

C.4

This issue distributed to:

Clerks of Superior Court, District Court Judges, Sheriffs

ADMINISTRATION OF JUSTICE MEMORANDA

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
The University of North Carolina at Chapel Hill

July 1982

No 82/03

*PERMANENT FILE COPY
not to be taken
from Library*

Exemptions from Judgment Collection- 1982 Legislation

RECEIVED

JUL 28 1982

Joan G. Brannon

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

THE JUNE 1982 SESSION of the General Assembly made some modifications to the procedure for designating exemptions effective September 1, 1982. Generally, Ch. 1224, H 1453 streamlines the procedure for claiming and designating exemptions, conforms the procedure to existing execution law, clarifies procedural points left answered by the earlier bill (Ch. 490), and makes technical corrections. This memo will discuss changes made by the new law. A copy of Chapter 1C as it will be codified with the changes by Ch. 1224 appears at the end of the memo.

PROCEDURE FOR DESIGNATING EXEMPTIONS

The new procedure allows a debtor to have his exempt property designated by motion after judgment has been rendered against him. The provision allowing a person who does not yet have a judgment rendered against him to bring an action to have exemptions set aside has been deleted. Generally, a clerk may not issue an execution or writ of possession unless a notice from the court that tells the judgment debtor his rights has been served on him. One major change in Ch. 1224 is that the notice must be served before either a writ of possession for personal property or execution is issued. The notice is from the Clerk of Superior Court, but the judgment creditor is responsible for seeing that it is served on the debtor. After judgment, the judgment creditor will ask the clerk for a signed notice of rights and a blank motion to set aside exempt property. (The judgment creditor might want to serve two copies of the motion, since the judgment debtor is required to file one

with the clerk and serve one on the judgment creditor.) The judgment creditor will then have the notice of rights and motion set aside exempt property served on the judgment debtor by certified or registered mail or by the sheriff under Rule 4(j)(1) of the Rules of Civil Procedure. If Rule 4(j)(1) service is unsuccessful, the judgment creditor then may serve the judgment debtor by first-class mail to his last known address. The judgment creditor must prove service to the clerk. Proof of service by certified or registered mail or personal service is as provided in Rule 4. Proof of first-class mail service is by filing a certificate that the notice was served, indicating the circumstances that warrant the use of such service and the date and address of service.

When served with the notice, the judgment debtor may either file the motion to designate exemptions or make a written request for a hearing before the clerk to claim exemptions. The burden is on the debtor and not the creditor to move forward at this point.

The execution to demand payment will be eliminated since the new law prohibits the clerk from issuing any execution until the notice of rights has been served on the judgment debtor.

Waiver

If the judgment debtor does not file a motion to designate exemptions with a schedule of assets or make a written request for a hearing to claim exemptions within 20 days after notice of his rights was served, he waives his rights to both the constitutional and statutory exemptions. In counting days, the waiver occurs 20 days after the sheriff serves the notice, 20 days after the date that notice is delivered by certified or registered mail, or--in accordance with Rule 6--23 days after the notice is served on the judgment debtor by first-class mail. No longer does the clerk have to hold a hearing to make findings that the judgment debtor had a reasonable opportunity to assert the exemption and that the exemptions are not necessary to ensure the reasonable support needs of the judgment debtor's dependents. Waiver is automatic upon a showing by the judgment creditor that the notice was served and that the clerk has received no response within the allotted time. Upon request of the judgment creditor, the clerk must issue an execution commanding the sheriff to seize any personal property he can find to satisfy the judgment, and--if not enough personal property can be found--to seize any real property. The law still allows a clerk or district court judge to relieve a waiver by reason of mistake, surprise, or excusable neglect at any time before property is sold at an execution sale.

Claiming Exemptions by Motion

The judgment debtor may claim his exemptions by filing a motion to designate exemptions. The motion must be filed with the clerk in the county where the judgment was rendered, and the judgment debtor must serve a copy on the judgment creditor under Rule 5. The judgment creditor has 10 days from the date served to file an objection to the judgment debtor's schedule of exemptions. If the judgment debtor files no objection, the clerk enters an order designating the property allowed by law and scheduled by the judgment debtor as exempt property. No hearing is ever held. The clerk might not always award every item claimed in the motion if the judgment debtor claimed items not allowed by law. For example, if the judgment debtor claimed his \$7,500 residence exemption and his \$2,500 personal household goods exemption and then claimed two motor vehicles with a total value of \$1,000, a clerk should exempt only one of the motor vehicles, since the debtor is entitled to claim only one under G.S. 1C-1601(a)(3).

