

New Mexico State Bankruptcy Exemptions

§ 42-10-9. Homestead exemption

Each person shall have exempt a homestead in a dwelling house and land occupied by the person or in a dwelling house occupied by the person although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of sixty thousand dollars (\$60,000) exempt from attachment, execution or foreclosure by a judgment creditor and from any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in probate. If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of sixty thousand dollars (\$60,000).

§ 42-10-10. Exemption in lieu of homestead

A. Any resident of this state who does not own a homestead shall in addition to other exemptions hold exempt real or personal property in the amount of two thousand dollars (\$ 2,000) in lieu of the homestead exemption.

B. Where the resident does not own a homestead, the sheriff or any other person or officer seeking to attach, execute or foreclose by judgment on property shall provide the resident with written notification of the resident's right to exemption in lieu of homestead as described in Subsection A of this section, together with a simple form by which the resident may designate that he is aware of the exemption and does or does not desire to claim the exemption. Where the resident refuses to make the election provided for in this section, the sheriff, other person or officer shall proceed to attach, execute or foreclose on the resident's property. Where the resident claims his exemption in lieu of homestead, the sheriff, other person or officer making attachment, execution or foreclosure by judgment shall file as part of his return a description, including the resident's stated value, of the property claimed as exempt bearing the resident's signature witnessed by the sheriff, other person or officer seeking to attach, execute or foreclose.

§ 42-10-1. Exemptions of married persons or heads of households

Personal property in the amount of five hundred dollars (\$ 500), tools of the trade in the amount of fifteen hundred dollars (\$ 1,500), one motor vehicle in the amount of four thousand dollars (\$ 4,000), jewelry in the amount of twenty-five hundred dollars (\$ 2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

§ 42-10-2. Exemptions of persons who support only themselves

Personal property other than money in the amount of five hundred dollars (\$ 500), tools of the trade in the amount of fifteen hundred dollars (\$ 1,500), one motor vehicle in the amount of four thousand dollars (\$ 4,000), jewelry in the amount of twenty-five hundred dollars (\$ 2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting only himself is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, executors or administrators in probate, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

§ 42-10-3. [Life, accident and health insurance benefits.]

The cash surrender value of any life insurance policy, the withdrawal value of any optional settlement, annuity contract or deposit with any life insurance company, all weekly, monthly, quarterly, semiannual or annual annuities, indemnities or payments of every kind from any life, accident or health insurance policy, annuity contract or deposit heretofore or hereafter issued upon the life of a citizen or resident of the state of New Mexico, or made by any such insurance company with such citizen, upon whatever form and whether the insured or the person protected thereby has the right to change the beneficiary therein or not, shall in no case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or who is protected by said contract, or who receives or is to receive the benefit thereof, nor shall it be subject in any other manner to the debts of the person whose life is so insured, or who is protected by said contract or who receives or is to receive the benefit thereof, unless such policy, contract or deposit be taken out, made or assigned in writing for the benefit of such creditor.

§ 35-12-7. Garnishment; exemptions

A. Exempt from garnishment with respect to the enforcement of an order or decree for child support is fifty percent of the defendant's disposable earnings for any pay period. Exempt from garnishment in all other situations is the greater of the following portions of the defendant's disposable earnings:

(1) seventy-five percent of the defendant's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the federal minimum hourly wage rate. The director of the financial institutions division [of the regulation and licensing department] shall provide a table giving equivalent exemptions for pay periods of other than one week.

B. As used in this section:

(1) "disposable earnings" means that part of a defendant's wage or salary remaining after deducting the amounts which are required by law to be withheld; and

(2) "federal minimum hourly wage rate" means the highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. However, it is immaterial whether the garnishee is exempt under federal law from paying the federal minimum hourly wage rate.

C. The maximum amount which may be taken from a spouse's disposable earnings under both the garnishment procedure and the wage deduction procedure for the enforcement of child support is fifty percent of the spouse's disposable earnings.

§ 42-10-5. [Life insurance proceeds.]

The proceeds of any life insurance are not subject to the debts of the deceased, except by special contract or arrangement, to be made in writing.

§ 42-9-4. [Filing complaint or statement, affidavit and bond; issuance of writ; property subject to attachment.]

A creditor wishing to sue his debtor by attachment, may place in the clerk's office of the district court of any county in this state, having jurisdiction, a complaint, or other lawful statement of his cause of action, and shall also file an affidavit and bond; and thereupon such creditor may sue out an original attachment against the lands, tenements, goods, moneys, effects, credits and any right, title, lien or interest whether legal or equitable upon, in or to real or personal, tangible or intangible property whether present or possessory or reversionary or in remainder and all property which could be reached upon execution or upon equitable proceedings in aid of execution, of the debtor in whosoever hands they may be except such property as is now, or may hereafter be, specifically exempted from attachment or execution by law and except interests of beneficiaries in spendthrift trusts for whom spendthrift trusts are or may be created.

§ 56-9-46. [Attachment not to issue after assignment.]

No process by attachment shall issue on behalf of any creditor of the assignor after such assignment has been duly made, as in this chapter contemplated, until a court of competent jurisdiction shall have first pronounced the assignment void, ab initio by proper suit or action brought by one or more creditors for that purpose, in which case, after the bill is filed and proper service is had, the court, or judge in vacation, shall fix the time for making up the issues, and render a final decree as soon as practicable.

§ 52-3-37. Compensation exempt from execution

Compensation shall be exempt from claims of creditors and from any attachment, garnishment or execution, and shall be paid only to such claimant or his personal representative, or such other persons as the court may, under the terms hereof, appoint to receive or collect the same. No claim or judgment for compensation, under this act, shall accrue to or be recovered by relatives or dependents not residents of the United States.

