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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

6 In re: ) BAP No. AZ-13-1273-KuDPa  
7 AMADO G. CALDERON, ) Bk. No. 4:12-bk-16880-EWH  
8 Debtor. )  
9 ----- )  
10 AMADO G. CALDERON, )  
11 Appellant, )  
12 v. ) **O P I N I O N**  
13 BETH LANG, Chapter 7 Trustee, )  
14 Appellee. )  
----- )

Argued and Submitted on January 23, 2014  
at Tempe, Arizona

Filed - February 28, 2014

Appeal from the United States Bankruptcy Court  
for the District of Arizona

Honorable Eileen W. Hollowell, Bankruptcy Judge, Presiding

21 \_\_\_\_\_  
Appearances: Barry W. Rorex argued for appellant Amado G.  
22 Calderon; Trudy A. Nowak argued for appellee Beth  
23 Lang, chapter 7 trustee.

24 \_\_\_\_\_  
25 Before: KURTZ, DUNN and PAPPAS, Bankruptcy Judges.  
26  
27  
28

1 KURTZ, Bankruptcy Judge:  
2

3 **INTRODUCTION**

4 In his chapter 7<sup>1</sup> bankruptcy case, debtor Amado Calderon  
5 claimed as exempt his former family residence. Chapter 7 trustee  
6 Beth Lang objected to Calderon's homestead exemption claim  
7 because, at the time of Calderon's bankruptcy filing, Calderon no  
8 longer was living at the residence, nor was he storing his  
9 personal possessions there. Instead, Calderon was living  
10 elsewhere and renting out the residence.

11 The bankruptcy court sustained the trustee's objection and  
12 disallowed Calderon's homestead exemption claim, opining that  
13 Arizona law did not permit Calderon to hold and retain a  
14 homestead exemption in the residence based solely on a vaguely  
15 expressed intent to return someday to the property. Calderon  
16 appealed.

17 We disagree with the bankruptcy court's interpretation of  
18 Arizona homestead exemption law. Arizona law permits debtors to  
19 move out of their homesteads for up to two years and retain  
20 preexisting homestead exemption rights, so long as they don't  
21 manifest a clear intent for their absence from the homestead to  
22 be permanent. Because the bankruptcy court incorrectly  
23 interpreted Arizona homestead exemption law, we VACATE AND  
24 REMAND.

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26  
27 <sup>1</sup>Unless specified otherwise, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 **FACTS**

2 Calderon and his wife Sheri purchased the residence in 2002,  
3 and Calderon lived in the residence until he and Sheri divorced  
4 in 2011. Pursuant to the couple's divorce settlement, Sheri  
5 conveyed her interest in the residence to Calderon in March 2011,  
6 and he thereafter became the sole owner of the residence. In  
7 April or May 2011, Calderon moved out of the residence and moved  
8 into a different house that he rented from a man named Paul  
9 Berkley ("Berkley House"). Meanwhile, Calderon rented out the  
10 residence to a couple named Brian and Lisa Torma. The Tormas and  
11 Calderon entered into a written twelve-month lease agreement that  
12 commenced on May 1, 2012 and was scheduled to end on April 30,  
13 2013. However, the lease agreement also contained an annual  
14 renewal option, which the Tormas apparently exercised.

15 Calderon commenced his bankruptcy case in July 2012. In the  
16 initial version of his schedules, Calderon listed his ownership  
17 interest in the residence, but identified the Berkley House as  
18 his home address and the location where he kept all of his  
19 personal property. Calderon also scheduled the income he derived  
20 from renting the residence as \$1,895 per month and his monthly  
21 mortgage expense for the residence, referred to in Schedule J as  
22 his "rental property," as \$2,209 per month. Even though  
23 Calderon's monthly mortgage payments for the residence exceeded  
24 the rental income he was receiving from the residence, Calderon  
25 filed a statement of intention indicating that he desired to keep  
26 the residence.

