

ARTICLE 16.

Exempt Property.

§ 1C-1601. What property exempt; waiver; exceptions.

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

- (1) The debtor's aggregate interest, not to exceed thirty-five thousand dollars (\$35,000) 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; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed sixty thousand dollars (\$60,000) in value so long as the property was previously owned by the debtor as a tenant by the entirety or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.
- (2) The debtor's aggregate interest in any property, not to exceed five thousand dollars (\$5,000) in value of any unused exemption amount to which the debtor is entitled under subdivision (1) of this subsection.
- (3) The debtor's interest, not to exceed three thousand five hundred dollars (\$3,500) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed five thousand dollars (\$5,000) in value for the debtor plus one thousand dollars (\$1,000) for each dependent of the debtor, not to exceed four thousand dollars (\$4,000) total for dependents, 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.
- (5) The debtor's aggregate interest, not to exceed two thousand dollars (\$2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.
- (6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.
- (7) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (8) Compensation for personal injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.
- (9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. Any money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or

eligible rollover that is excluded from gross income under the Internal Revenue Code, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) of the Internal Revenue Code.

- (10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars (\$25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.
- (11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.
- (12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(b) Definitions. – As used in this section, the following definitions apply:

- (1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.
- (2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article cannot be waived except by:

- (1) Transfer of property allocated as exempt (and in that event only as to the specific property transferred);
- (2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or
- (3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

- (1) Of the United States or its agencies as provided by federal law;
- (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
- (3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

- (4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
- (5) For payment of obligations contracted for the purchase of the specific real property affected;
- (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6, effective September 1, 1982;
- (7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
- (8) For statutory liens, on the specific property affected, other than judicial liens;
- (9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;
- (10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy Code. – The exemptions provided in The Bankruptcy Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy Code, 11 U.S.C. § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, ss. 1-7, 20; 1991, c. 506, s. 1; 1995, c. 250, s. 1; 1998-212, s. 19.4(j); 1999-337, s. 2; 2005-401, s. 1; 2009-417, s. 1; 2013-91, s. 3(a)(9).)

§ 1C-1602. Alternative exemptions.

The debtor may elect to take the personal property and homestead exemptions provided in Article X of the Constitution of North Carolina instead of the exemptions provided by G.S. 1C-1601. If the debtor elects to take his constitutional exemptions, the exemptions provided in G.S. 1C-1601 shall not apply and in that event the exemptions provided in this Article shall not be construed so as to affect the personal property and homestead exemptions granted by Article X of the Constitution of North Carolina. If the debtor elects to take his constitutional exemptions, the clerk or district court judge must designate the property to be exempt under the procedure set out in G.S. 1C-1603. The debtor is entitled to have one thousand dollars (\$1,000) in value in real property owned and occupied by him and five hundred dollars (\$500.00) in value in his personal property exempted from sale under execution. If the value of the property in which the debtor claims his constitutional exemption is in excess of his exemptions, the clerk, in an execution, may order the sale of the property with the proceeds of the sale being distributed first to the debtor to satisfy his exemption and the excess to be distributed as ordered. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, s. 8.)

§ 1C-1603. Procedure for setting aside exempt property.

- (a) Motion or Petition; Notice. –

- (1) After judgment has been entered against a judgment debtor, that person's exempt property may be designated by motion.
 - (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 10.
 - (3) The clerk or district court judge may determine that particular property is not exempt even though there has been no proceeding to designate the exemption.
 - (4) After judgment, except as provided in subdivision (3) of this subsection or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising the debtor of the debtor's rights. The judgment creditor must cause the notice, which must be accompanied by the form for the statement by the debtor under subsection (c1) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided under G.S. 1A-1, Rule 4(j)(1), the judgment creditor may serve the judgment debtor by mailing a copy of the notice to the judgment debtor at the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.
 - (5) The Administrative Office of the Courts must provide a form for the notice from the court required by subdivision (4) of this subsection. The notice must inform the debtor that:
 - a. The judgment debtor has the right to retain an interest in certain property free from collection efforts by the judgment creditor.
 - b. To preserve that right, the judgment debtor is required to respond to the notice by filing a motion or petition to claim exempt property, including a schedule of assets that are claimed as exempt, no later than 20 days after the debtor receives the notice, and that the judgment debtor must also mail or take a copy to the judgment creditor at the address provided in the notice.
 - c. The judgment debtor has the option to request a hearing to claim exemptions rather than filing a schedule of assets.
 - d. The judgment debtor may have exemptions under State and federal law that are in addition to those listed on the form for the debtor's statement that is included with the notice, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.
 - e. There is a procedure for challenging an attachment or levy on the judgment debtor's property.
 - f. The judgment debtor may wish to consider hiring an attorney.
 - g. Failure to respond within the required time results in the loss of statutory rights.
- (b) Contents of Motion or Petition. – The motion or petition must:
- (1) Name the judgment debtor;
 - (2) Name the judgment creditors of the debtor insofar as they are known to the movant;

