

Designating Exemptions

Ann M. Anderson
Training for New Clerks of Superior Court
January 8–10, 2013



UNC
SCHOOL OF GOVERNMENT

www.sog.unc.edu

What are exemptions?

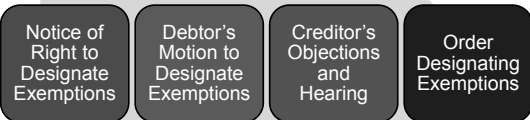
- Judgment debtor's opportunity to keep certain property out of the hands of the judgment creditor.
- Certain property is exempt (free) from the creditor's grasp.



UNC
SCHOOL OF GOVERNMENT



Overview of the Process



UNC
SCHOOL OF GOVERNMENT





UNC

SCHOOL OF GOVERNMENT

Types of Exemptions

- Statutory
 - *By far* the most commonly used
- Constitutional
 - Typically only used if debtor waived statutory exemptions.


Statutory Exemptions

- G.S. § 1C-1601
- Clerk's Manual Chapter:
"Setting Aside Exemptions"

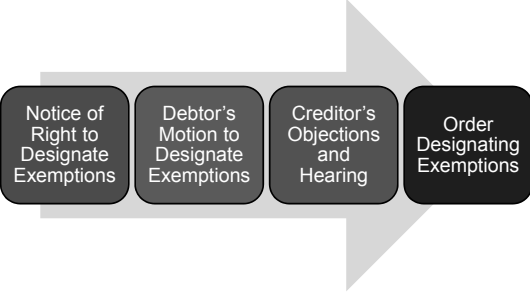
Exemptions Available

- Residence – up to \$35,000
- Motor vehicle – up to \$3500
- Household goods and apparel – up to \$5000 (plus \$1,000 for each dependent)
- "Wild card" – up to \$5000 of unused residence exemption
- Tools of trade – up to \$2000
- Others: Life insurance, health aids, personal injury awards, IRAs and certain retirement, college savings plans, alimony and support


HOW EXEMPTIONS ARE CLAIMED



Overview of the Process




```
graph LR; A[Notice of Right to Designate Exemptions] --> B[Debtor's Motion to Designate Exemptions]; B --> C[Creditor's Objections and Hearing]; C --> D[Order Designating Exemptions];
```



Clerk's Determination

- Judgment creditor asks for execution.
- Clerk determines if debtor is entitled to exemptions.
 - Debtor is individual
 - Debtor is North Carolina resident
 - Judgment is not for child support, alimony, or equitable distribution, state or local taxes, or to enforce lien under Chapter 44.



Clerk's Determination

- Clerk determines if exemptions have already been designated in that judgment (in an earlier execution).
 - Whether to issue new Notice of Rights to the debtor is a matter of policy in each clerk's office.
 - Policy should reflect allowing exemptions to be taken whenever possible.

UNC
Navigation icons: back, forward, search, etc.

Notice of Rights

- Notice of Rights issued to debtor.
- Forms:
 - Notice of Right to Have Exemptions Designated (AOC-CV-406)
 - Motion to Claim Exempt Property (Statutory Exemptions) (AOC-CV-415)*

*AOC-CV-407 if judgment before 1/1/06

UNC
Navigation icons: back, forward, search, etc.

Notice of Rights

- Clerk gives to creditor:
 - Original and copy of Notice of Rights.
 - Original and two copies of Motion.
(Creditor usually brings these to the clerk with captions completed.)
- Original of Notice of Rights is for return of service. Copy is for service on debtor.
- Original and two copies of Motion are served on debtor.

UNC
Navigation icons: back, forward, search, etc.

Service on Debtor

- Creditor serves the Notice of Rights (with copies of Motion) on debtor.
 - Must first try rule 4 service (certified mail, Fed Ex/UPS, US mail signature confirmation, sheriff service)
 - If the attempt to serve by Rule 4 does not work, may serve by US mail.

Debtor's Claims

- Debtor must claim exemptions on time or waives them.
 - 20 days after sheriff's service
 - 20 days after certified mail delivery or receipt of Fed Ex/UPS delivery
 - 23 days after first class mail
- Clerk (or dist ct judge) may relieve waiver for mistake, surprise, excusable neglect any time before sale.

Debtor's Claims

- Debtor claims exemptions in 1 of 2 ways:
 - Filing the Motion to Claim Exemptions (AOC-CV-415)
 - Must also be served on creditor under Rule 5.
 - Requesting (in writing) a hearing before the clerk to claim exemptions
 - Clerk sets hearing and issues Notice of Hearing on Exempt Property (AOC-CV-408).
 - Clerk checks block one on form.



Debtor's Claims

- At the hearing:
 - Clerk goes through Motion form with debtor and helps debtor complete the Motion.
 - Does not make decisions for the debtor, but helps explain the exemptions and offer guidance in completing the form.
 - Creditor may attend the hearing, but does not have a right to object to debtor's valuations during the hearing.



