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NOT FOR PUBLICATION

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

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UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	ID-14-1049-KiDJu
	)		
DOUGLAS CARL JOHNS and	)	Bk. No.	3:12-bk-20828-TLM
JANINA JOHNS,	)		
	)		
Debtors.	)		
_____	)		
BANNER BANK,	)		
	)		
Appellant,	)		
	)		
v.	)		
	)		
DOUGLAS CARL JOHNS; JANINA	)		
JOHNS,	)		
	)		
Appellees.	)		
_____	)		

MEMORANDUM<sup>1</sup>

Submitted Without Oral Argument  
on November 20, 2014<sup>2</sup>

Filed - December 8, 2014

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

Honorable Terry L. Meyers, Chief Bankruptcy Judge, Presiding

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Appearances: Thomas E. Dvorak, Angela M. Reed and Alexander P. McLaughlin of Givens Pursley LLP on brief for appellant Banner Bank; Kenneth Larry Anderson of Law Office of Kenneth L. Anderson on brief for appellees Douglas and Janina Johns.

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<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

<sup>2</sup> In an order entered on June 23, 2014, the Panel determined this matter was suitable for disposition without oral argument. Fed. R. Bankr. P. 8012; 9th Cir. BAP R. 8012-1.

1 Before: KIRSCHER, DUNN and JURY, Bankruptcy Judges.

2 Appellant Banner Bank ("Bank") appeals an order overruling  
3 its objection to debtors' claimed homestead exemption in three  
4 separately described but contiguous parcels of real property under  
5 Idaho Code § 55-1003. The bankruptcy court overruled the Bank's  
6 objection on the basis that the Bank did not meet its burden to  
7 prove that debtors' claimed exemption was improper. In re Johns,  
8 504 B.R. 657, 661 (Bankr. D. Idaho 2014). However, the Bank  
9 contends that while debtors are entitled to the homestead  
10 exemption as to one of the parcels, the bankruptcy court erred  
11 when it extended the exemption protection to the other two  
12 parcels. We AFFIRM.

13 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

14 Douglas and Janina Johns ("Johns") filed a chapter 13<sup>3</sup>  
15 petition on July 10, 2012. Their case was subsequently converted  
16 to chapter 7 on May 1, 2013. In both cases, the Johns have  
17 maintained their entitlement to a homestead exemption on real  
18 property they own in Latah County, Idaho.

19 Specifically, the Johns own approximately twenty-five acres  
20 of real property in Juliaetta, Idaho. The property consists of  
21 multiple parcels, but for purposes of this matter, the parcels  
22 that comprise the real property have been consistently referred to  
23 as "Parcel I," "Parcel II" and "Parcel III."<sup>4</sup> The three parcels  
24

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25 <sup>3</sup> Unless specified otherwise, all chapter, code and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

28 <sup>4</sup> The parcels were purchased separately by Douglas Johns' parents in the 1940s and 1950s and all were subsequently acquired by the Johns by 1980.

1 are contiguous.

2 Parcel I consists of .67 acres and includes the Johns'  
3 primary residence. Parcel II consists of approximately one acre,  
4 which includes: a house the Johns rent to a family friend; a  
5 garden; a riding area; and a barn the Johns use to shelter one of  
6 their horses. At the time the Johns filed their bankruptcy  
7 petition, they rented the house to their daughter's friend for  
8 \$700 per month. The Johns have continually used the outbuildings  
9 and pastures in Parcel II. Parcel III contains 23.81 acres, a  
10 larger barn the Johns use for their remaining horses and  
11 livestock, riding areas and a pasture.

12 The Bank holds a consensual deed of trust securing a 2008  
13 home equity loan, which encumbers only Parcel I. The Bank also  
14 holds two default judgments against the Johns related to separate  
15 commercial debt. The Bank has judgment liens on all of the real  
16 property at issue.

17 On April 27, 2012, the Bank directed the sheriff to levy on  
18 Parcels II and III to satisfy its judgment liens. The Johns  
19 responded by filing a declaration of homestead against Parcels I,  
20 II and III. They filed their bankruptcy petition one day before  
21 the sheriff's sale.