27 Calderon did not attempt to claim as exempt his equity in  
28 the residence in the initial version of his schedules. However,

1 he filed an amended Schedule C in September 2012 in which he  
2 claimed a homestead exemption in his interest in the residence  
3 under Arizona Revised Statutes ("A.R.S.") § 33-1101(A).  
4 According to his amended Schedule C, the residence was worth  
5 roughly \$300,000, and he had roughly \$84,000 in equity in the  
6 residence, in which he claimed the exemption.

7 The trustee filed an objection to Calderon's homestead  
8 exemption claim, asserting that Calderon could not claim a  
9 homestead exemption in the residence under A.R.S. § 33-1101  
10 because he had moved out of the residence in May 2011 and because  
11 he was renting the residence to the Tormas.

12 Calderon filed a response opposing the objection. Calderon  
13 disputed that he had abandoned his homestead. He claimed that he  
14 moved out of the residence and was renting it as a temporary  
15 measure to reduce his housing expenses. He further claimed that  
16 he intended to return to the residence as soon as his lease with  
17 the Tormas expired.

18 The bankruptcy court scheduled the matter for an evidentiary  
19 hearing on May 1, 2013. In addition to setting the hearing date,  
20 the court's scheduling order contained deadlines for completing  
21 various aspects of pre-hearing procedure, including a deadline  
22 for exchanging lists of witnesses and exhibits and a deadline for  
23 submitting to the court a joint pre-hearing statement. The  
24 court's scheduling order further warned the parties that  
25 sanctions might be imposed if either party failed to cooperate or  
26 comply with the pre-hearing procedures.

27 The trustee duly filed a list of witnesses and exhibits and  
28 a unilateral pre-hearing statement. The trustee also filed a

1 legal brief in support of her objection. Calderon, on the other  
2 hand, did not participate in the filing of the required joint  
3 pre-hearing statement, nor did he otherwise comply with the  
4 court's pre-hearing requirements. The only thing Calderon filed  
5 in advance of the hearing was a one-page motion, filed two days  
6 before the hearing, seeking to convert his bankruptcy case from  
7 chapter 7 to chapter 13. The trustee opposed the motion to  
8 convert, contending that it was part of Calderon's bad-faith  
9 tactics aimed at obstructing the resolution of the trustee's  
10 exemption claim objection.

11 The bankruptcy court held the hearing on the exemption claim  
12 objection on May 1, 2013, as scheduled. As a sanction for  
13 Calderon's noncompliance with the scheduling order, the  
14 bankruptcy court prohibited Calderon from presenting any evidence  
15 or argument in support of his exemption claim.<sup>2</sup> As a result, the  
16 bankruptcy court relied entirely on the evidence and testimony  
17 presented by the trustee. The trustee was the sole witness to  
18 testify, and her testimony largely consisted of what she learned  
19 from various documents of Calderon's, including his bankruptcy  
20 schedules, his tax returns, his divorce settlement with his wife  
21 and his lease with the Tormas.

22 The trustee's evidence tended to show that Calderon was the  
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24 <sup>2</sup>Calderon did not challenge in his appeal brief the  
25 propriety of the bankruptcy court's sanction excluding him from  
26 presenting any evidence. As a result, he has forfeited the  
27 issue, and we will not address it. See Christian Legal Soc'y  
28 Chapter of Univ. of Cal. v. Wu, 626 F.3d 483, 487-88 (9th Cir.  
2010); Brownfield v. City of Yakima, 612 F.3d 1140, 1149 n.4 (9th  
Cir. 2010) (citing Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir.  
1994)).

1 sole owner of the residence but that he was not living there;  
2 rather, he was living at the Berkley House and was renting out  
3 the residence. According to the trustee's testimony, her  
4 exemption claim objection was based on the fact that Calderon no  
5 longer lived at the residence. At the same time, the trustee  
6 conceded during cross-examination that Calderon had been living  
7 at the residence through April 2011. The trustee further  
8 conceded that Calderon, through his counsel, had expressed a  
9 generalized intent "to move back into [the residence] at some  
10 point."<sup>3</sup> Hr'g Tr. (May 1, 2013) at 31:14-22.

