

§ 1-507.39. Procedure for determining individual business debtor's exempt property.

If the debtor is an individual business debtor, the provisions of G.S. 1C-1603 for designating the debtor's exempt property shall apply, except to the extent that any of the provisions of G.S. 1C-1603 conflict with or are inconsistent with the provisions of this Article, and except that the following provisions shall instead apply:

- (1) If before the appointment of the receiver for the individual business debtor there has been no entry of an order designating the individual business debtor's exemptions under G.S. 1C-1603 for setting aside the individual business debtor's exempt property, the receiver shall serve the notice advising the individual business debtor of the individual business debtor's rights, accompanied by the form for the statement by the individual business debtor under subsection (c1) of G.S. 1C-1603, within 30 days of the receiver's appointment or such later time as the court may order. The notice shall be served on the individual business debtor as provided under G.S. 1A-1, Rule 4(j)(1), or if the individual business debtor cannot be served as provided under G.S. 1A-1, Rule 4(j)(1), the notice may be served by mailing a copy thereof to the individual business debtor at the individual business 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 receiver 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.
- (2) No later than 20 days after service of the notice of rights, or such later time as the court may order, the individual business debtor shall file with the court and serve upon the receiver the statement under subsection (c1) of G.S. 1C-1603 or a request for a hearing before the court. No later than 10 days after receipt of the individual business debtor's statement or request for hearing, or such later time as the court may order, the receiver shall send a copy of the individual business debtor's statement or hearing request to all persons on the most current master service list.
- (3) No later than 10 days after service of the individual business debtor's statement upon all persons on the most current master service list, or such later time as the court may order, the receiver or any party in interest may file an objection to all or any part of the individual business debtor's statement. If an objection is timely filed to the individual business debtor's statement, or if the individual business debtor had requested a hearing without filing a statement, the court shall schedule a hearing and the receiver shall send notice of the scheduled hearing to all persons on the most current master service list. At the hearing, the individual business debtor may claim the debtor's exemptions. The court shall determine the issues and enter an order designating the individual business debtor's exempt property allowed by law.
- (4) The forms used shall be the same forms provided by the Administrative Office of the Courts and used under G.S. 1C-1603, and the procedure for setting aside exempt property shall be the same as set forth in G.S. 1C-1603(c), except that (i) all references in the forms or in G.S. 1C-1603(c) to "judgment debtor" shall be to the individual business debtor and all references to "judgment creditor" shall be to the receiver, (ii) all hearings concerning the designation of the individual business debtor's exempt property shall be before, and the order designating the property allowed by law and scheduled by the individual business debtor as exempt property shall be entered by, the judge appointed

to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b), and not the district court judge unless the district court judge is the judge appointed to supervise the receiver and the receivership under G.S. 1-507.24(b), and (iii) all valuations of property shall be made by the judge appointed to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b) and the judge, upon motion of the individual business debtor, the receiver, or any party in interest may appoint a qualified person to examine the property and report its value to the court. Compensation of that person must be advanced by the person requesting the valuation and is a claim having priority under G.S. 1-507.51(a)(2).

- (5) Any appeal from the judge's order designating the individual business debtor's property as exempt shall be in the same manner as an appeal as any other order of the court, and G.S. 1C-1603(e)(12) shall not apply.
- (6) Any designation of the individual business debtor's exemption before the appointment of the receiver for the individual business debtor shall remain enforceable in accordance with its terms, but may be modified pursuant to G.S. 1C-1603(g) upon the motion of the receiver or any other person who did not receive notice or participate in the original exemption proceeding, or upon motion of the individual business debtor, the receiver or any party in interest upon a change in circumstances.
- (7) The individual business debtor may within 60 days after acquiring property subsequent to the designation of the individual business debtor's exemption move to amend the designation of the individual business debtor's exemption to assert an exemption applicable to the after acquired property.
- (8) In the case of a limited receivership, the provisions of this section shall only apply if the individual business debtor claims or has the right to claim an exemption in all or any part of the receivership property. (2020-75, s. 1.)