22 Following conversion to chapter 7,<sup>5</sup> the Johns amended  
23 Schedule C and exempted under Idaho Code § 55-1003 "[i]mproved

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24  
25 <sup>5</sup> On April 15, 2013, the chapter 13 trustee moved to dismiss  
26 or convert the Johns' bankruptcy case to chapter 7 on the basis of  
27 eligibility as their unsecured debts exceeded \$360,474, the  
28 statutory limit imposed in a chapter 13 case pursuant to § 109(e).  
On April 30, 2013, the Johns moved to convert the case to  
chapter 7. The bankruptcy court converted the case to chapter 7  
on May 1, 2013.

1 real property used as debtors residence, commonly described as  
2 519 State Street and 525 State Street<sup>6</sup> and all contiguous land,  
3 City of Juliaetta, County of Latah, State of Idaho[.]”

4 The Bank timely objected to the Johns’ claimed homestead  
5 exemption, asserting it should be limited to Parcel I.<sup>7</sup> Relevant  
6 to the issue on appeal, the Bank argued that because Parcel I  
7 contains a residence, the Johns cannot also include Parcel II as  
8 part of their homestead exemption because it too contains a  
9 “dwelling house” and the Johns cannot have a homestead with more  
10 than one “dwelling.” In support of its position, the Bank pointed  
11 to the statutory definition of “homestead” under Idaho Code  
12 § 55-1001(2) and the bankruptcy court’s interpretation of this  
13 statute in In re Tiffany, 106 B.R. 213 (Bankr. D. Idaho 1989)  
14 (Hagan, J.), where the court limited the debtor’s multiple  
15 dwelling homestead (including one rental property) exemption claim  
16 to a single residence property.

17 The Bank urged the court to adopt the reasoning in  
18 In re Tiffany and exclude from the Johns’ homestead exemption  
19 Parcels II and III. It asserted Parcel II must be excluded  
20 because it contained a second dwelling that is a rental property

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22 <sup>6</sup> The address “519 State Street” refers to Parcel I and “525  
23 State Street” refers to Parcel II.

24 <sup>7</sup> The chapter 7 trustee also filed an objection to Johns’  
25 claimed homestead exemption on the basis that “the property  
26 consists of three separate parcels. Debtor[s’] residence is  
27 located on one parcel and the parcels are not contiguous. The  
28 homestead exemption only applies to the parcel containing the  
Debtors’ residence.” However, the trustee later withdrew his  
objection without explanation. The trustee subsequently informed  
this appellate court that he was not an appellee, but was an  
interested party.

1 with its own distinct physical address and tax parcel number. As  
2 to Parcel III, the Bank argued that it could not be included  
3 because that unimproved land was not otherwise contiguous to  
4 either Parcel I or II, and the Johns did not intend to use it as  
5 part of the homestead as a whole.

6 The Johns timely responded to the Bank's objection. They  
7 argued that the presence of a second dwelling on Parcel II did not  
8 exclude it from protection under Idaho law because nothing in the  
9 statutory language restricts a homestead to a parcel with only a  
10 single building. The Johns asserted that Idaho Code § 55-1003 and  
11 Idaho bankruptcy case law only require the exemption not to exceed  
12 a \$100,000 net value, that the parcels be utilized as a whole and  
13 the lands be contiguous. In this regard, the Johns provided their  
14 amended Schedule D to demonstrate that because the secured claims  
15 exceeded the value of the property, the net value did not exceed  
16 the statutory cap. To prove the parcels were indeed contiguous  
17 and used as a whole, the Johns provided maps demonstrating the  
18 layout of the various plots, and set forth facts indicating that  
19 their family used the land and outbuildings on all three parcels  
20 for sheltering their horses, horseback riding, gardening, growing  
21 fruit trees and hay, and for pasturage.

22 After additional briefing, the Bank and the Johns submitted  
23 stipulated facts to the bankruptcy court. A hearing on the  
24 homestead exemption issue was held on December 10, 2013, where the  
25 parties reiterated their positions. The court took the matter  
26 under advisement.

27 On January 7, 2014, the bankruptcy court filed a Memorandum  
28 of Decision and entered an Order overruling the Bank's objection

1 to the Johns' homestead exemption. In conjunction with the plain  
2 language of Idaho Code §§ 55-1001 and 55-1003, the bankruptcy  
3 court relied on prior Idaho bankruptcy case law allowing homestead  
4 exemptions where multiple parcels are involved and concluded that  
5 whether property consists of multiple parcels or structures is not  
6 determinative or relevant if those parcels are contiguous and  
7 occupied and used by the Johns as one parcel. In re Johns,  
8 504 B.R. at 660.