11 At the conclusion of the trustee's presentation of evidence,  
12 the bankruptcy court announced its ruling sustaining the  
13 trustee's exemption claim objection, and the court later reduced  
14 its oral ruling to a written order, which contains the court's  
15 holding and its key reasoning. According to the court, the  
16 totality of the evidence demonstrated that the debtor was not  
17 then living in the residence and had not done so "for the better  
18 part of the last two years." Order (May 29, 2013) at 2:6. The  
19 court further noted that, after he moved out of the residence,  
20 Calderon had been using the property as income-producing property  
21 by renting it out.

22 Based on these facts, the court reasoned, Arizona law did  
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24 <sup>3</sup>Of course, this is hearsay and probably double hearsay.  
25 But no one objected to the trustee's testimony regarding what  
26 Calderon's counsel told her about Calderon's intent to move back  
27 into the residence. Moreover, the bankruptcy court apparently  
28 credited this testimony, as the bankruptcy court posited that  
Calderon had a vague intent to return to the property. We found  
no other evidence in the record specifically addressing  
Calderon's intent to return to the property.



1 Mele), 501 B.R. 357, 362 (9th Cir. BAP 2013).

2 **DISCUSSION**

3 The commencement of a bankruptcy case creates a bankruptcy  
4 estate consisting of all of the debtor's property. See § 541;  
5 Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193, 1198 (9th Cir.  
6 2012); Gaughan v. Smith (In re Smith), 342 B.R. 801, 805 (9th  
7 Cir. BAP 2006). The debtor may exempt property from the estate  
8 to extent permitted by applicable law. See § 522(b); In re  
9 Jacobson, 676 F.3d at 1198. Typically, the debtor's entitlement  
10 to an exemption is determined based on the facts as they existed  
11 at the time of the debtor's bankruptcy filing. See In re  
12 Jacobson, 676 F.3d at 1199; Ford v. Konnoff (In re Konnoff),  
13 356 B.R. 201, 204-05 (9th Cir. BAP 2006).<sup>4</sup> And the trustee bears  
14 the burden of proof to establish that the debtor is not entitled  
15 to the claimed exemption. See Rule 4003(c); In re Cerchione, 414  
16 B.R. at 548-49.

17 Because Arizona has opted out of the federal bankruptcy  
18 exemption scheme, Arizona residents are limited to those  
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21 <sup>4</sup>We are aware of the holding in In re Jacobson, and in  
22 England v. Golden (In re Golden), 789 F.2d 698, 700 (9th Cir.  
23 1986), that the bankruptcy court must consider postpetition  
24 events when: (1) the debtor claims an exemption in the proceeds  
25 from the sale of the debtor's homestead, (2) the applicable  
26 homestead exemption law requires the debtor to reinvest the sale  
27 proceeds in another homestead within a fixed amount of time, and  
28 (3) the time period for reinvestment has not yet run at the time  
of the debtor's bankruptcy filing. But In re Jacobson and In re  
Golden are inapposite. As explained below, Calderon's homestead  
exemption was not subject to an absolute, fixed time limitation.  
Rather, the key to Calderon's retention of his homestead  
exemption was whether he intended to permanently remove himself  
from the residence. See A.R.S. § 33-1104(A)(3).



1 exemptions permitted by Arizona law. See In re Smith, 342 B.R.  
2 at 805 (citing A.R.S. § 33-1133). Consequently, we must  
3 interpret and apply Arizona law to determine whether Calderon was  
4 entitled to claim a homestead exemption in the residence. See  
5 id.; see also Renner v. Ariz. Dept. of Econ. Sec. (In re Renner),  
6 822 F.2d 878, 879 n.1 (9th Cir. 1987).

7 When we interpret state law, we are bound by the decisions  
8 of the applicable state's highest court. Kekauoha-Alisa v.  
9 Ameriquet Mortg. Co. (In re Kekauoha-Alisa), 674 F.3d 1083, 1087  
10 (9th Cir. 2012) (citing Sec. Pac. Nat'l Bank v. Kirkland (In re  
11 Kirkland), 915 F.2d 1236, 1238 (9th Cir. 1990)). And when, as  
12 here, the state's highest court has not interpreted the  
13 dispositive state law, we do our best to predict how that state's  
14 highest court would decide the issue. See In re Kekauoha-Alisa,  
15 674 F.3d at 1087-88. Accord White v. Brown (In re White), 389  
16 B.R. 693, 701 (9th Cir. BAP 2008).

