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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Christina C Flatt, et al.,  
Appellants,  
v.  
Brian J Mullen,  
Appellee.

No. CV-18-00914-PHX-DLR  
**ORDER**

Appellants Christina and Robert Flatt appeal the bankruptcy court’s turnover order and, in doing so, have moved to certify questions to the Arizona Supreme Court regarding Arizona’s homestead statute, A.R.S. § 33-1101(C) (Doc. 6). For the reasons stated below, Appellants’ motion to certify is denied and the bankruptcy court’s order is affirmed.<sup>1</sup>

**I. Background**

Appellants filed their Chapter 7 bankruptcy petition on April 18, 2017. As of the petition date, the bankruptcy estate owned real property located in Glendale, Arizona.

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<sup>1</sup> Appellants also ask the Court to take judicial notice of the date that *In re Foreacre*, 358 B.R. 384 (Bank. D. Ariz. 2006) was taken under submission. (Doc. 17.) To the extent that Appellants simply seek to highlight the submission date, their request is moot; the submission date appears in the case caption on Westlaw and the Court can consider that date without a request for judicial notice. To the extent, however, that Appellants ask the Court to judicially notice the "fact" that the *In re Foreacre* court lacked jurisdiction based on the case’s submission date, the request is denied because it does not seek notice of fact, let alone one that is properly subject to judicial notice. Instead, Appellants raise a legal argument concerning the persuasive value, if any, of *In re Foreacre*.

1 Appellee Brian J. Mullen was appointed acting trustee of the bankruptcy estate.

2 On June 6, 2017, the bankruptcy court approved the sale of the real property,  
3 which generated proceeds of \$59,093.18. On June 9, 2017, relying on Arizona's  
4 homestead exemption, the proceeds were deposited into Appellants' checking account,  
5 which also contained other funds not originated from the sale. During the next several  
6 months, Appellants spent the proceeds on various expenditures, including groceries,  
7 dining, entertainment, clothing, insurance premiums, utility bills, apartment furnishings,  
8 auto loan payments, health care expenses, and veterinarian bills.

9 On November 21, 2017, Appellee filed a motion requesting Appellants turn over  
10 all of the identified cash proceeds from the sale of the property, contending that  
11 Appellants were not entitled to a homestead exemption under Arizona law. Appellants  
12 timely opposed the motion, requested certification of pertinent questions to the Arizona  
13 Supreme Court, and sought a stay until the Arizona Supreme Court accepted certification  
14 and made a final ruling, or declined to do so. Appellee filed a reply memorandum,  
15 supporting turnover and opposing the motion for certification and stay.

16 On February 27, 2018, after a hearing, the bankruptcy court granted Appellee's  
17 motion for turnover of cash proceeds from the sale of the property. On March 6, 2018, a  
18 written order followed, clarifying that Appellants were not entitled to the homestead  
19 exemption because they commingled the sale proceeds and spent them on non-exempt  
20 expenditures. The written order also clarified that the bankruptcy court denied  
21 Appellants' request for certification and stay. On March 8, 2018, Appellants noticed an  
22 appeal.

## 23 **II. Motion to Certify**

24 The Arizona Supreme Court may answer questions of law certified to it by a  
25 United States District Court if: (1) there are questions of state law that might be  
26 determinative of the case pending in the certifying court and (2) it appears to the  
27 certifying court that there is no controlling state court precedent. A.R.S. § 12-1861; *see*  
28 *also Binford v. Rhode*, 116 F.3d 396, 399 (9th Cir. 1997). Certification is not mandatory,

1 however, simply because state law is unclear on a particular issue. *Lehman Bros. v.*  
2 *Schein*, 416 U.S. 386, 390-91 (1974). Whether to certify a question to the state’s highest  
3 court is within the district court’s discretion. *Id.* In determining whether certification is  
4 appropriate, courts look to “factors such as the complexity of the issue, the availability of  
5 precedent from lower courts or other jurisdictions, and the magnitude of disagreement on  
6 the issue . . . .” *Smith v. Allstate Ins. Co.*, 202 F. Supp. 2d 1061, 1064 (D. Ariz. 2002).

7 Appellants raise two issues related to Arizona’s homestead exemption, which  
8 generally exempts proceeds from the sale of certain delineated properties from a  
9 bankruptcy estate: (1) whether the homestead exemption is lost by commingling  
10 homestead proceeds with non-exempt funds, and (2) whether the homestead exemption is  
11 lost with respect to proceeds spent for non-exempt purposes. Neither issue is complex.  
12 *Id.* (finding issue non-complex when the court was not required to “wade into any  
13 intricate or abstruse administrative or statutory scheme”). Although Arizona courts have  
14 not weighed in on these particular issues, courts in other states with similar statutes have  
15 addressed both issues and have resolved them in a similar manner, indicating a lack of  
16 serious debate. *See, e.g., In re Kierig*, No. 99-21016, 2000 WL 33716966, at \*3 (Bankr.  
17 D. Idaho Feb. 10, 2000); *In re Ziegler*, 239 B.R. 375, 379 (Bankr. C.D. Ill. 1999); *In re*  
18 *Zibman*, 268 F.3d 298, 305 (5th Cir. 2001) (Texas law); *In re Golden*, 789 F.2d 698, 700  
19 (9th Cir. 1986) (California law). Moreover, bankruptcy courts applying the Arizona  
20 homestead statute have reached nearly uniform results. *See, e.g., In re Smith*, 515 B.R.  
21 755, 762 (Bankr. D. Ariz. 2014); *In re White*, 389 B.R. 693, 704 (9th Cir. B.A.P. 2008);  
22 *In re Hassett*, No. 14-BK-12106-BKM (Bankr. D. Ariz. Mar. 13, 2017) (order denying  
23 debtors’ motion for abandonment). Given these circumstances, the Court concludes that  
24 certification is not necessary and denies Appellants’ motion.