9 The bankruptcy court found specifically relevant to the issue  
10 of multiple dwelling units the decision of In re Egbert, 2000 WL  
11 33712213 (Bankr. D. Idaho June 13, 2000) (Pappas, J.), which held  
12 that property containing two residences, one of which was rented  
13 to tenants, qualified as a "homestead" under Idaho law. In  
14 adopting the In re Egbert rationale, the bankruptcy court rejected  
15 the Bank's reliance on In re Tiffany, as the holding in that case  
16 was expressly rejected by the court in In re Egbert. The court  
17 reasoned:

18 Given that exemptions are to be construed liberally and  
19 there is no specific statutory limitation on land size  
20 (i.e., 'the land on which [the dwelling and appurtenant  
21 buildings] are situated and by which the same are  
22 surrounded or improved,' [citing Idaho Code § 55-1001(2)]  
23 and 'regardless of area' [citing Idaho Code § 55-1003]),  
24 this Court agrees with the reasoning in Egbert.

25 In re Johns, 504 B.R. at 660.

26 Ultimately, the bankruptcy court held that "Idaho laws  
27 protect Debtors' homestead property, no matter the size or the  
28 number of legal parcels, as long as that property is contiguous  
and used as a whole. Here Parcels I, II and III meet that  
criteria." Id. at 661. As such, the bankruptcy court concluded  
the Bank had not met its burden to prove the exemption was

1 improper. This timely appeal followed.

2 **II. JURISDICTION**

3 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
4 and 157(b)(2)(B). We have jurisdiction under 28 U.S.C. § 158.

5 **III. ISSUE**

6 Did the bankruptcy court err when it overruled the Bank's  
7 objection to the Johns' claimed Idaho homestead exemption,  
8 allowing them to include Parcels II and III?

9 **IV. STANDARDS OF REVIEW**

10 We review a bankruptcy court's conclusions of law, including  
11 its interpretation of state law, de novo. Hopkins v. Cerchione  
12 (In re Cerchione), 414 B.R. 540, 545 (9th Cir. BAP 2009). The  
13 right of a debtor to claim an exemption is a question of law we  
14 review de novo. Kelley v. Locke (In re Kelley), 300 B.R. 11, 16  
15 (9th Cir. BAP 2003).

16 The bankruptcy court's findings of fact with respect to a  
17 claimed exemption are reviewed for clear error. Id. Factual  
18 findings are clearly erroneous if illogical, implausible or  
19 without support in the record. Retz v. Samson (In re Retz),  
20 606 F.3d 1189, 1196 (9th Cir. 2010).

21 **V. DISCUSSION**

22 **A. The bankruptcy court did not err by including Parcels II and  
23 III in the Johns' homestead exemption.**

24 **1. Law of exemptions in general**

25 When the Johns filed their bankruptcy petition, all of their  
26 assets became property of their bankruptcy estate under § 541,  
27 subject to their right to reclaim certain property as exempt.  
28 Schwab v. Reilly, 560 U.S. 770, 774 (2010). "Property a debtor

1 claims as exempt will be excluded from the bankruptcy estate  
2 '[u]nless a party in interest' objects." Id. (citing § 522(1)).  
3 Whether property qualifies as exempt is to be determined as of the  
4 date of the filing of debtors' bankruptcy petition. White v.  
5 Stump, 266 U.S. 310, 313 (1924); In re Cerchione, 414 B.R. at 548.

6 Section 522(b) allows debtors to choose the exemptions  
7 afforded by state law or the federal exemptions listed under  
8 § 522(d). Idaho has elected to "opt out" of the federal  
9 exemptions. Idaho Code § 11-609. Accordingly, the Johns were  
10 limited to the exemption allowed under Idaho law.  
11 In re Steinmetz, 261 B.R. 32, 33 (Bankr. D. Idaho 2001).  
12 Therefore, while "the federal courts decide the merits of state  
13 exemptions, . . . the validity of the claimed state exemption is  
14 controlled by the applicable state law." In re Kelley, 300 B.R.  
15 at 16. In this regard, Idaho exemption statutes are to be  
16 liberally construed in favor of the debtor. In re Wiley, 352 B.R.  
17 716, 718 (Bankr. D. Idaho 2006); In re Kline, 350 B.R. 497, 502  
18 (Bankr. D. Idaho 2005).