§ 52-1-52. Exemption from creditors

A. Compensation benefits shall be exempt from claims of creditors and from any attachment, garnishment or execution and shall be paid only to such worker or his personal representative or such other persons as the court may, under the terms hereof, appoint to receive or collect compensation benefits.

B. Notwithstanding the provisions of Subsection A of this section, compensation benefits being paid or owing to a worker shall be considered wages for the purpose of securing support for a minor dependent. No order may be entered against such benefits which results in the worker retaining less than one hundred dollars (\$ 100) a week or an amount each week equal to forty times the federal minimum wage rate if legally required to support minor dependents other than those for whom the action is brought.

§ 51-1-37. Protection of rights and benefits

A. Except as provided by Section 51-1-37.1 NMSA 1978, any agreement by an individual to waive, release or commute his rights to benefits or any other rights under the Unemployment Compensation Law [51-1-1 NMSA 1978] shall be void. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions or payments in lieu of contributions, required under the Unemployment Compensation Law from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the

remuneration of individuals in his employ to finance the employer's contributions or payments in lieu of contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ. Any employer or officer or agent of an employer who violates any provisions of this subsection shall, for each offense, be fined not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$ 1,000) or be imprisoned for not more than six months, or both.

B. No individual claiming benefits shall be charged fees of any kind in any proceeding under the Unemployment Compensation Law [51-1-1 NMSA 1978] by the department or its representatives or by any court or any officer thereof. Any individual claiming benefits and any employer in any proceeding before the secretary, his authorized representative or the board of review may be represented by counsel or any other duly authorized agent, but no such counsel or agent shall either charge or receive for such services more than an amount approved by the secretary. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than fifty dollars (\$ 50.00) nor more than five hundred dollars (\$ 500) or imprisoned for not more than six months, or both.

C. Except as provided in Subsection D of this section, any assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under the Unemployment Compensation Law [51-1-1 NMSA 1978] shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, garnishment or any other remedy provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from a remedy for the collection of debts except debts incurred for necessities furnished to an individual or his spouse or dependents during the time when he was unemployed. Any waiver of any exemption provided for in this subsection is void.

D. The following actions for collection of the indicated obligations may be taken:

- (1) deduction and withholding [withholding] of amounts of unpaid child support pursuant to Section 51-1-37.1 NMSA 1978;
- (2) levy by the federal internal revenue service pursuant to Section 6331(h)(2)(C) of the Internal Revenue Code provided that arrangements have been made by the internal revenue service for reimbursement of the division for administrative costs incurred by the division that are attributable to the repayment of uncollected federal internal revenue taxes. Levy of federal income taxes will be made in accordance with such regulations as the secretary may prescribe; and
- (3) deduction and withholding of amounts for food stamp overissuances pursuant to Section 51-1-37.2 NMSA 1978.

§ 27-2-21. Assistance not assignable

Assistance granted under this act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this act shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

§ 10-11-36. State hazardous duty member coverage plan 1; final average salary

Under state hazardous duty member coverage plan 1, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service. Under state hazardous duty member coverage plan 1, if a member has less than thirty-six months of credited service, the final average salary is the aggregate amount of salary paid a member for the member's period of credited service divided by the member's credited service.

§ 22-11-42. Nonassignability; division of funds as community property; child support obligations

A. Except as specifically provided in the Educational Retirement Act [22-11-1 NMSA 1978] and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational Retirement Act [22-11-1 NMSA 1978]. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act [22-11-1 MSA 1978] and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

§ 29-4-10. [Interest in trust fund not subject to assignment, lien or judicial process; trustee may pay expenses.]

No person entitled to any interest in or share of or pension or benefit from the trust funds shall, prior to the actual payment therefor, have the right to anticipate the same, or to sell, assign, pledge or mortgage or otherwise dispose of or encumber the same, nor shall such interest, share, pension or benefit prior to the actual payment thereof, be liable for the debts or liabilities of the person entitled thereto or be subject to attachment, garnishment, execution or to levy or sale on judicial proceedings, or be transferable by any means, voluntarily or involuntarily. The trustee may expend such sums as it [he] may deem proper from such fund for the necessary expenses connected therewith.

§ 53-4-28. Share and membership certificates, attachment

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subject to such liability, the directors of the association may either admit the purchaser thereof to membership, or may, if and when there are sufficient surplus funds, purchase from him such holdings at par value.

§ 70-4-12. Materials exempt from attachment

Whenever materials, tools, machinery, equipment or oil and gas supplies shall have been furnished for use or employment in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or in the construction, operation or repairing of any gas pipeline, oil pipeline or gasoline pipeline, such materials, machinery, equipment or oil and gas supplies shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, machinery, tools, equipment or supplies, except a debt due for the purchase price thereof so long as such purchase price, or any part thereof, remains unpaid, and such materials, tools, machinery, equipment or supplies are in good faith about to be used for the purposes for which they were so furnished, until after the expiration of the time for filing a lien for such purchase price under the provisions of this act [70-4-1 to 70-4-15 NMSA 1978].

§ 31-22-15. Exemption from execution. (Repealed effective July 1, 2006.)

No reparation payable under the Crime Victims Reparation Act [31-22-1 NMSA 1978] shall be, prior to its actual receipt by the victim or dependents entitled thereto or their legal representatives, assignable or subject to garnishment, execution, attachment or other process whatsoever, including process to satisfy an order or judgment for support or alimony.

§ 54-1A-307. Actions by and against partnership and partners

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with Section 54-1A-306 NMSA 1978, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 54-1A-306 NMSA 1978 and:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the partnership is a debtor in bankruptcy;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 54-1A-308 NMSA 1978.

Note: Laws may have changed since our last update. For the latest information on your state's bankruptcy laws, speak to a local bankruptcy lawyer.