debtor has in liquid or gaseous hydrocarbon. These interests

148. VA. CODE ANN. § 34-26(5) (West 2016).
149. See Herzog, *supra* note 22.
150. Britton, *supra* note 31.
151. Bankruptcy Federal Judiciary Official Form B106A/B, U.S. COURTS, http://www.uscourts.gov/sites/default/files/form_b106ab.pdf (last updated Dec. 2015) (*see* Section 3).
152. 11 U.S.C. § 541 (2012).
153. *Id.* Items that do not come into the estate are varied and include: "any interest of the debtor in liquid or gaseous hydrocarbons" and "funds placed in an education individual retirement account". *Id.*

are listed on Form 106A/B, but they do not come into the estate because of section 541.[154] Pets would be listed on the form, but would not come into the bankruptcy estate for distribution.

This proposal is advantageous because Section 541 of the Code applies to all states, regardless of the exemptions that they may or may not provide to their debtors. States may not opt out of the section either. Therefore, by adding a provision to 541(b) all debtors in all states would be protected.

C. All States Adopt Virginia's Pet Exemption Statute

An alternative option is for each state to adopt Virginia's exemption law for pets.[155] Virginia's law specifies what pets are exempt but allows for flexibility with the phrase "other pets." The qualifying clause in the exemption of not being held for sale or profit is a crucial component. This eliminates animals that are being used for agricultural or breeding purposes that generate a profit for the debtor. Though there might be instances of an animal that is both a pet and used for profit, there needs to be a line somewhere. A bright line rule of zero profit is easy to be implemented and allows for true pets to be exempt from liquidation.

If a state did not wish to implement a zero profit policy and wanted to allow for a small amount of profit to be made from a pet, an exemption could instead include language that is found in Maine's exemption statute: "held primarily for the personal, family or household use of the debtor or a dependent of the debtor".[156] This language would protect debtors that derive a small profit from their animals but still consider them to be a beloved household pet.

D. The Code Should Implement a Pet Exemption Under Section 522

Instead of each state changing their respective exemption laws, an additional option is to adopt the Virginia pet exemption in the exemption

154. *Id.*
155. *See* VA. CODE ANN. § 34-26(5) (West 2016) ("All animals owned as pets, such as cats, dogs, birds, squirrels, rabbits and other pets not kept or raised for sale or profit.").
156. ME. REV. STAT. ANN. tit. 14, § 4422 (LexisNexis 2018).

section of the Code, section 522.[157] There was significant controversy as to adoption of uniform federal exemptions or specific state exemptions.[158] The compromise reached by Congress allowed states to opt out of the federal code exemptions.[159] If the Code were to implement the Virginia pet exemption statute, those states that selected to opt out of the federal exemptions would not have a change in their laws because they provide state specific exemptions exclusively. Debtors would only be able to exempt what their state allows them to exempt—perhaps not a household pet. Pets would be exempt from states that either adopted that part of the Code or allow their citizens to choose from either the specific state exemptions or the federal exemptions enacted by the Code, which would then include a pet exemption under this proposal. A problem with this proposal is that debtors in some states will not be able to exempt their household pets while debtors in other states may be able to.[160]

CONCLUSION

Many Americans go through Chapter 7 bankruptcy every year due to financial difficulties. In a Chapter 7 liquidation, a trustee takes all property that is not exempt or encumbered by a lien and sells it for cash that is distributed to creditors. This could mean that a trustee sells a beloved family pet. This Note argues that this works against Congress's intent of a fresh start since pets are adored and more connected emotionally to the debtor than other types of property in the bankruptcy estate. This Note suggests for pets to not be included in the bankruptcy estate or for states to adopt a suitable exemption statute. A suitable exemption statute would protect all pets regardless of their proposed worth because Rover who may be worth $1,500 is not loved any less by its owners than Fido who is worth $150. The idea of a "fresh start" should allow a debtor to bring Rover into their post-bankruptcy life regardless of his fair market value.

157. 11 U.S.C. § 522 (2012).
158. Bogdanoff, *supra* note 59, at 925.
159. *Id.*
160. This concern is substantial, but lack of uniformity in exemption laws is also a concern with the exemptions in their current condition. This is illustrated in the analysis above with the hypothetical involving Rover. A Virginia debtor would be able to keep Rover, but an Alaska debtor would not. Debtors in these states could use the political process to add the exemption, if necessary.