19 A claimed exemption is "presumptively valid." Carter v.  
20 Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)  
21 (citation omitted). Once an exemption has been claimed, as the  
22 objecting party, the Bank "has the burden of proving that the  
23 exemptions are not properly claimed." Rule 4003(c); Gonzalez v.  
24 Davis (In re Davis), 323 B.R. 732, 736 (9th Cir. BAP 2005) (Klein,  
25 J., concurring). Initially, this means the objecting party has  
26 the burden of production and the burden of persuasion.  
27 In re Carter, 182 F.3d at 1029 n.3. If the objecting party  
28 produces evidence to rebut the presumptively valid exemption, the



1 burden of production then shifts to the debtor to come forward  
2 with unequivocal evidence to demonstrate the exemption is proper.  
3 Id. However, the burden of persuasion always remains with the  
4 objecting party. Id.

5 **2. Idaho homestead exemption at issue**

6 The Johns contend they are entitled to apply Idaho Code  
7 § 55-1003 to exempt their three parcels of contiguous real  
8 property. That statute provides:

9 A homestead may consist of lands, as described in section  
10 55-1001, Idaho Code, regardless of area, but the  
11 homestead exemption amount shall not exceed the lesser of  
12 (i) the total net value of the lands, mobile home, and  
improvements as described in section 55-1001, Idaho Code;  
or (ii) the sum of one hundred thousand dollars  
(\$100,000).

13 Idaho Code § 55-1003 (emphasis added). The Johns maintain that  
14 Parcels I, II and III consist of lands within the meaning of  
15 "homestead," which is statutorily defined in pertinent part as a:

16 [D]welling house or the mobile home in which the owner  
17 resides or intends to reside, with appurtenant buildings,  
18 and the land on which the same are situated and by which  
19 the same are surrounded, or improved; or unimproved land  
owned with the intention of placing a house or mobile  
home thereon and residing thereon [.]

20 Idaho Code § 55-1001(2).

21 The Bank does not dispute that the Johns are entitled to  
22 exempt Parcel I under the foregoing statutes. However, the Bank  
23 disputes the bankruptcy court's decision to allow the Johns also  
24 to include Parcels II and III in their homestead exemption.

25 **3. Parcels II and III were properly included in the Johns'**  
26 **homestead exemption.**

27 The Bank's principal argument on appeal is that the presence  
28 of a second dwelling on Parcel II excludes it from the Johns'

1 homestead exemption because the definition of "homestead" under  
2 Idaho law contemplates only a single "dwelling." In support of  
3 this position, the Bank relies on the definition of a "homestead"  
4 set forth in Idaho Code § 55-1001(2), and the interpretation of it  
5 under In re Tiffany. Furthermore, the Bank argues that because  
6 Parcel II falls outside the Johns' homestead exemption, Parcel III  
7 must also be excluded because it is not itself contiguous to  
8 Parcel I.

9 We agree that if Parcel II is to be excluded from the  
10 homestead, then Parcel III must also be excluded as it is not  
11 directly connected to Parcel I. However, we disagree with the  
12 Bank's threshold premise as to Parcel II because it fails to  
13 consider the issues material to the exemption of a multiple parcel  
14 homestead and contravenes the factually relevant and legally sound  
15 decision of In re Egbert, which expressly disposed of the multiple  
16 dwelling issue in a manner consistent with the underlying policy  
17 of Idaho's homestead exemption laws.

18 **a. Idaho law allows multiple parcels to qualify as a**  
19 **"homestead" under Idaho Code § 55-1001 and**  
**therefore be exempt under Idaho Code § 55-1003.**

20 The statutes governing homestead exemptions in Idaho do not  
21 limit the size of a debtor's homestead. In re Zantman, 261 B.R.  
22 41, 43 (Bankr. D. Idaho 2001) (Idaho legislature has not imposed a  
23 property size limitation on a homestead exemption); In re Millsap,  
24 122 B.R. 577, 581 (Bankr. D. Idaho 1991) (statutes contain no area  
25 restrictions on property claimed for a homestead). This principle  
26 is extrapolated from the plain language of Idaho's homestead  
27 exemption statutes, which allow a debtor to exempt the principal  
28 dwelling "in which the owner resides," as well as "the land on

1 which [the dwelling and appurtenant buildings] are situated and by  
2 which the same are surrounded or improved," "regardless of area."  
3 See Idaho Code §§ 55-1001(2), 55-1003.

