

§ 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 - (2) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 10.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.)