

**UNITED STATES BANKRUPTCY ADMINISTRATOR
MIDDLE DISTRICT OF NORTH CAROLINA**

JOHN PAUL H. COURNOYER — BANKRUPTCY ADMINISTRATOR

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September 29, 2023

Via Email to Chapter 7 Trustees

**Re: Unnecessary Objections to Tenancy by the Entireties
Exemptions**

Dear Trustees,

It is not necessary to object to a tenancy by the entireties exemption in order to administer the property to pay joint claims or an IRS claim. Of course, you should object if you dispute that the exemption applies (e.g., the property is not owned by the entireties). However, no objection is needed to preserve your ability to administer such property for joint claimants or the IRS.

Section 522(b)(3)(B) allows a debtor to claim an exemption for an interest in entireties property “to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.” 11 U.S.C. § 522(b)(3)(B). In *In re Williams*, 104 F.3d 688, 689–90 (4th Cir. 1997), the Fourth Circuit held that this statutory language meant that a trustee did not need to object to an entireties objection to administer property for the benefit of joint creditors. In that case, the debtor exempted her interest in real estate held in tenancy by the entireties. The trustee did not object to the exemption, but later sought to sell the real estate for the benefit of joint creditors. The debtor argued that the trustee had forfeited his right to administer the property, even for joint creditors. The Fourth Circuit rejected this argument, holding that the debtor’s exemption claim “exempted that interest only from the claims of her non-joint creditors, and not from the claims of her joint creditors.” *Id.*

Both judges in our district have followed this precedent. In *In re Gifford*, 634 B.R. 909, 916 (Bankr. M.D.N.C. 2021), the trustee had not objected to an entireties exemption, and the debtor argued that the failure to timely object precluded the administration of the asset for joint creditors. Judge Kahn rejected this argument, holding that under section § 522(b)(3)(B) and *Williams*, the debtor “never claimed that his interest in the [p]roperty was exempt from the claims of his joint creditors.” *Id.*; see also *In re Tucker*, Case No. 23-50259, Doc. No. 34 (Bankr. M.D.N.C. July 26, 2023) (James, J.) (overruling a trustee’s objection on the basis that it was “not necessary for the Trustee to object to a debtor’s asserted tenancy by the entireties interest to the extent of any joint claims or other debts to which the North Carolina entireties exemption does not apply”).

United States Bankruptcy Administrator – M.D.N.C.

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Thanks for your hard work!

A handwritten signature in black ink, appearing to read "John Paul H. Cournoyer", written over a horizontal line.

John Paul H. Cournoyer

U.S. Bankruptcy Administrator

Middle District of North Carolina