



**United States Bankruptcy Court
District of New Mexico
Office of the Clerk
Norman H. Meyer, Jr., Clerk of Court**

EXEMPTIONS

The following is provided by the Office of the Clerk, United States Bankruptcy Court for the District of New Mexico, **for general informational purposes only** as part of the court's packet of information available to self-represented bankruptcy petition filers.

Under section 522 of the United States Bankruptcy Code, each individual debtor (i.e., not a corporation or partnership) is allowed to claim certain property exempt. This means that the debtor(s) may keep the property free from the claims of any creditors except secured creditors that may hold a lien on the property. A claim of exemption has no effect on valid liens. This means that, for example, a home mortgage or a car loan is still valid when the house or car is claimed exempt.

The Bankruptcy Code allows debtors to choose their exempt property either from a federal list of exemptions or a state list of exemptions. Mixing federal and state exemptions is not permitted. In other words, the exemptions must be all state or all federal. Additionally, if husband and wife file jointly, both must claim federal exemptions or both must claim state exemptions.

Exemptions are claimed on Schedule C. Creditors, the case trustee, or other party in interest may file with the court an objection to an exemption claimed by the debtor. Objections to the list of property claimed exempt must be filed within 30 days of the conclusion of the first meeting of creditors. The Bankruptcy Code states that if no party in interest objects to the list of exempt property, it is exempt.

FEDERAL EXEMPTIONS - with dollar amounts adjusted effective April 1, 2001

The federal exemptions are contained within sections 522(d)(1) through 522(d)(11) of the United States Bankruptcy Code. The dollar amounts provided here are effective as of April 1, 2001. These amounts may be adjusted in 2004 and every three years thereafter. [See 11 U.S.C. §104.](#)

522(d): The following property may be exempted ...

(1) The debtor's aggregate interest, not to exceed \$17,425 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$2,775 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$450 in value in any particular item or \$9,300 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed \$1,150 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$925 plus up to \$8,725 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$9,300 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$17,425, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

NEW MEXICO EXEMPTIONS

The New Mexico exemptions are contained in sections 42-10-1 through 42-10-13 of the New Mexico Statutes.

42-10-1. Exemptions of married persons or heads of households. Personal property in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-2. Exemptions of persons who support only themselves. Personal property other than money in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person

supporting only himself is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, executors or administrators in probate, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-3. [Life, accident and health insurance benefits.] The cash surrender value of any life insurance policy, the withdrawal value of any optional settlement, annuity contract or deposit with any life insurance company, all weekly, monthly, quarterly, semiannual or annual annuities, indemnities or payments of every kind from any life, accident or health insurance policy, annuity contract or deposit heretofore or hereafter issued upon the life of a citizen or resident of the state of New Mexico, or made by any such insurance company with such citizen, upon whatever form and whether the insured or the person protected thereby has the right to change the beneficiary therein or not, shall in no case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or who is protected by said contract, or who receives or is to receive the benefit thereof, nor shall it be subject in any other manner to the debts of the person whose life is so insured, or who is protected by said contract or who receives or is to receive the benefit thereof, unless such policy, contract or deposit be taken out, made or assigned in writing for the benefit of such creditor.

42-10-4. [Benefits from benevolent associations.] Any beneficiary fund not exceeding five thousand dollars [(\$5,000)], set apart, appropriated or paid, by any benevolent association or society, according to its rules, regulations or bylaws, to the family of any deceased member, or to any member of such family, shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debts of such deceased member.

42-10-5. [Life insurance proceeds.] The proceeds of any life insurance are not subject to the debts of the deceased, except by special contract or arrangement, to be made in writing.

42-10-6. Personal property used as a security under the Uniform Commercial Code is not exempt. A secured creditor who has personal property of the debtor as security as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978] may proceed according to the terms of the security instrument and the Uniform Commercial Code. The debtor cannot exempt personal property given to a secured creditor as security unless there be more property than is necessary to pay the debt to the secured creditor. The debtor may claim an exemption out of the surplus.

42-10-7. Taxes and garnishment excepted. This article is not applicable to taxes or garnishment.

42-10-8. Repealed.

42-10-9. Homestead exemption. Each person shall have exempt a homestead in a dwelling house and land occupied by him or in a dwelling house occupied by him although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of thirty thousand dollars (\$30,000) exempt from attachment, execution or foreclosure by a judgment creditor and from

any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in probate. If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of thirty thousand dollars (\$30,000).

42-10-10. Exemption in lieu of homestead.

A. Any resident of this state who does not own a homestead shall in addition to other exemptions hold exempt real or personal property in the amount of two thousand dollars (\$2,000) in lieu of the homestead exemption.

B. Where the resident does not own a homestead, the sheriff or any other person or officer seeking to attach, execute or foreclose by judgment on property shall provide the resident with written notification of the resident's right to exemption in lieu of homestead as described in Subsection A of this section, together with a simple form by which the resident may designate that he is aware of the exemption and does or does not desire to claim the exemption. Where the resident refuses to make the election provided for in this section, the sheriff, other person or officer shall proceed to attach, execute or foreclose on the resident's property. Where the resident claims his exemption in lieu of homestead, the sheriff, other person or officer making attachment, execution or foreclosure by judgment shall file as part of his return a description, including the resident's stated value, of the property claimed as exempt bearing the resident's signature witnessed by the sheriff, other person or officer seeking to attach, execute or foreclose.

42-10-11. When homestead exemption does not apply. The provisions of this article [42-10-9 to 42-10-12 NMSA 1978] do not apply or extend to taxes, garnishment, recorded liens of mortgagees or lessors or recorded liens of laborers or materialmen for labor or materials furnished for the construction or repair of the dwelling house.

42-10-12. Repealed.

42-10-13. Claim of exemption or priority. Any person desiring to claim that property is exempt from execution or is subject to execution only after other property is used to satisfy a debt under the provisions of Sections 40-3-10 and 40-3-11 NMSA 1978 shall file his claim of exemption or priority in the appropriate court, or the right to claim such exemption is waived as between a spouse and the creditor.

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