

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1224
HOUSE BILL 1453

AN ACT TO AMEND THE PROCEDURE FOR GRANTING EXEMPTIONS FROM
MONEY JUDGMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601(b) is rewritten as follows:

"(b) Definition. 'Value' as used in this Article means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced."

Sec. 2. G.S. 1C-1601(c) is amended by deleting the first sentence, and is further amended on line 4 by inserting after the word "Article" the words "and in Sections 1 and 2 of Article X of the North Carolina Constitution," and by deleting the word "otherwise".

Sec. 3. G.S. 1C-1601(c)(3) is amended by deleting the comma and the language "if the court finds that the debtor had a reasonable opportunity to assert the exemption." and inserting in its place a period, and is further amended on line 3 by deleting the word "court" and inserting in its place "clerk or district court judge".

Sec. 4. G.S. 1C-1601(e)(2) is amended by deleting the word "or" as it appears after the word "taxes" and inserting in its place a comma and by inserting after the word "bonds" the words "or fiduciary bonds".

Sec. 5. G.S. 1C-1601(e)(5) is amended on line 2 by inserting the word "real" in front of the word "property".

Sec. 6. G.S. 1C-1601(e) is amended by deleting subdivision (6) and renumbering subdivisions (7) through (9) accordingly.

Sec. 7. G.S. 1C-1601(e)(9), before being renumbered by Section 6 of this bill, is rewritten as follows:

"(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes."

Sec. 8. G.S. 1C-1602 is rewritten as follows:

"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 (\$1000) 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."

Sec. 9. G.S. 1C-1603(a) is amended by rewriting subdivision (1) to read as follows:

"(1) A judgment debtor may have his exempt property designated by motion after judgment has been entered against him."

Sec. 10. G.S. 1C-1603(a) is further amended by deleting subdivision (2) and renumbering subdivisions (3) and (4) accordingly.

Sec. 11. The first sentence of G.S. 1C-1603(a)(3), subdivision (4) before being renumbered by Section 10 of this bill, is rewritten to read as follows:

"After judgment, except as provided in G.S. 1C-1603(a)(2) 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 him of his rights. The judgment creditor must cause the notice 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 above, the judgment creditor may serve him by mailing a copy of the notice to the judgment debtor at his 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."

Sec. 12. G.S. 1C-1603(d) is amended to read as follows:

"(d) Notice to Persons Affected. If the judgment debtor moves to designate his exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in G.S. 1A-1, Rule 5."

Sec. 13. G.S. 1C-1603(e) is rewritten to read as follows:

"(e) Procedure for Setting Aside Exempt Property.

- (1) When served with the notice provided in G.S. 1C-1603(a)(3), the judgment debtor may either file a motion to designate his 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 his rights was served in accordance with G.S. 1C-1603(a)(3) or if he 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 shall issue a writ of execution or writ of possession.
- (3) If the judgment debtor moves to designate his exemptions by filing a motion and schedule of assets, the judgment creditor is served as provided in G.S. 1C-1603(d).
- (4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk sets a hearing date and gives notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim his 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 shall 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 shall 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 his 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 G.S. 7A-31."

Sec. 14. G.S. 1C-1603 is amended by deleting subsection (h).

Sec. 15. G.S. 1-305 is amended by designating the present section as subsection (a), by adding on the first line before the comma the language "and subsection (b) below", and by adding a new subsection (b) to read as follows:

"(b) The clerk may not issue an execution unless

- (1) the judgment debtor's exemptions have been designated, or
- (2) the judgment debtor has waived his exemptions as provided in G.S. 1C-1601(c), or
- (3) the clerk determines that the exemptions are inapplicable to the particular claim as authorized by G.S. 1C-1603(a)(2) (as renumbered by Section 10 of this bill)."

Sec. 16. G.S. 7A-28 is amended by amending the title by adding at the end thereof the words "or valuation of exempt property" and by numbering the present section as subsection (a) and by adding a new subsection (b) as follows:

"Decisions of the Court of Appeals upon review of valuation of exempt property under G.S. 1C are final and not subject to further review in the Supreme Court by appeal, motion, certification, writ, or otherwise."

Sec. 17. G.S. 7A-31(a) is amended on line 6 by deleting the words "embracing subject matter covered by G.S. 7A-28" and inserting the words "or valuation of exempt property pursuant to G.S. 7A-28."

Sec. 18. G.S. 1C-1603(f) is amended by deleting the second sentence and inserting a new sentence to read as follows:

"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 shall 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."

Sec. 19. G.S. 1C-1603(a)(3) (before being renumbered by Section 10 this bill) is amended in lines 1 and 2 by deleting the words "In a proceeding for the enforcement of a money judgment (including an execution or a supplemental proceeding) the court" and by inserting in their place the words "The clerk or district court judge".

Sec. 20. G.S. 1C-1601(c)(2) is amended on line 1 by deleting the word "court" as it appears twice, and inserting in its place the words "clerk or district court judge".

Sec. 21. If any section, paragraph or clause of this act is declared unconstitutional by a court of competent jurisdiction, that judgment shall not affect or invalidate the remainder of the act, but is limited to the section, paragraph or clause of this act that was declared unconstitutional.

Sec. 22. This act shall become effective September 1, 1982, and applies to all proceedings to enforce money judgments begun on or after that date. When a proceeding to enforce a money judgment has begun before the effective date of this act, the clerk may enter appropriate transitional orders.

In the General Assembly read three times and ratified, this the 18th day of June, 1982.