17 In interpreting Arizona statutes, the Arizona Supreme Court  
18 has stated that its duty is to determine the intent of the  
19 legislature at the time of enactment. Jackson v. Phoenixflight  
20 Prods., Inc., 700 P.2d 1342, 1345 (Ariz. 1985). "Where the  
21 language of the Legislature is clear and leaves no opportunity  
22 for interpretation, the language must be followed." Id. And  
23 "clear language in a statute is given its usual meaning unless  
24 impossible or absurd consequences would result." In re Marriage  
25 of Gray, 695 P.2d 1127, 1129 (Ariz. 1985).

26 Specifically with respect to Arizona's homestead exemption  
27 statutes, the Arizona Supreme Court has stated that these laws  
28 should be liberally interpreted to carry out their fundamental

1 purpose, which is to protect the claimant and the claimant's  
2 family from the forced sale of their homestead property by  
3 creditors. See First Nat'l Bank of Mesa v. Reeves, 234 P. 556,  
4 558 (Ariz. 1925).<sup>5</sup> The Arizona Supreme Court further has stated:

5 [Arizona] Homesteads are purely creatures of the  
6 statute, and we must, therefore, look to our own  
7 statutes to find out what that term or designation  
8 means. If the language is plain, it is the duty of the  
9 court to give it effect by following it; if its meaning  
10 be doubtful, we may look to the reasoning of other  
11 courts upon similar statutes, if there be any, to aid  
12 us in the construction of our statute.

13 Wuicich v. Solomon-Wickersham Co., 157 P. 972, 972 (Ariz. 1916).

14 The trustee asserts that the resolution of this appeal is  
15 governed by the residency requirement necessary to establish a  
16 homestead exemption under Arizona law. See A.R.S. § 33-1101.<sup>6</sup>  
17 Because Calderon was not living at the residence when he filed

18 \_\_\_\_\_  
19 <sup>5</sup>At the time Reeves was decided, the exclusive focus of  
20 Arizona's homestead exemption was the claimant's family; the  
21 Arizona homestead exemption statutes did not protect individuals.  
22 See Phlegar v. Elmer, 325 P.2d 881, 882 (Ariz. 1958). More  
23 recently, however, the Arizona legislature broadened Arizona's  
24 homestead exemption laws to provide homestead exemptions to  
25 individuals as well as families. See First Nat'l Bank of Dona  
26 Ana Cnty. v. Boyd, 378 F. Supp. 961, 963 (D. Ariz. 1974).

27 <sup>6</sup>In relevant part, A.R.S. § 33-1101 provides:

28 A. Any person the age of eighteen or over, married or  
single, who resides within the state may hold as a  
homestead exempt from attachment, execution and forced  
sale, not exceeding one hundred fifty thousand dollars  
in value, any one of the following:

1. The person's interest in real property in one  
compact body upon which exists a dwelling house in  
which the person resides.

(Emphasis added.)

1 bankruptcy, the trustee reasons, he did not qualify for a  
2 homestead exemption under A.R.S. § 33-1101. According to the  
3 trustee, Calderon's continued occupancy of the residence was a  
4 prerequisite for him to be entitled to claim a homestead  
5 exemption in the residence, and any such entitlement  
6 automatically and immediately ceased when Calderon moved out and  
7 began using the residence as a rental property.

8 The trustee's assertion lacks merit. It is undisputed here  
9 that Calderon had been living in the residence and occupying it  
10 as his home between 2002 and 2011. This prolonged period of  
11 residency was more than sufficient to establish the residence as  
12 Calderon's homestead by operation of law. See A.R.S. §§ 33-1101,  
13 33-1102; see also In re Allman, 286 B.R. 402, 403-04 (Bankr. D.  
14 Ariz. 2002) (holding that debtor, by operation of law,  
15 established his homestead in a mobile home by residing in the  
16 mobile home). Once Calderon's homestead was established by  
17 operation of law, the controlling question shifted from whether  
18 Calderon established a homestead in the residence to whether he  
19 abandoned his homestead in the residence.