Claiming Exemptions by Hearing

If the judgment debtor is unable to fill out the motion to designate exemptions, he may make a written request for a hearing before the clerk of superior court to complete the form. Again, the hearing is held before the clerk in the county where the judgment was rendered. The request must be made within 20 days after the notice is served on the judgment debtor. If the judgment debtor makes a written request for a hearing, the clerk must set a date for a hearing and notify the judgment debtor and the judgment creditor of the hearing. The notice may be sent by first-class mail or given personally to either party if he is in the clerk's office. If the judgment debtor does not appear at the requested hearing, he automatically waives his right to either the statutory or constitutional exemptions, and the creditor is entitled to have an execution issue. If the debtor does not appear, the clerk should make a written finding that the debtor was sent notice of hearing and did not appear. If he does appear, the purpose of the hearing is for the judgment debtor to claim his exemptions; the judgment creditor need not be present. He has 10 days after the hearing to file an objection to the schedule of exemptions claimed at the hearing. If the judgment creditor files no objection, the clerk enters 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 would then issue an execution for the sheriff to satisfy the judgment out of nonexempt property. A copy of the order designating exempt property must be attached to any such execution so that the sheriff will know what property not to seize.

Hearing Before the District Court Judge

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 at the next civil session. The judge will determine the value of the property, but he may have a qualified person examine the property and report its value to him. The party requesting the valuation (who will always be the judgment creditor) must advance the expenses of hiring the person who examines the property. The district court judge must enter an order designating exempt property. After the order has been issued, upon request of the judgment creditor, the clerk must issue an execution for the sheriff to satisfy the judgment out of nonexempt property.

Docketing of Exemption Designation

After an order is issued setting aside exemptions, the clerk must docket a notation that exemptions have been designated in the judgment docket book opposite the judgment that was being enforced. G.S. 1C-1603(f) was amended to also require also that if real property located in a county other than the one in which the judgment is rendered is designated as exempt and the judgment has been docketed in that county, the clerk must send a notice of designation of exempt property to that county. The clerk in the county where the real property located must note the designation of exempt property on the judgment docket. For example, say that a judgment debtor lives and owns real property in Durham County. A judgment is rendered against him in Wake County. The judgment creditor has the judgment docketed in Durham County. The judgment debtor moves to designate exemptions before the Wake County clerk. After the exemptions are designated, the Wake County clerk enters a notation in his docket book and notifies the Durham County clerk, who enters a notation in his book. If, when the real property is claimed as exempt, the judgment has not been docketed in the county where the property is located, then the clerk in the county where exemptions were designated does not notify the clerk in the county where the property is located. Later, if the judgment is docketed in the county where the real property is located, the transcript of judgment must indicate that exemptions have been designated. The clerk in the receiving county must enter the notation of designation of exempt property as well as docket the judgment.

Appeal

Ch. 1224 provides that appeal from a designation of exempt property by the clerk is to the district court judge. Appeal must be entered within 10 days from entry of the order designating exempt property. Appeal from designation by the district court judge is to the Court of Appeals. That court's decisions regarding valuation of property are final. Other questions may be taken to the Supreme Court by the normal routes.

Issuance of Execution Without Notice of Rights

G.S. 1C-1603(a)(3) carries forward the earlier law's provision that the clerk may issue an execution or writ of possession without service of the notice of rights in two instances: (1) when the clerk determines that particular property is not exempt even though no proceeding has been held to designate the exemption, or (2) when exemptions have already been designated. The first exception will be of particular importance now that the law provides that the clerk may not issue a writ of possession for personal property before the notice of rights has been served. In only one classification of cases must a notice of rights be served before a writ of possession is issued--when the writ arises out of a nonpurchase money, nonpossessory security agreement in which the security to be recovered is household goods. Generally, the only lender that will take a nonpurchase money security interest in household goods is a finance company; banks rarely take household goods as collateral. Thus, the clerk should not issue a writ of possession when the judgment creditor is a finance company and the goods to be recovered are household goods unless the judgment creditor has served the notice of rights on the judgment debtor and the debtor has had an opportunity to claim his exemptions. If the finance company can satisfy the clerk that the money was lent to purchase the household goods--in other words, a purchase money security agreement existed--the clerk may issue the writ of possession without requiring that the notice of rights be served. More important, in all other situations the clerk may issue a writ of possession without prior service of the notice because he would have determined that the property is not exempt under the law. For example, if the judgment creditor is a finance company or bank but the security to be recovered is a motor vehicle, mobile home, or any property other than household goods, the law prohibits the judgment debtor from exempting that property. Therefore the clerk may issue the writ of possession without prior service of a notice of rights. The same principle would apply if the judgment creditor is a merchant and the security he has a judgment to recover is household goods. In those

cases, the merchant has a purchase-money security interest, and the judgment debtor may not exempt the household goods from that judgment. And finally, if the judgment for the return of specific personal property is based on wrongful taking of the property rather than on breach of a security agreement, the clerk may issue the writ of possession without prior service of a notice of rights.