4 The Idaho bankruptcy court has consistently applied this  
5 statutory language to allow homestead exemptions where multiple  
6 parcels are involved, as long the parcels are contiguous and used  
7 by the debtor as a whole. See, e.g., In re Zantman, 261 B.R. at  
8 44 (allowing an exemption in various parcels that were contiguous  
9 and used by debtors as a single property); In re Taylor, 1995 WL  
10 66330, at \*3 (Bankr. D. Idaho Feb. 7, 1995) (allowing an exemption  
11 in multiple parcels when contiguous and debtors used "the property  
12 as one parcel"); In re Millsap, 122 B.R. at 580-81 (allowing an  
13 exemption in multiple contiguous parcels utilized by the owner as  
14 a single parcel).<sup>8</sup>

15 It is undisputed that the parcels at issue are contiguous, as  
16 this was expressly stated in the parties' stipulated facts: "The  
17 Johns' real estate in Juliaetta, Latah County, Idaho, consists of  
18 three contiguous parcels." The bankruptcy court found that  
19 "Parcel II is contiguous to Parcel I and Parcel III is contiguous  
20 to Parcel II." In re Johns, 504 B.R. at 558 n.3. Ample  
21 supporting points in the parties' stipulated facts corroborate the  
22 court's finding to this effect.

23 Additionally, it is undisputed that the Johns use all three  
24 parcels as one. In acknowledging that the use of Parcel I is not  
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26 <sup>8</sup> Indeed, the Bank acknowledges this rule and does not  
27 challenge the bankruptcy courts' application of it as to the land  
28 and appurtenant buildings on the Johns' three parcels, but, as  
discussed infra, claims the second dwelling cannot be encompassed  
under this rule.

1 independent from the use of Parcels II and III, the bankruptcy  
2 court noted in its decision that "the stipulated facts show  
3 Debtors use appurtenant buildings on Parcels II and III and the  
4 land that encompasses the same as part of their homestead,  
5 primarily to pasture and care for their horses." In re Johns,  
6 504 B.R. at 660. This assessment that the three parcels are used  
7 as one is well supported by the stipulated facts that describe how  
8 the Johns use the various parcels for pasturing and housing  
9 horses, family activities such as horseback riding, for storing  
10 hay and residential personal property, and raising chickens for  
11 family eggs and meat.

12 Therefore, the record establishes that the real property  
13 meets the criteria for a multiple parcel homestead exemption under  
14 Idaho law because the parcels are contiguous and utilized by the  
15 Johns as a whole. In other words, all three parcels are properly  
16 exempt under Idaho Code § 55-1003 as a "homestead" pursuant to  
17 Idaho Code § 55-1001(2).

18 Given that Parcels II and III are properly included in the  
19 Johns' exemptible "homestead" as contiguous parcels used as part  
20 of the whole, the narrow issue in this appeal then becomes whether  
21 the presence of a second "dwelling" on Parcel II extinguishes the  
22 Johns' right to protect that property, which would otherwise be  
23 exempt under the foregoing multiple parcel analysis.

24 **b. The effect of a second "dwelling" within the**  
25 **otherwise exempt homestead**

26 The Bank argues that because the definition of "homestead"  
27 under Idaho Code § 55-1001(2) uses the term "dwelling" in the  
28 singular form, the Johns' homestead cannot be comprised of more

1 than one dwelling; therefore, the presence of a second dwelling on  
2 Parcel II renders it outside the scope of Idaho's homestead  
3 exemption. In support of this interpretation of Idaho Code  
4 § 55-1001(2), the Bank relies on In re Tiffany, which applied that  
5 statute in limiting a debtor's homestead exemption to a single  
6 dwelling. In re Tiffany, 106 B.R. at 214. The Bank contends that  
7 In re Tiffany is on point factually and provides a "well-reasoned"  
8 approach that should control the disposition of the second  
9 dwelling issue in this case. We disagree.

10 In In re Tiffany, the debtor sought to exempt as his  
11 homestead property that included multiple dwellings. 106 B.R. at  
12 214. In this respect, In re Tiffany is similar to this case as  
13 the Johns have also sought to exempt a homestead with more than  
14 one "dwelling" on it. However, that is where the similarities  
15 end, and in all material respects the analysis in In re Tiffany  
16 becomes distinguishable from the case at bar.