20 Accordingly, this appeal hinges on the meaning of A.R.S.  
21 § 33-1104, which governs abandonment of homesteads and which  
22 provides in relevant part as follows:

23 A. A homestead may be abandoned by any of the following:

24 1. A declaration of abandonment or waiver.

25 2. A transfer of the homestead property by deed of  
26 conveyance or contract for conveyance.

27 3. A permanent removal of the claimant from the  
28 residence or the state. A claimant may remove from the  
homestead for up to two years without an abandonment or  
a waiver of the exemption.

1           It is undisputed that Calderon did not execute and record a  
2 declaration of abandonment or waiver. Nor did he transfer away  
3 his homestead by a deed or contract of conveyance. Thus, we are  
4 only concerned here with paragraph 3 of § 33-1104(A), which deals  
5 with the "permanent removal of the claimant from the residence or  
6 the state." (Emphasis added.) In accordance with the Arizona  
7 Supreme Court's rules of construction, we presume that the  
8 Arizona legislature intended the word "permanent" to have its  
9 usual meaning, which is: "Continuing or designed to continue or  
10 last indefinitely without change; abiding, enduring, lasting;  
11 persistent. Opposed to temporary." Oxford English Dictionary  
12 Online ([http://www.oed.com/search?searchType=dictionary&q](http://www.oed.com/search?searchType=dictionary&q=permanent&_searchBtn=Search)  
13 [=permanent&\\_searchBtn=Search](http://www.oed.com/search?searchType=dictionary&q=permanent&_searchBtn=Search)) (last visited February 24, 2014);  
14 see also Merriam-Webster Online ([http://www.merriam-webster.com/](http://www.merriam-webster.com/dictionary/permanent)  
15 [dictionary/permanent](http://www.merriam-webster.com/dictionary/permanent)) (last visited February 24, 2014).

16           So stated, the usual meaning of the word "permanent"  
17 introduces an element of intent into the statutory inquiry. This  
18 focus on intent for purposes of determining whether debtors have  
19 permanently abandoned their homestead is consistent with the  
20 consideration of intent for purposes of determining debtors'  
21 "residence" under Arizona's homestead exemption laws. As one  
22 Arizona bankruptcy court decision put it, "under Arizona law, the  
23 intent of the individual is the critical factor in determining  
24 where an individual resides and . . . the individual need not be  
25 present at the residence on a day-to-day basis." See In re Elia,  
26 198 B.R. 588, 598-99 (Bankr. D. Ariz. 1996) (citing Garcia v.  
27 Garcia (In re Garcia), 168 B.R. 403, 408 (D. Ariz. 1994)).

28           We also must consider the import of the second sentence of

1 A.R.S. § 33-1104(A)(3). That sentence states: "A claimant may  
2 remove from the homestead for up to two years without an  
3 abandonment or a waiver of the exemption." Read in a vacuum,  
4 this sentence arguably means that, for up to two years, debtors  
5 can live somewhere other than their homesteads without being  
6 deemed to have abandoned their homesteads. And by negative  
7 implication, this sentence also could be read in isolation to  
8 mean that, after two years living elsewhere, debtors are deemed  
9 to have automatically abandoned their homesteads.

10 But the Arizona Supreme Court requires us to consider this  
11 sentence in context and not in isolation. See Adams v. Comm'n on  
12 App. Ct. Appointments, 254 P.3d 367, 374 (Ariz. 2011). And that  
13 context includes the first sentence of A.R.S. § 33-1104(A)(3),  
14 which focuses on the intended permanency of the removal from the  
15 homestead. That context also includes the Arizona homestead  
16 exemption statutes as a whole, their intended purpose, and the  
17 requirement that we construe the homestead exemption statutes  
18 liberally to effectuate their intended purpose. As a result,  
19 when read in context, we are convinced that the Arizona  
20 legislature did not intend for the second sentence of A.R.S.  
21 § 33-1104(A)(3) to create an absolute temporal bar, that on the  
22 second anniversary of removal from their homesteads, debtors  
23 automatically are deemed to have abandoned their homesteads for  
24 exemption purposes. To the contrary, our contextual reading of  
25 A.R.S. § 33-1104(A)(3) leads us to conclude that the temporal  
26 aspect of the statute simply was meant to aid courts in  
27 determining the intended permanency of the removal from the  
28 residence. In other words, the Arizona legislature meant to make

