

IC 34-55-10

Chapter 10. Sales and Execution of Real Estate: Exemptions

IC 34-55-10-0.2

Application of certain amendments to prior law

Sec. 0.2. (a) The amendments made to IC 34-2-28 (before its repeal, now codified in this chapter) by P.L.182-1986 do not apply to causes of action in tort that accrue before September 1, 1986.

(b) The amendments made to IC 34-2-28-1 (before its repeal, now codified at section 2 of this chapter) by P.L.290-1989 apply to judgments obtained after June 30, 1989.

As added by P.L.220-2011, SEC.581.

IC 34-55-10-1

Bankruptcy exemptions

Sec. 1. In accordance with Section 522(b) of the Bankruptcy Code of 1978 (11 U.S.C. 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Indiana is not entitled to the federal exemptions as provided by Section 522(d) of the Bankruptcy Code of 1978 (11 U.S.C. 522(d)).

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.9.

IC 34-55-10-2

Bankruptcy exemptions; limitations

Sec. 2. (a) This section does not apply to judgments obtained before October 1, 1977.

(b) The amount of each exemption under subsection (c) applies until a rule is adopted by the department of financial institutions under section 2.5 of this chapter.

(c) The following property of a debtor domiciled in Indiana is exempt:

(1) Real estate or personal property constituting the personal or family residence of the debtor or a dependent of the debtor, or estates or rights in that real estate or personal property, of not more than fifteen thousand dollars (\$15,000). The exemption under this subdivision is individually available to joint debtors concerning property held by them as tenants by the entireties.

(2) Other real estate or tangible personal property of eight thousand dollars (\$8,000).

(3) Intangible personal property, including choses in action, deposit accounts, and cash (but excluding debts owing and income owing), of three hundred dollars (\$300).

(4) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(5) Any interest that the debtor has in real estate held as a tenant by the entireties. The exemption under this subdivision does not apply to a debt for which the debtor and the debtor's spouse are jointly liable.

(6) An interest, whether vested or not, that the debtor has in a retirement plan or fund to the extent of:

(A) contributions, or portions of contributions, that were made to the retirement plan or fund by or on behalf of the debtor or the debtor's spouse:

(i) which were not subject to federal income taxation to the debtor at the time of the contribution; or

(ii) which are made to an individual retirement account in the manner prescribed by Section 408A of the Internal Revenue Code of 1986;

(B) earnings on contributions made under clause (A) that are not subject to federal income taxation at the time of the levy; and

(C) roll-overs of contributions made under clause (A) that are not subject to federal income taxation at the time of the levy.

(7) Money that is in a medical care savings account established under IC 6-8-11.

(8) Money that is in a health savings account established under Section 223 of the Internal Revenue Code of 1986.

(9) Any interest the debtor has in a qualified tuition program, as defined in Section 529(b) of the Internal Revenue Code of 1986, but only to the extent funds in the program are not attributable to:

(A) excess contributions, as described in Section 529(b)(6) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate contributions made by the debtor for all programs under this subdivision and education savings accounts under subdivision (10) having the same designated beneficiary:

(i) not later than one (1) year before; and

(ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the aggregate contributions.

(10) Any interest the debtor has in an education savings account, as defined in Section 530(b) of the Internal Revenue Code of 1986, but only to the extent funds in the account are not attributable to:

(A) excess contributions, as described in Section 4973(e) of the Internal Revenue Code of 1986, and earnings on the excess contributions;

(B) contributions made by the debtor within one (1) year before the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the contributions; or

(C) the excess over five thousand dollars (\$5,000) of aggregate contributions made by the debtor for all accounts

under this subdivision and qualified tuition programs under subdivision (9) having the same designated beneficiary:

- (i) not later than one (1) year before; and
- (ii) not earlier than two (2) years before;

the date of the levy or the date a bankruptcy petition is filed by or against the debtor, and earnings on the excess contributions.

(11) The debtor's interest in a refund or a credit received or to be received under the following:

(A) Section 32 of the Internal Revenue Code of 1986 (the federal earned income tax credit).

(B) IC 6-3.1-21-6 (the Indiana earned income tax credit).

(12) A disability benefit awarded to a veteran for a service connected disability under 38 U.S.C. 1101 et seq. This subdivision does not apply to a service connected disability benefit that is subject to child and spousal support enforcement under 42 U.S.C. 659(h)(1)(A)(ii)(V).

(13) Compensation distributed from the supplemental state fair relief fund under IC 34-13-8 to an eligible person (as defined in IC 34-13-8-1) for an occurrence (as defined in IC 34-13-8-2). This subdivision applies even if a debtor is not domiciled in Indiana.

(d) A bankruptcy proceeding that results in the ownership by the bankruptcy estate of a debtor's interest in property held in a tenancy by the entireties does not result in a severance of the tenancy by the entireties.

(e) Real estate or personal property upon which a debtor has voluntarily granted a lien is not, to the extent of the balance due on the debt secured by the lien:

- (1) subject to this chapter; or
- (2) exempt from levy or sale on execution or any other final process from a court.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.10; P.L.145-2008, SEC.33; P.L.44-2010, SEC.1; P.L.53-2010, SEC.1; P.L.42-2011, SEC.73; P.L.160-2012, SEC.65.

IC 34-55-10-2.5

Exemption amounts; adoption of rules

Sec. 2.5. (a) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing the amount for each exemption under section 2(c)(1) through 2(c)(3) of this chapter to take effect not earlier than January 1, 2010, and not later than March 1, 2010.

(b) The department of financial institutions shall adopt a rule under IC 4-22-2 establishing new amounts for each exemption under section 2(c)(1) through 2(c)(3) of this chapter every six (6) years after exemption amounts are established under subsection (a). The rule establishing new exemption amounts under this subsection must take effect not earlier than January 1 and not later than March 1 of the sixth calendar year immediately following the most recent adjustments to the exemption amounts.

(c) The department of financial institutions shall determine the amount of each exemption under subsections (a) and (b) based on changes in the Consumer Price Index for All Urban Consumers, published by the United States Department of Labor, for the most recent six (6) year period.

(d) The department of financial institutions shall round the amount of an exemption determined under subsections (a) and (b) to the nearest fifty dollars (\$50).

(e) A rule establishing amounts for exemptions under this section may not reduce an exemption amount below the exemption amount on July 1, 2005.

(f) The department of financial institutions may adopt a rule under subsection (a) or subsection (b) as an emergency rule under IC 4-22-2-37.1.

(g) An emergency rule adopted by the department of financial institutions under this section expires on the earlier of the following dates:

(1) The expiration date stated in the emergency rule.

(2) The date the emergency rule is amended or repealed by a later rule adopted under IC 4-22-2-24 through IC 4-22-2-36 or under IC 4-22-2-37.1.

As added by P.L.179-2005, SEC.11. Amended by P.L.140-2013, SEC.21.

IC 34-55-10-3

Designation of exempt property by debtor

Sec. 3. The debtor may designate real property, personal property, or both, as the exempted property.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.12.

IC 34-55-10-4

Appraisal of exempt property; selection of appraisers

Sec. 4. For the appraisal of any property to be exempted under this chapter, two (2) appraisers shall be chosen, one (1) by the plaintiff or the plaintiff's agent or attorney, and one (1) by the debtor. These two (2), in case of disagreement, shall select a third. If either party fails to select an appraiser, one (1) shall be selected by the officer holding the execution.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.13.

IC 34-55-10-5

Schedule of exempt property; affidavit of appraisers

Sec. 5. The appraisers shall make a schedule of the real and personal property selected by the debtor, describing the real estate by metes and bounds, and the personal property by separate items, affixing to each the value they agree upon. The appraisers, or a majority, shall affix to the schedule an affidavit in substance as follows: "We, the undersigned, swear that, in our opinion, the

property described in the schedule above is valued justly.".
As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.14.

IC 34-55-10-6

Delivery of schedule of exempt property; second or subsequent appraisals

Sec. 6. The schedule of real and personal property shall be delivered to the officer holding the execution or other process. The officer shall return the schedule with the execution or other process and make the schedule a part of the return. However, all second or subsequent appraisals under this chapter are at the cost of the party or parties asking for the reappraisal, unless the property of the debtor at the time of the reappraisal is appraised at enough over and above the legal exemption to meet the costs.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.15.

IC 34-55-10-7

Repealed

(Repealed by P.L.179-2005, SEC.20.)

IC 34-55-10-8

Personal property only claimed as exemption; procedure

Sec. 8. If the debtor claims as exempt from execution personal property only, the officer holding the execution shall cause the property to be appraised and set apart to the debtor, and shall proceed to sell such other property, if any, that is subject to execution according to law.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.16.

IC 34-55-10-9

Personal and real property claimed as exemption; procedure

Sec. 9. (a) If the value of a debtor's interest in property for which an exemption is claimed exceeds the amount of the exemption, the property may be sold. However, the debtor must be paid an amount equal to the debtor's exemption in the property from the proceeds of the sale.

(b) In making the sale under subsection (a), the officer may not accept a bid unless the bid exceeds the exempt value of the property. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, a bid may not be accepted if the bid is less than the sum of the amount of the indebtedness secured by the lien and the exempt value of the property.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.17.

IC 34-55-10-10

Repealed

(Repealed by P.L.179-2005, SEC.20.)

IC 34-55-10-11

Division of real property claimed as exemption; exemption of homestead

Sec. 11. In all cases in which real property is claimed as exempt from sale on execution, if the real property is susceptible of division by metes and bounds without material injury, the real property shall be divided to exempt the principal dwelling house or homestead of the debtor.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.18.

IC 34-55-10-12

Debtor's schedule required

Sec. 12. Before a debtor receives the benefit of the exemption provided by this chapter, the debtor shall deliver to the officer holding the execution a schedule of all the debtor's property, as required by law, if an exemption from sale on execution is claimed.

As added by P.L.1-1998, SEC.51. Amended by P.L.179-2005, SEC.19.

IC 34-55-10-13

Absence of execution defendant; rights of spouse

Sec. 13. In any case when the execution defendant is absent from Indiana, or is absent himself or herself from home, and an attachment or execution is directed against the execution defendant's property, the spouse may:

- (1) make out and verify the schedule of the absent spouse's property, and claim and receive for the absent spouse the exemption provided in this chapter; and
- (2) claim and exercise all the rights that would belong to the absent spouse if the absent spouse were present.

As added by P.L.1-1998, SEC.51.

IC 34-55-10-14

Certain lands and taxes unaffected

Sec. 14. The exemption under this chapter does not:

- (1) affect any laborer's or mechanic's lien or lien for the purchase money of the real property exempted; or
- (2) exempt any property from taxation or from sale for taxes.

As added by P.L.1-1998, SEC.51.