CLAIMING CONSTITUTIONAL EXEMPTIONS

Ch. 1224 clarifies the procedure for claiming and setting aside the constitutional exemptions. As mentioned earlier, the new law clearly provides that a waiver by failure to assert the exemption is a waiver as to both constitutional and statutory exemptions. If the judgment debtor asserts his rights to exemptions, he may elect to take his constitutional exemptions rather than his statutory exemptions. The same procedure is used for designating constitutional exemptions as for statutory exemptions. Under the constitutional exemptions, the judgment debtor is entitled to \$1,000 in value in real property owned and occupied by him and \$500 in value in his personal property exempted from sale under execution. If the value of the property in which the debtor claims his constitutional exemptions is greater than his statutory exemptions, the clerk, in an execution may order that the property be sold, with the proceeds to be first distributed to the judgment debtor to satisfy the exemptions and then used to satisfy the judgment. Thus the new law will handle excess in the constitutional exemptions in the same way as the statutory exemptions are handled. It ends the old procedure that required that a portion of the real property itself--e.g., the front hall--not be sold under execution.

OTHER CHANGES

Value Definition

The new law redefines the term "value" for the purposes of determining value of items claimed by the judgment debtor to be true equity interest of the debtor in the property. The old law defined value as "fair market value, exclusive of valid liens." Since a judgment is a valid lien against real property from the time the judgment is docketed, the very judgment the judgment creditor was seeking to enforce could be used to reduce the debtor's equity in his real property and allow the debtor to keep the property free and clear of

the judgment. The new law redefines "value" as "fair market value of an individual's interest in property, less valid liens superior to the judgment sought to be enforced." For an example of how the new law works, assume that a judgment debtor owns a house valued at \$40,000, with a \$20,000 deed of trust against it and a \$15,000 judgment is rendered against him. When the judgment creditor seeks to enforce his \$15,000 judgment, the debtor will have \$20,000 value in the house. Since he is entitled to an exemption of only \$7,500, the house may be sold and the excess equity used to satisfy the judgment. Under the old law, the debtor would have had only \$5,000 value and would have been able to keep the house. If, in this example, the judgment debtor had two judgments against him--a \$15,000 judgment docketed on June 1, 1982, and a \$5,000 judgment docketed on July 1, 1982--and the judgment creditor of the \$5,000 judgment sought to enforce the judgment, the judgment debtor would have only \$5,000 value in his residence because there are two liens superior to the judgment he is seeking to enforce.

Exceptions to Exemptions

The new law makes several changes in the exceptions to the exemptions. It provides that the exemptions do not apply to the state's claims for fiduciary bonds. Clerks may now allow individuals to sign fiduciary bonds; if a default occurs, that individual may claim only the constitutional exemptions. The exemptions do not apply to claims for equitable distribution awards, and equitable-distribution awards are thereby treated the same as alimony or child support. (Supreme Court cases have held that alimony and child support awards are not subject to the constitutional exemptions. Presumably, the same reasoning would apply to distributive awards.)

Ch. 1224 amends G.S. 1C-1601(e)(5) to provide that the exception for payment of obligations contracted for the purchase of the specific property affected applies only to real property, thereby carrying forward the provision found in Article X, section 2(1), of the North Carolina Constitution. This amendment corrects the earlier law, which would have allowed a creditor to treat specific property sold as secured property without actually having a security agreement. For example, under the earlier law, an appliance store could (a) sell a person a TV set, (b) bill the set on a regular open account (not taking a security interest in the set), (c) after default sue for the money owed for the set, (d) have an execution issued for the TV set, and (e) have the sheriff seize and sell the TV set at an execution sale. That procedure seems counter to former collection law and apparently was unintended.

Similarly, the new law deleted that part of the earlier law providing that the exemptions do not apply to claims for the repair or improvement of the specific property affected. The judgment debtor will be able to exempt his car from a money judgment by the mechanic. The mechanic can prevent the debtor from claiming an exemption in the car by refusing to return the car and asserting a lien under General Statutes Chapter 44A or by having the debtor sign a security agreement that the car would be security for the debt.