1 it harder for debtors to abandon their homesteads simply by  
2 moving out of their homes for less than two years, but easier for  
3 them to abandon their homesteads if they have been living  
4 elsewhere for two years or more. Regardless of the amount of  
5 time elapsed, the controlling question always remains the intent  
6 of the debtors - whether they intended for their removal to be  
7 permanent.<sup>7</sup>

8       Once so understood, the statute is not particularly  
9 difficult to apply in bankruptcy cases. On the petition date, if  
10 the debtor has been living elsewhere for less than two years,  
11 only evidence of a clear intent of permanent removal will suffice  
12 to permit the bankruptcy court to find that the debtor has  
13 abandoned his homestead exemption under Arizona law. On the  
14 other hand, on the petition date, if the debtor has been living  
15 elsewhere for two years or more, then the debtor is presumed to  
16 intend for the removal to be permanent, and only evidence of a  
17 clear intent for the removal to be temporary will overcome that  
18 presumption.

19       Arizona case law encourages us to consider precedent from  
20 other states with similar homestead exemption laws, especially

21 \_\_\_\_\_  
22       <sup>7</sup>If the Arizona legislature had intended to create a per se  
23 rule of abandonment based on two years removal from the  
24 residence, it easily could have done so by stating in the statute  
25 something like the following: "A homestead may be abandoned by  
26 any of the following . . . a removal from the residence of two  
27 years or more." Notably, the Arizona legislature did not employ  
28 such language. Instead, it provided for abandonment to turn on  
the intended permanency of the removal and also provided that:  
"[a] claimant may remove from the homestead for up to two years  
without an abandonment." (Emphasis added.) We find it  
significant that the Arizona legislature used permissive language  
in the statute rather than prohibitive or preemptory language.

1 when there are no binding Arizona cases on point. See Wuicich,  
2 157 P. at 972. But we have not found a homestead abandonment  
3 statute from another state with a similar combination of both  
4 intent and temporal components.

5 Nonetheless, it is instructive to note that many  
6 jurisdictions fall into one of two "camps" regarding the nature  
7 of proof required to establish that debtors intended to abandon  
8 their existing homesteads. The first camp requires evidence of a  
9 clear intent not to return to the homestead. See, e.g., Thomas  
10 v. Graham Mortg. Corp., 408 S.W.3d 581, 589 (Tex. App. 2013)  
11 (holding that there must be a clear intent not to use the subject  
12 property as a homestead again); In re Wells, 132 B.R. 966, 968  
13 (Bankr. D.N.M. 1991) (holding that debtor who moved out of her  
14 homestead but did not manifest "an absolute and unequivocal  
15 intent to abandon" the homestead did not abandon the homestead);  
16 see also Jones, Givens, Gotcher & Bogan, P.C. v. Berger, 46 P.3d  
17 698, 702 (Okla. 2002) (stating that temporary absence from the  
18 homestead and occupancy of another property does not necessarily  
19 demonstrate an intent to abandon the homestead and that renting  
20 out some or all of the homestead does not as a matter of law  
21 demonstrate abandonment); In re Beebe, 224 B.R. 817, 820 (Bankr.  
22 N.D. Fla. 1998) ("For a debtor to abandon homestead property, a  
23 debtor must state an intention to abandon the property and have  
24 an intent of not returning to the property.").

25 In contrast, the second camp considers the homestead  
26 abandoned unless there is evidence of a clear intent to return to  
27 the property at a fixed time. See, e.g., In re Nguyen, 332 B.R.  
28 393, 395 (Bankr. W.D. Mo. 2005) (stating that "a vague and

1 indefinite intention to return at some future time under certain  
2 conditions is not sufficient to rebut the presumption of  
3 abandonment"); In re Patterson, 275 B.R. 578, 584 (Bankr. D.  
4 Colo. 2002) (stating that a vague intention to return and resume  
5 residency will not preserve a claimant's homestead); see also  
6 Wagenbach v. PHI Fin. Servs., Inc. (In re Wagenbach), 232 B.R.  
7 112, 114 (Bankr. C.D. Ill. 1999) ("A removal from the homestead  
8 premises will be taken as an abandonment unless it clearly  
9 appears that there is an intention to return and occupy them. . .  
10 . Such intention must be unequivocal, for an equivocal intention  
11 to return is not sufficient.").

