



**Opinion Title:** 04/26/2006 UNPUBLISHED In re Beckstead, 05-35213, Judge Thurman.

**Body:** The Court was called upon to determine whether a real estate commission was property of the estate and if so, whether it was exempt. One of the Debtors in this case was employed as a real estate agent under the supervision of her principal broker. Before filing for chapter 7 bankruptcy relief, the Debtor produced buyers to certain sellers, who were ready, willing and able to purchase the sellers' real property. The Debtor, acting as a real estate agent, performed the bulk of her services before the filing of the Debtor's case. The sale did not close until after the Debtor filed this bankruptcy case. Upon receipt of the commission from the sale, the Debtors amended their statements and schedules to include the commission and claimed an exemption for 75% of the commission under Utah R. Civ. P. 64D. The chapter 7 trustee assigned to the Debtors' case objected to their claimed exemption, arguing that a commission is not subject to an exemption under Rule 64D. The Court first held that under Utah law the commission is property of the estate because the Debtor had an agreement with her broker that she was entitled to a commission whenever the broker became entitled to its commission. Under Utah law a broker is entitled to a commission when the broker presents a seller with a buyer who is ready, willing and able to purchase the property at issue, regardless of whether the sale actual goes to completion. Because the broker was entitled to collect its commission before the Debtor filed for bankruptcy relief, so too was the Debtor entitled to collect the commission. Thus, the Court concluded that the commission was property of the estate. The Court also held that under Utah law a commission is subject to an exemption under Rule 64D. The Court reached this conclusion by considering the language and history of Rule 64D, applying Utah rules of statutory construction.

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**Judge:** [Judge William T. Thurman](#) [2]

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