17 The Bank argues that In re Tiffany limits the Johns'  
18 homestead exemption to one dwelling because the analysis does not  
19 rely upon the manner in which the Johns use the dwellings but  
20 depends upon the plain language of the statute that does not allow  
21 a claimant to assert a homestead over multiple dwellings. We  
22 fundamentally disagree with this reading of In re Tiffany.

23 Contrary to the Bank's statement of the case, the outcome in  
24 In re Tiffany did not arise from such a broad rationale, when in  
25 fact the Tiffany court framed its analysis around the unique  
26 character of the specific dwelling at issue, stating that:

27 [T]he fact a tenant is renting a portion of the property  
28 and living in [his own] mobile home [i.e. owned by the  
tenant, not the debtor] on the property is a material

1 factor in determining the extent of debtor's homestead,  
2 since the tenant could conceivably also declare a  
3 homestead exemption on the property under the statute.

4 106 B.R. at 214 (emphasis added). Indeed, the court's application  
5 of the plain language of Idaho Code § 55-1001 was tailored to this  
6 unique circumstance.

7 The Tiffany court made the observation that Idaho Code  
8 § 55-1001 "contemplates only one dwelling." Id. But, it did not  
9 stop there so as to make a definitive and general determination as  
10 to the effect of the singular use of "dwelling," and thereby  
11 foreclose the exemption of multiple dwelling homesteads in all  
12 contexts. Rather, the Tiffany court immediately tempered this  
13 strict construction with the qualifying explanation that:

14 [B]ased on the plain wording of the statute, the debtor's  
15 homestead cannot include property upon which other  
16 residences are located, which residences and the land upon  
17 which they are situated could also be subject to homestead  
18 declarations.

19 Id. (emphasis added).

20 Thus, the court's analysis in In re Tiffany of whether an  
21 Idaho homestead can consist of more than one dwelling was driven  
22 by the narrow factual context of separate ownership interests in  
23 the dwellings sought to be claimed exempt, which could give rise  
24 to the potential for multiple party homestead exemption claims.  
25 Therefore, the Panel is not persuaded to apply the reasoning of  
26 In re Tiffany in a case such as this, where the debtors own both  
27 dwellings and no risk of multiple homestead exemption claims  
28 exists.

29 Instead, the Panel agrees with the bankruptcy court's  
30 decision in In re Egbert, which, similar to the case at bar,  
31 involved debtors who sought to exempt property that contained two

1 "dwellings," both of which they owned, one of which was rented.  
2 2000 WL 33712213, at \*1. In In re Egbert, the court concluded  
3 that even though the property included a second dwelling, it  
4 qualified as a "homestead" under Idaho Code § 55-1001. Id. In  
5 reaching this conclusion, the Egbert court applied the same  
6 statutory language as the Tiffany court, but expressly rejected  
7 the outcome in Tiffany based on the plain language of Idaho Code  
8 § 55-1001(2) and the narrow distinguishable facts.

9 Specifically, the Egbert court reasoned that the debtors'  
10 homestead exemption claim was proper as to both dwellings because  
11 it was consistent with the plain language of Idaho Code § 55-1001.  
12 It explained that just as the statute requires, the debtors "do in  
13 fact 'reside'" in one of the "'dwelling house[s]'" on the  
14 property, and the second dwelling could also be included because  
15 "the statute imposes no restrictions on what sort of additional  
16 buildings or improvements are permitted on the homestead."  
17 In re Egbert, 2000 WL 33712213, at \*1.

18 The Egbert court recognized that while the Tiffany court  
19 construed the Idaho homestead exemption to include only one  
20 dwelling, it did so on facts that were "sufficiently  
21 distinguishable to justify a departure from the result in this  
22 case." Id. at \*2 n.1. In this regard, the Egbert court noted  
23 that contrary to the unique circumstances of In re Tiffany, the  
24 debtors in In re Egbert were sole owners of the land and both  
25 dwellings; therefore, there was "no danger here that Debtors'  
26 second dwelling will be claimed by others as a homestead. . . .  
27 There is no possibility that the property could be the subject of  
28 multiple homestead claims." Id. at \*2.