- (3) If it is a motion to modify a previously allocated exemption, describe the change of condition (if the movant received notice of the exemption hearing) and the modification desired.
- (c) Statement by the Debtor. – When proceedings are instituted, the judgment debtor must file with the court a schedule of:
- (1) The debtor's assets, including their location;
 - (2) Repealed by Session Laws 2014-107, s. 3.1, effective October 1, 2014.
 - (3) The property that the debtor desires designated as exempt.
- (c1) Form for Debtor's Statement. – The Administrative Office of the Courts must provide a form for the schedule required under subsection (c) of this section. The form must include a statement to the effect that North Carolina law and federal law also exempt certain other property not included in the form, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for the debtor's personal services rendered within the last 60 days.
- (d) Notice to Persons Affected. – If the judgment debtor moves to designate exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in G.S. 1A-1, Rule 5.
- (e) Procedure for Setting Aside Exempt Property. –
- (1) When served with the notice under subdivision (4) of subsection (a) of this section, the judgment debtor may either file a motion to designate exemptions with a schedule of assets or may request, in writing, a hearing before the clerk to claim exemptions.
 - (2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of the debtor's rights was served in accordance with subdivision (4) of subsection (a) of this section, or if the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution. Upon request of the judgment creditor, the clerk must issue a writ of execution or writ of possession.
 - (3) If the judgment debtor moves to designate exemptions by filing a motion and schedule of assets, the judgment creditor must be served as provided in subsection (d) of this section.
 - (4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk must set a hearing date and give notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim the debtor's exemptions.
 - (5) The judgment creditor has 10 days from the date served with a motion and schedule of assets or from the date of a hearing to claim exemptions to file an objection to the judgment debtor's schedule of exemptions.
 - (6) If the judgment creditor files no objection to the schedule filed by the judgment debtor or claimed at the requested hearing, the clerk must enter an order designating the property allowed by law and scheduled by the judgment debtor as exempt property. Upon request of the judgment creditor, the clerk must issue an execution or writ of possession except for exempt property.

- (7) If the judgment creditor objects to the schedule filed or claimed by the judgment debtor, the clerk must place the motion for hearing by the district court judge, without a jury, at the next civil session.
- (8) The district court judge must determine the value of the property. The district court judge or the clerk, upon order of the judge, may appoint a qualified person to examine the property and report its value to the judge. Compensation of that person must be advanced by the person requesting the valuation and is a court cost having priority over the claims.
- (9) The district court judge must enter an order designating exempt property. Supplemental reports and orders may be filed and entered as necessary to implement the order.
- (10) Where the order designating exemptions indicates excess value in exempt property, the clerk, in an execution, may order the sale of property having excess value and appropriate distribution of the proceeds.
- (11) The clerk or district court judge may permit a particular item of property having value in excess of the allowable exemption to be retained by the judgment debtor upon the debtor's making available to judgment creditors money or property not otherwise available to them in an amount equivalent to the excess value. Priorities of judgment creditors are the same in the substituted property as they were in the original property.
- (12) Appeal from a designation of exempt property by the clerk is to the district court judge. A party has 10 days from the date of entry of an order to appeal. Appeal from a designation of exempt property by a district court judge is to the Court of Appeals. Decisions of the Court of Appeals with regard to questions of valuation of property are final as provided in G.S. 7A-28. Other questions may be appealed as provided in G.S. 7A-30 and 7A-31.

(f) Notation of Order on Judgment Docket. – A notation of the order setting aside exempt property must be entered by the clerk of court on the judgment docket opposite the judgment that was the subject of the enforcement proceeding. If real property located in a county other than the county in which the judgment was rendered is designated as exempt and the judgment has already been docketed in that county, the clerk must send a notice of the designation of exempt property to the county where the property is located. The clerk of the county where the land is located must enter a notation of the designation of exempt property on the judgment docket. If a judgment is docketed in a county where real property is located after that real property has been designated as exempt, the transcript of judgment must indicate that the exemptions have been designated. The clerk in the county receiving the transcript must enter the notation of designation of exempt property as well as docket the judgment.

(g) Modification. – The judgment debtor's exemption may be modified by motion in the original exemption proceeding by anyone who did not receive notice of the exemption hearing. Also, the debtor's exemption may be modified upon a change of circumstances, by motion in the original exemption proceeding, made by the debtor or anyone interested. A substantial change in value may constitute changed circumstances. Modification may include the substitution of different property for the exempt property.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 14. (1981, c. 490, s. 1; 1981 (Reg. Sess., 1982), c. 1224, ss. 9-14, 18, 19; 1991, c. 607, s. 1; 1999-456, s. 59; 2005-401, ss. 2, 3; 2011-326, s. 1; 2014-107, s. 3.1.)

§ 1C-1604. Effect of exemption.

(a) Property allocated to the debtor as exempt is free of the enforcement of the claims of creditors for indebtedness incurred before or after the exempt property is set aside, other than claims exempted by G.S. 1C-1601(e), for so long as the debtor owns it. When the property is conveyed to another, the exemption ceases as to liens attaching prior to the conveyance. Creation of a security interest in the property does not constitute a conveyance within the meaning of this section, but a transfer in satisfaction of, or for the enforcement of, a security interest is a conveyance. When exempt property is conveyed, the debtor may have other exemptions allotted.

(a1) The statute of limitations on judgments is suspended for the period of exemption as to the property which is exempt. However, the statute of limitations is not suspended as to the exempt property unless the judgment creditor shall have, prior to the expiration of the statute of limitations, recorded a copy of the order designating exempt property in the office of the register of deeds in the county where the exempt real property is located.

(b) Exempt property which passes by devise, intestate succession or gift to a dependent spouse, child or person to whom the debtor stands in loco parentis, continues to be exempt while held by that person. The exemption is terminated if the spouse remarries, or, with regard to a dependent, when the court determinates that dependency no longer exists. (1981, c. 490, s. 1; 1991, c. 607, s. 2; 2011-284, s. 6.)

§§ 1C-1605 through 1C-1700. Reserved for future codification purposes.