



North Carolina Exemptions

Introduction

Many people assume that bankruptcy filing will result in a complete loss of their real and/or personal property. The Bankruptcy Code contemplates a “fresh start” for each debtor. In order to accomplish the “fresh start” the debtor is allowed to keep a certain amount of his or her property for his or her own use. The following will discuss the North Carolina exemptions contained in N.C.G.S. § 1C-1601 *et seq.*

Which Exemptions Apply?

One of the most significant protections afforded to a debtor in bankruptcy is the ability to exempt certain property from the claim of creditors. Pre-BAPCPA an individual could use the exemptions of the state in which they resided for the past 180 days. Following BAPCPA, section 522(b)(3) of the Bankruptcy Code provides that the applicable exemptions are based on the debtor’s domicile for the 730 days preceding the filing of the bankruptcy petition.

What are North Carolina’s Exemptions?

Section 522 of the Bankruptcy Code contains federal exemptions designed at protecting a debtor’s property from the claim of a creditor. North Carolina has opted out of these exemptions in favor of the exemptions contained in N.C.G.S. § 1C-1601 *et seq.* Please note that the federal exemptions will apply in rare circumstances. The exemptions contained in N.C.G.S. § 1C-1601 *et seq.*, are discussed below. Please review these exemptions and contact us with any questions.

Homestead Exemption

The Homestead Exemption protects the equity that an individual has in their home. To calculate the equity subtract any mortgage or other secured loan amount from the current fair market value of the property. If you do not know the fair market value consider accessing the tax value from the county tax department, consulting a real estate agent, or obtaining an appraisal of the property.

A debtor is entitled to exempt the 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



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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.

*Husband and Wife filing jointly may claim up to \$70,000.

Wildcard Exemption

A debtor is entitled to exempt the debtor's aggregate interest in any property, not to exceed five thousand dollars (\$5,000) in value of any unused exemption amount related to the Homestead Exemption. This exemption is more commonly referred to as the "wild card exemption". Please note that this exemption *is* not available if an individual uses the total amount available under the Homestead Exemption.

*Husband and Wife filing jointly may claim up to \$10,000.

Motor Vehicle

A debtor is entitled to exempt the debtor's interest, not to exceed three thousand five hundred dollars (\$3,500) in *value*, in one motor vehicle. Please note that the statute expressly provides for one motor vehicle per debtor.

*Husband and Wife may claim \$3500 per motor vehicle each.

Household & Family Goods

A debtor is entitled to exempt 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.

*Husband and Wife may each claim \$5,000. Thus a typical family of four will have \$12,000 available for the Household & Family Good Exemption.



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Professional Books & Tools of the Trade

A debtor is entitled to exempt 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.

Life Insurance

A debtor is entitled to exempt life insurance as provided in Article X, Section 5 of the Constitution of North Carolina. This section of the constitution provides: "any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for or by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

Professionally Prescribed Health Aids

A debtor is entitled to exempt professionally prescribed health aids for the debtor or a dependent of the debtor.

Compensation for Personal Injury or Death of Person Upon Which You Depend

A debtor is entitled to exempt 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.

Qualified Individual Retirement Plans

A debtor is entitled to exempt 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



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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.

College Savings Plans

A debtor is entitled to exempt 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.

Alimony, Support, Separate Maintenance & Child Support Payments

A debtor is entitled to exempt 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.

Additional Statutory Exemptions

- Earnings within the 60 Days Preceding the Bankruptcy Petition (N.C.G.S. § 1-362)
- Unemployment Compensation (N.C.G.S. § 96-17)
- Worker's Compensation (N.C.G.S. § 97-21)
- North Carolina Fireman's & Rescue Squad Workers Pension Fund (N.C.G.S. §58-86)
- State & Local Public Servants under the North Carolina Retirement System (N.C.G.S. § 128-31)
- Teachers & State Employee Retirement System (N.C.G.S. § 135-9)
- Fraternal Benefit Society Benefits (N.C.G.S. § 58-24-85)
- Aid to the Blind Persons (N.C.G.S. § 111-18)
- Group Life Insurance Benefits (N.C.G.S. § 58-58-165)