### 25 **III. Appeal of Bankruptcy Court’s Turnover Order**

26 “On appeal, a district court may affirm, modify, or reverse a bankruptcy judge’s  
27 judgment, order, or decree or remand with instructions for further proceedings. A district  
28 courts review a bankruptcy court’s . . . conclusions of law de novo.” *Medina v. Vander*

1 *Poel*, 523 B.R. 820, 823 (E.D. Cal. 2015) (internal quotation and citation omitted).

2 Appellants challenge the bankruptcy court’s conclusion that Appellants waived  
3 their homestead exemption rights by commingling the proceeds with non-exempt funds  
4 and by spending proceeds on non-exempt expenditures. They do not challenge the  
5 bankruptcy court’s factual findings that they commingled the proceeds with non-exempt  
6 funds and spent proceeds for non-exempt purposes. Instead, Appellants contend that the  
7 bankruptcy court erred as a matter of law when it concluded that § 33-1101(C) prohibits  
8 commingling and use of sales proceeds on non-exempt expenditures. The Court  
9 disagrees.

10 The filing of a bankruptcy petition creates an estate that consists of all of the  
11 debtor’s legal and equitable interests in property, including potentially exempt property.  
12 11 U.S.C. § 541; *Cusano v. Klein*, 264 F.3d 936, 945-46 (9th Cir. 2001). Section 522(b)  
13 of the Bankruptcy Code allows a debtor to exempt property from the bankruptcy estate.  
14 Because Arizona has “opted out” of the federal Bankruptcy Code’s exemptions, Arizona  
15 law governs homestead exemptions. 11 U.S.C. § 522(b); A.R.S. § 33-1133(B).

16 The Arizona homestead exemption statute provides, in pertinent part, as follows:

17 The homestead exemption, not exceeding [one hundred fifty  
18 thousand dollars in value], automatically attaches to the  
19 person’s interest in identifiable cash proceeds from the  
20 voluntary or involuntary sale of the property. The homestead  
21 exemption in identifiable cash proceeds continues for  
22 eighteen months after the date of the sale of the property or  
until the person establishes a new homestead with the  
proceeds, whichever period is shorter. Only one homestead  
exemption at a time may be held by a person under this  
section.

23 A.R.S. § 33-1101(C). The fundamental purpose of the homestead exemption is to protect  
24 the debtors against the forced sale of their home. *In re Irwin*, 293 B.R. 28, 33-34 (Bankr.  
25 D. Ariz. 2003). The homestead exemption, however, was not created to confer “a favor  
26 or privilege on a debtor, but to shelter the family and thereby maintain the stability and  
27 welfare of the state.” *In re White*, 377 B.R. 633, 643 (Bankr. D. Ariz. 2007).

28 “Once the homestead proceeds are placed in the same account with other funds,

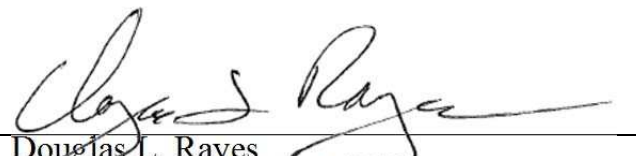
1 such as wages, then those funds are no longer ‘identifiable’” for purposes of § 33-  
2 1101(C). *In re Foreacre* 358 B.R. 384, 389-390 (Bankr. D. Ariz. 2006) (finding that  
3 proceeds must be kept in a separate account and not commingled); *In re Hassett*, No. 14-  
4 BK-12106-BKM. Moreover, once proceeds are used for non-exempt purposes, like  
5 purchasing a vehicle, the proceeds are no longer entitled to the homestead exemption.  
6 *See, e.g., In re Smith*, 515 B.R. at 762 (finding proceeds used for purposes that do not  
7 qualify as expenditures made to establish a new homestead not entitled to homestead  
8 exemption); *In re White*, 389 B.R. at 704 (finding that debtor cannot use proceeds in a  
9 manner inconsistent with exempt purposes). Given that Appellants do not dispute that  
10 they commingled the proceeds and spent them on non-exempt expenditures, the  
11 bankruptcy court did not err in finding that Appellants were no longer entitled to the  
12 homestead exemption. The bankruptcy court properly ordered turnover of the proceeds  
13 because the bankruptcy estate has a “contingent, revisionary interest in the sale  
14 proceeds.” *In re Smith*, 342 B.R. 801, 808 (B.A.P. 9th Cir. 2006).

15 **IT IS ORDERED** that Appellants’ motion for certification (Doc. 6) is **DENIED**.

16 **IT IS FURTHER ORDERED** that the bankruptcy court’s turnover order is  
17 **AFFIRMED**. The Clerk of the Court shall enter judgment accordingly and terminate  
18 this case.

19 **IT IS FURTHER ORDERED** that Appellants’ motion for judicial notice (Doc.  
20 17) is **DENIED**.

21 Dated this 6th day of November, 2018.

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26 Douglas L. Rayes  
27 United States District Judge  
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