12 In light of our contextual reading of A.R.S. § 33-  
13 1104(A)(3), Arizona appears to have one foot firmly planted in  
14 each camp. And which camp's law is helpful in a particular case  
15 in determining whether the debtors have abandoned their Arizona  
16 homestead will depend on how long the debtors have been removed  
17 from their homestead at the time of their bankruptcy filing.

18 The trustee claims that it is "ridiculous" to suppose that  
19 debtors subject to Arizona homestead exemption law may absent  
20 themselves from their homestead for up to two years without  
21 losing a homestead previously established by their prior  
22 residence. But this is what A.R.S. § 33-1104(A)(3) explicitly  
23 contemplates, and we see nothing ridiculous or absurd in the  
24 application of A.R.S. § 33-1104(A)(3) as worded. The statute's  
25 temporal dividing line simply represents the Arizona  
26 legislature's attempt to enact a clear-cut guideline for courts  
27 having to interpret what debtors' absence from their homestead  
28 means for purposes of determining whether they intended to



1 permanently remove themselves from their homestead.

2 As indicated above, the trustee also argues that we don't  
3 need to reach the issue of abandonment because there was no  
4 homestead to abandon in the first place. Because Calderon moved  
5 out of the residence and was renting out the residence when he  
6 filed bankruptcy, the trustee reasons, he could not qualify for a  
7 homestead exemption, let alone abandon a homestead exemption,  
8 under A.R.S. § 33-1101. However, if a homestead established by  
9 operation of law under A.R.S. §§ 33-1101 and 33-1102 can be  
10 automatically extinguished by a debtor living elsewhere for less  
11 than two years, then the second sentence of A.R.S. § 33-  
12 1104(A)(3) would be rendered meaningless. In short, we reject  
13 the trustee's argument because it would deprive a significant  
14 portion of A.R.S. § 33-1104(A)(3) of any meaning.

15 Even though Calderon, at the time of his bankruptcy filing,  
16 had been absent from the residence for less than two years, the  
17 bankruptcy court interpreted Arizona's homestead exemption  
18 statutes as requiring proof that Calderon held more than a vague  
19 intent to return someday to the residence. When, as here, the  
20 bankruptcy court has applied an incorrect legal standard, we  
21 typically vacate the bankruptcy court's decision and remand so  
22 that the bankruptcy court can apply the correct law to the facts  
23 of the case. See Hopkins v. Asset Acceptance LLC (In re  
24 Salgado-Nava), 473 B.R. 911, 922 (9th Cir. BAP 2012).

25 On occasion, this Panel has declined to remand and instead  
26 has, itself, applied the correct law to the facts previously  
27 found when the record has been fully developed on the critical  
28 issues and there is no doubt as to the outcome. See, e.g., id.

1 In this instance, we are not wholly convinced that the record was  
2 fully developed and the outcome beyond doubt regarding the key  
3 issue of Calderon's intent. While the bankruptcy court's written  
4 decision included a finding on this point, the evidence presented  
5 was thin, even assuming the hearsay statements in the record  
6 regarding Calderon's intent were admissible. We leave it to the  
7 bankruptcy court to determine, in the first instance, whether the  
8 record should be reopened to allow the presentation of additional  
9 evidence on the issue of Calderon's intent, or whether the  
10 correct interpretation of Arizona law should be applied to the  
11 facts previously found on an as-is basis. We express no opinion  
12 on how the bankruptcy court should decide this issue.

13 **CONCLUSION**

14 For the reasons set forth above, we VACATE the bankruptcy  
15 court's order sustaining the trustee's exemption claim objection,  
16 and we REMAND for further proceedings consistent with this  
17 decision.