

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :
MANUEL FURTADO, JR. : BK No. 00-13949
Debtor : Chapter 7

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ORDER

Pursuant to 11 U.S.C. § 522(b)(2), the Debtor elected the exemptions afforded under State law, and seeks to exempt \$100,000 in equity in his home under the Rhode Island Homestead Act, R.I. Gen. Laws § 9-26-4.1 (hereinafter the "Act"). The Act states in relevant part:

In addition to the property exempt from attachment as set forth in § 9-26-4, an estate of homestead to the extent of one hundred thousand dollars (\$100,000) in the land and buildings *may be acquired* pursuant to this section by an owner or owners of a home or one or all who rightfully possess the premise by lease or otherwise, and who occupy or intend to occupy said home as a principal residence.

R.I. Gen. Laws § 9-26-4.1 (emphasis added). The Environmental Protection Agency ("EPA") objects, arguing that the phrase "may be acquired" requires an affirmative act on the part of the Debtor in order to qualify for the protection of the Act, urging that we enunciate a requirement that debtors record a notice of the claimed exemption in the land evidence records, before they are given the protection afforded by the Act. Clearly, this Court is not authorized to re-write the Rhode Island Homestead Act in such a manner.

The Debtor argues that the statute's silence as to any procedural steps required to acquire an estate in homestead means that home

ownership is the only prerequisite, and that for the Court to engraft additional requirements to qualify for the exemption would invade the province of the legislature. I agree. If the Rhode Island legislature wanted to make the recording of a declaration of homestead in the land evidence records the manner in which to acquire the exemption, it could easily have done so. In fact, one legislator attempted to do just that in 1999, when Senate Bill 270 was introduced. That bill, which spelled out a specific mechanism for claiming a homestead exemption, died in committee later that year, see 1999 RI S.B. 270, and no similar resolution has been introduced. See *Carlson v. McLyman*, 77 R.I. 177, 180 (1950) ("It is not within the province of this court to insert or delete words from a statute unless the necessity to do so is plainly evident in order to carry out the legislative intent.") No such necessity being plainly evident in this case, the EPA's Objection to Debtor's homestead Exemption is OVERRULED.

Enter judgment consistent with this order.

Dated at Providence, Rhode Island, this 10th day of
May, 2001.

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge