

## **CHAPTER 28-22 EXEMPTIONS**

### **28-22-01. Property exempt from all process.**

Except as otherwise provided, the property mentioned in this chapter is exempt to the head of a family, as defined by section 28-22-01.1, from attachment, prejudgment, or other mesne process and from levy and sale upon execution and from any other final process issued from any court.

#### **28-22-01.1. Head of a family defined.**

The phrase "head of a family" as used in this chapter means:

1. The husband or wife when the claimant is a married person.
2. Every person who has residing on the premises with the person and under the person's care and maintenance, any of the following:
  - a. That person's child or the child of that person's deceased spouse, whether by birth or adoption.
  - b. A minor brother or sister or the minor child of a deceased brother or sister.
  - c. A father, mother, grandfather, or grandmother.
  - d. The father or mother or grandfather or grandmother of a deceased husband or wife.
  - e. Any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.
3. Every person who provides support for unmarried minor children of a previous marriage of the person, even though the children do not reside on the premises with the person.

#### **28-22-02. Absolute exemption.**

The property mentioned in this section is absolutely exempt from all process, levy, or sale:

1. All family pictures.
2. A pew or other sitting in any house of worship.
3. A lot or lots in any burial ground.
4. One family Bible or other family primary religious text and all schoolbooks used by the family and all other books used as a part of the family library.
5. All wearing apparel, not exceeding five thousand dollars in value, and all clothing of the debtor and the debtor's family.
6. The in-kind provisions for the debtor and the debtor's family necessary for one year's supply, either provided or growing, or both, and in-kind fuel necessary for heating the debtor's home or operating the debtor's motor vehicle for one year.
7. The homestead as created, defined, and limited by law.
8. All crops and grain, both threshed and unthreshed, raised by the debtor on not to exceed one hundred sixty acres [64.75 hectares] of land in one tract occupied by the debtor, either as owner or tenant, as the debtor's home, but the provisions of this subsection in no way affect seed, thresher, or landlord liens, and if the debtor takes advantage of this subsection the debtor may not take any additional alternative exemptions provided under this chapter.
9. All insurance benefits resulting from insurance covering any or all of the absolute exemptions if the insurance benefits are in cash or have been invested in other property capable of exemption under this chapter.
10. In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any housetrailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

### **28-22-03. Additional exemption for head of a family.**

In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, the head of a family, personally or by that person's agent, may select from that person's other personal property, any goods, chattels, merchandise, money, and other personal property not exceeding in value the sum of seven thousand five hundred dollars, which also is exempt from all attachment or mesne process, levy and sale upon execution, and any other final process issued from any court. The exemption under this section may not be used to exempt a real estate interest of any kind.

#### **28-22-03.1. Additional exemptions for residents.**

In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.
2. A motor vehicle exemption in one vehicle not to exceed two thousand nine hundred fifty dollars in value over security interests and liens upon that vehicle, or a motor vehicle exemption in one vehicle not to exceed thirty-two thousand dollars for a motor vehicle that has been modified at a cost of not less than one thousand five hundred dollars to accommodate an individual with a permanent physical disability who is the owner of that motor vehicle.
3. The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any tools, implements, or professional books of the trade of the debtor or the trade of a dependent of the debtor.
4. Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.
5. The debtor's aggregate interest, not to exceed in value eight thousand dollars less any amount of property transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
6. Professionally prescribed health aids for the debtor or a dependent of the debtor.
7. Retirement funds that have been in effect for at least one year, to the extent those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986. The value of those assets exempted may not exceed one hundred thousand dollars for any one account or two hundred thousand dollars in aggregate for all accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents. Retirement funds are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.
8. The debtor's right to receive:
  - a. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - b. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.
  - c. A disability, illness, or unemployment benefit.

- d. Alimony, support, or separate maintenance, but not property settlements, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - e. A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:
    - (1) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under that plan or contract arose;
    - (2) That payment is on account of age or length of service; and
    - (3) That plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.
9. The debtor's right to receive, or property that is traceable to:
- a. An award under a crime victim's reparation law.
  - b. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - c. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - d. A payment, not to exceed eighteen thousand four hundred fifty dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - e. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

**28-22-04. Specific alternative exemptions.**

Repealed by S.L. 2009, ch. 276, § 12.

**28-22-05. Exemptions of an unmarried person without dependents.**

In addition to the absolute exemptions mentioned in section 28-22-02, except in subsection 8 thereof, an unmarried person without any dependents, in person or by that person's agent, may select from that person's other personal property, goods, chattels, merchandise, money, or other personal property not exceeding in value the sum of three thousand seven hundred fifty dollars, which is exempt.

**28-22-06. Claim to be made within ten days.**

Any claim for exemptions must be made by or on behalf of the debtor within ten days after service of notice of levy.

**28-22-07. How exemptions claimed - Appraisal.**

All property claimed as exempt must be selected by the debtor or the debtor's agent or attorney regardless of whether levy has been made yet on the property by the sheriff or levying officer. Failure to claim all exempt property at the time exemptions are claimed renders the unclaimed property nonexempt for purposes of this chapter. The value thereof, when material, must be determined by an appraisal made under the direction of the sheriff or other officer. Whenever any debtor, against whom an execution, writ of attachment, or other process has been issued, desires to claim the benefit of section 28-22-03, such debtor or the debtor's agent or attorney, shall make a schedule of all of the debtor's personal property of every kind and character, including money on hand and debts due and owing to the debtor, and shall deliver the same to the officer having the execution, writ of attachment, or other process. The schedule

must be subscribed and sworn to by the debtor or the debtor's agent or attorney, and any property owned by the debtor and not included in such schedule is not exempt. No claim for exemptions may be disallowed for insufficiency as to form unless three days' notice in writing has been given first of the insufficiency by the party in interest claiming such insufficiency to the person making the claim for exemptions, and specifying in apt language the defect complained of. The person claiming the exemption thereupon may amend the same to conform to the objections made within three days, if that person desires so to do, by serving upon the proper person an amended claim for exemptions.

**28-22-08. How appraisers selected.**

To make the appraisal, the debtor or the debtor's agent or attorney shall select one person, the creditor or the creditor's agent or attorney shall select another person, and these two so selected shall select a third person. All persons selected must be disinterested residents of the county, not related to either party nearer than the fourth degree. If the two fail to agree upon the third person, the sheriff or other officer shall select the third person. If either the debtor or creditor fails or refuses upon notice to select a person to act as one of the appraisers, the sheriff or other officer shall select one for the debtor or creditor who failed or refused to make a selection.

**28-22-09. Oath and duties of appraisers.**

The three appraisers shall take and subscribe an oath before the sheriff or other officer, to be attached to the inventory and appraisal, that they will truly, honestly, and impartially appraise the property of the debtor. The property must be appraised at the actual value of the several articles at the place where they are situated, as nearly as can be determined, and must be set down in an inventory by articles or by lots, when definitely descriptive, with the value opposite.

**28-22-10. Selection after appraisal.**

If the appraisal of the whole property or of any class of alternative exemptions exceeds the limitation in value of that which may be claimed by the debtor as exempt, the debtor, or the debtor's agent or attorney, may select therefrom such property as the debtor, or the debtor's agent or attorney, may wish within such limitations.

**28-22-11. Spouse or child over sixteen may act.**

If in any case the debtor neglects or refuses, or for any cause fails, to claim the whole or any of the exemptions to which the debtor is entitled, a spouse may make such claim or demand, select and choose the property, select and designate one of the appraisers, and do all other acts necessary in the premises the same and with like effect as the debtor might do, and if the spouse neglects, refuses, or for any cause fails so to do in whole or in part, then one of the children sixteen years of age or upwards, who is a member of the family, may do so in like manner and with like effect.

**28-22-12. Sheriff's inventory of exemptions.**

The sheriff or other officer having any process of levy or sale shall make return with the sheriff's or officer's writ or warrant of any inventory and appraisal of any personal property claimed as exempt.

**28-22-13. Partnership or limited liability company can claim but one exemption.**

A partnership or limited liability company can claim but one exemption, which must be in the amount in value or in alternative property allowed to the head of a family, if any one of the partners or members is the head of a family, and must be in the amount in value allowed to a single person if none of the partners or members is the head of a family. Such exemption may be claimed out of the partnership or limited liability company property.

**28-22-14. Property not exempt in action for its purchase price.**

No property is exempt from execution or attachment in an action brought for its purchase price or any part thereof.

**28-22-15. When only absolute exemptions allowed.**

Only absolute exemptions may be allowed against process:

1. For the wages of a laborer or mechanic who is, or had been, employed by the judgment debtor;
2. Upon a debt incurred for property obtained under false pretenses;
3. For fines, penalties, or costs of criminal prosecutions;
4. Against a nonresident;
5. Against a debtor who is in the act of removing with the debtor's family from the state; or
6. Against a debtor who has absconded, taking the debtor's family along.

**28-22-16. Exemptions limited in certain cases.**

In addition to the absolute exemptions against process, on a judgment for forfeiture of an undertaking or bond or of recognizance taken in criminal cases, there must be allowed as exempt property, property of any kind to the value of five hundred dollars.

**28-22-17. Nonavailability of federal bankruptcy exemptions.**

In accordance with the provisions of section 522(b) of the Bankruptcy Reform Act of 1978 [Pub. L. 95-598; 92 Stat. 2586; 11 U.S.C. 522(b)], residents of this state are not entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state are limited to claiming those exemptions allowable by North Dakota law.

**28-22-18. Wages - Exemption restricted.**

The wages of a debtor are exempt from all process or levy only to the extent provided in section 32-09.1-03.

**28-22-19. Exemptions from legal process - Public pensions, assistance, and awards.**

The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes. The exemption in this subsection does not apply to the collection of child support unless federal law requires an exemption or if complying with an execution or other process would require an actuarial analysis to determine the current value of the amounts that are payable to the debtor.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.