UNC



Exemptions Available

- Residence – up to \$35,000
- Motor vehicle – up to \$3500
- Household goods and apparel – up to \$5000 (plus \$1,000 for each dependent)
- “Wild card” – up to \$5000 of unused residence exemption
- Tools of trade – up to \$2000
- Others: Life insurance, health aids, personal injury awards, IRAs and certain retirement, college savings plans, alimony and support

UNC



Residence Exemption

- Value of residence (real estate or mobile home) or burial plot up to \$35,000
- \$60,000 if:
 - unmarried,
 - 65 or older, *and*
 - previously owned home by entirety (or with right of survivorship) and co-owner is deceased.



UNC





Residence Exemption

• “Entireties” property

- If only one spouse is the debtor, and owns home with spouse as tenants by the entireties, a creditor cannot reach that asset. No need to exempt.
- If both spouses are debtors, a creditor can reach the asset. The exemption is applicable, and they may claim the full exemption equally.
 - Up to \$70,000 total



Example

- Debtor owns home worth \$300,000.
- Home is subject to \$275,000 mortgage. (Debtor has \$25,000 equity.)
- What is the amount of debtor’s exemption?
- What if debtor owes \$200,000 on mortgage (\$100,000 equity)?
 - How much is exemption?
 - What if debtor is married, and spouse is not a debtor?
 - What if spouse is also a debtor?

“Wild Card” Exemption

- Only used if there’s “leftover” residence exemption.
- Debtor may claim up to \$5000 in any property (real or personal) using remaining residence exemption value.



“Wild Card” Examples

- Residence exemption taken: 35K
Wild card available?
- Residence exemption taken: 31K
Wild card available?
- Residence exemption taken: 20K
Wild card available?
- Residence exemption not taken b/c spouse
co-owns house (by entireties).
Wild card available?



UNC


Motor Vehicle Exemption

- One motor vehicle.
- Debtor may exempt up to \$3500 of its value.



UNC

Motor Vehicle Exemption

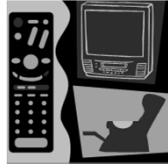
- May use “wild card” for value above \$3500 (or another car).
- Example:
Car valued at \$6000. 
Auto exemption taken for \$3500.
Wild card taken for \$2500.

UNC



Household Goods Exemption

- Debtor may exempt up to \$5000 in household goods.
 - Furnishings and other “goods” (televisions)
 - Wearing apparel
 - Appliances
 - Books
 - Animals
 - Crops
 - Musical instruments



Household Goods Exemption

- Debtor may exempt another \$1000 in goods for each dependent, up to \$4000 total.
- Total exemption is \$9000 (\$5000 + \$4000), even if debtor has more than 4 dependents.



Tools of the Trade Exemption

- Debtor may exempt \$2000 in goods used as tools of his or her trade.



Other exemptions

- Life insurance, if spouse or children are sole beneficiaries
- Health aids
- Compensation for injury or death of person on whom debtor was dependent
- IRAs
- College savings plan up to \$25K
- Certain out-of-state retirement benefits
- Alimony and support

UNC

EXERCISE

UNC

Overview of the Process

```
graph LR; A[Notice of Right to Designate Exemptions] --> B[Debtor's Motion to Designate Exemptions]; B --> C[Creditor's Objections and Hearing]; C --> D[Order Designating Exemptions];
```

UNC

Creditor's Objections

- Creditor has 10 days from service of Motion *or* from date of hearing to object to exemptions.
- Creditor notifies clerk of objections.

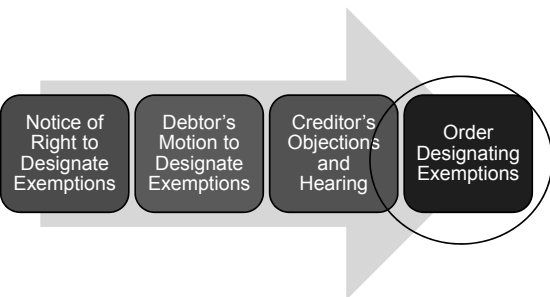


Creditor's Objections

- If creditor objects, clerk sets hearing before district court judge.
- Next non-jury civil session.
- *Clerk* gives notice of hearing to debtor and creditor.
 - Notice of Hearing on Exempt Property (AOC-CV-408) (block two).



Overview of the Process



The Order

- Clerk issues Order Designating Exempt Property (AOC-CV-409).
 - May do so:
 - As soon as creditor fails to object to exemptions (10 days); or
 - When creditor requests issuance of execution (more common).

The Order

- If the case is heard by a district court judge (upon creditor's objection), the district court judge enters the Order Designating Exempt Property (AOC-CV-409).



Post-Order

- Clerk notes in judgment docket that exemptions were designated.

Appeal

- Appeal of clerk's Order is to the district court. (10 days)
- Appeal of district court's Order is to the Court of Appeals.

Constitutional Exemptions

- Generally used only if debtor waives statutory exemptions.
- May be claimed any time until the proceeds of sale are applied to the debt.

Constitutional Exemptions

- Exemptions:
 - \$1000.00 in real property
 - \$500.00 in personal property
- Motion to Claim Exempt Property (Constitutional Exemptions) (AOC-CV-411)