1           The Johns' homestead in this case shares the same  
2 distinguishable features to warrant a divergence from  
3 In re Tiffany and to adopt the Egbert court's interpretation of  
4 Idaho Code § 55-1001 as to the treatment of a second dwelling.  
5 The Johns own both the dwelling on Parcel I and the sometimes-  
6 rented dwelling on Parcel II. Distinct from the concerns that  
7 drove the court's analysis in In re Tiffany, no risk exists here  
8 that more than one homestead exemption can be claimed on this  
9 property.

10           Consistent with In re Egbert's interpretation of Idaho Code  
11 § 55-1001, the Johns "do in fact 'reside'" in the "'dwelling  
12 house'" on Parcel I. See id. at \*1. As such, we agree with the  
13 analysis in In re Egbert that the definition imposes no further  
14 restriction on what sort of additional buildings or improvements  
15 are permitted on the homestead. Id. Therefore, nothing in the  
16 statutory scheme requires a piecemeal exclusion of the "dwelling"  
17 on Parcel II.

18           Although the Bank argues that In re Tiffany stands for the  
19 broader proposition that the singular form of "dwelling" in Idaho  
20 Code § 55-1001(2) should be construed to cover only one dwelling,  
21 to the extent the holding in In re Tiffany could be generalized in  
22 such a way despite the factual disparities, then we "must  
23 respectfully disagree with the construction given the statute by  
24 [the Tiffany] Court." In re Egbert, 2000 WL 33712213, at \*2 n.1.

25           Allowing the dwelling on Parcel II to be included in the  
26 Johns' homestead exemption, when in all material respects the  
27 property has met the requirements to qualify as a "homestead"  
28 under Idaho Code § 55-1001(2), reflects the "interpretive rules



1 requiring liberal construction of exemptions statutes, and [is]  
2 consistent with the plain language of Idaho Code § 55-1001." See  
3 id. at \*2. The Johns reside in the dwelling on Parcel I as their  
4 principal residence, and all parcels are contiguous and utilized  
5 as a whole; the mere presence of a structure that is characterized  
6 as a second "dwelling" should not defeat their right to an  
7 exemption.

8       Indeed, the Idaho legislature has already incorporated in the  
9 statutory scheme explicit limitations on the extent of a debtor's  
10 homestead exemption. Idaho Code § 55-1003 restricts a debtor's  
11 homestead exemption to the "lesser of . . . the total net value of  
12 the lands . . . and improvements . . . or the sum of one hundred  
13 thousand dollars." Thus, "any attempt to abuse the homestead  
14 exemption is curbed not only by the requirement that the debtor  
15 reside on the property, but also by the [\$100,000] value  
16 limitation." In re Egbert, 2000 WL 33712213, at \*2 (citation  
17 omitted); accord In re Zantman, 261 B.R. at 43 ("Creditors'  
18 interests are protected . . ., as the Legislature designed, by the  
19 limitation that only [\$100,000] in equity in the property may be  
20 claimed as exempt.").

21       Therefore, the appropriate limitation on a debtor's Idaho  
22 homestead exemption is not the technical character of the  
23 structures appurtenant to it. We decline to create such a  
24 restriction based on an inference that the Bank argues can be  
25 drawn from the singular use of the word "dwelling," as applied in  
26 the factually distinct case of In re Tiffany. Accordingly, we  
27 fail to see how the presence of the second dwelling on contiguous  
28 Parcel II should warrant Parcel II's exclusion, in whole or in

1 part, from the Johns' homestead exemption, when the Bank's  
2 interests are protected as the Idaho Legislature intended by the  
3 statutory cap in exemptible equity.

4 Having concluded that the second dwelling on Parcel II does  
5 not defeat the Johns' right to include it as part of their  
6 homestead, the Bank's argument collapses as to Parcel III. In  
7 other words, because Parcel II is preserved as part of the  
8 homestead, it is irrelevant that Parcel III is not itself  
9 contiguous to Parcel I because Parcel III is contiguous to  
10 Parcel II, which is contiguous to Parcel I.

11 **VI. CONCLUSION**

12 For the reasons set forth above, the Bank did not carry its  
13 burden to prove the Johns' claimed homestead exemption was  
14 improper. Therefore, we AFFIRM the bankruptcy court's order  
15 overruling the Bank's objection to the Johns' claim of homestead  
16 exemption, thereby recognizing Parcels I, II and III as exempt  
17 under Idaho Code § 55-1003.

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