Excess Value in Exempt Property

G.S. 1C-1603(e)(10) clarifies that when an order designating exempt property indicated that there is excess value in a particular piece of property exempted, the clerk, when execution is issued, may order the sheriff to sell the property. The bottom of the execution form has a blank space entitled "additional order for satisfying judgment" to be used for this purpose. The order should include a command to the sheriff to begin the sale at an amount at least equal to the debtor's exemption plus the sheriff's commission. The debtor would be paid first from the proceeds of the sale, the sheriff would take his commission, and the excess would be used to satisfy the judgment. The clerk might even want to order the sheriff to begin the bidding at \$1 over the debtor's exemption plus the sheriff's commission so that the property will be sold for some excess value and some money will be applied the judgment.

Effective Date

As mentioned earlier, the new law takes effect on September 1, 1982, and applies to proceedings to enforce money judgments beginning on or after that date. No execution or writ of possession may be issued on or after September 1, 1982, without complying with this new law. The law provides that if a proceeding to designate exemptions has begun before September 1 but no order has yet been issued, the clerk may enter appropriate transitional orders.

SPECIAL NOTE FOR SHERIFFS

The new law's only major effect on sheriffs is that it will eliminate the execution to demand payment. Under the new law the only kind of execution issued will be to seize property. The execution will not be issued until the court

has already settled the matter of exemptions by setting aside exemptions, by determining that the debtor was not entitled to exemptions, or by having the debtor waive his right to exemptions. Thus the execution will command the sheriff either to seize any property he can find to satisfy the judgment or to seize any nonexempt property he can find. When exemptions have been set aside, a copy of the order listing the exempt property will be attached to the execution. The sheriff may then seize any property not listed on the order.

The only other new provision that affects sheriffs (indirectly) is the change requiring that the notice of rights be sent to a judgment debtor before the clerk issues a writ of possession to enforce a nonpurchase money security interest in household goods. That change means that the sheriff need not worry about whether to tell defendants they might be able to exempt property under a writ of possession. The notice of rights and the opportunity to claim exemptions will be handled by the clerk before a writ is even issued.

ARTICLE 16.

Exempt Property.

§ 1C-1601. What property exempt; waiver; exceptions.

(a) Exempt property. — Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

- (1) The debtor's aggregate interest, not to exceed seven thousand five hundred dollars (\$7,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
- (2) The debtor's aggregate interest in any property, not to exceed two thousand five hundred dollars (\$2,500) in value less any amount of the exemption used under subdivision (1).
- (3) The debtor's interest, not to exceed one thousand dollars (\$1,000) in value, in one motor vehicle.
- (4) The debtor's aggregate interest, not to exceed two thousand five hundred dollars (\$2,500) in value for the debtor plus five hundred dollars (\$500) for each dependent of the debtor, not to exceed two thousand dollars (\$2,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
- (5) The debtor's aggregate interest, not to exceed five hundred dollars (\$500) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.
- (6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.
- (7) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (8) Compensation for personal injury or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(b) Definition. — "Value" as used in this Article means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. — The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution cannot be waived except by:

- (1) Transfer of property allocated as exempt (and in that event only as to the specific property transferred), or
- (2) Written waiver, after judgment approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them;

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. - The exemptions provided in subdivisions (2), (3), (4) and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition of bankruptcy.

(e) Exceptions. - The exemptions provided in this Article are inapplicable to claims

- (1) Of the United States or its agencies as provided by federal law;
- (2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
- (3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;
- (4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
- (5) For payment of obligations contracted for the purchase of the specific real property affected;
- (6) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
- (7) For statutory liens, on the specific property affected, other than judicial liens;
- (8) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes.

(f) Federal Bankruptcy Act. - The exemptions provided in The Bankruptcy Act, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article shall apply for purposes of The Bankruptcy Act, 11 U.S.C. § 522(b).

§ 1C-1602. Alternative exemptions.

The debtor may elect to take the personal property and homestead exemptions provided in Article X of the Constitution instead of the exemptions provided by G.S. 1C-1601. If the debtor elects to take his constitutional exemptions, the exemptions provided in G.S. 1C-1601 shall not apply and in that event the exemptions provided in this Article shall not be construed so as to affect the personal property and homestead exceptions granted by Article X of the Constitution of North Carolina. If the debtor elects to take his constitutional exemptions, the clerk or district court judge must designate the property to be exempt under the procedure set out in G.S. 1C-1603. The debtor is entitled to have \$1,000 in value in real property owned and occupied by him and \$500 in value in his personal property exempted from sale under execution. If the value of the property in which the debtor claims his constitutional exemption is in excess of his exemptions, the clerk, in an execution, may order the sale of the property with the proceeds of the sale being distributed first to the debtor to satisfy his exemption and the excess to be distributed as ordered.

§ 1C-1603. Procedure for setting aside exempt property.

(a) Motion; Notice. -

- (1) A judgment debtor may have his exempt property designated by motion after judgment has been entered against him.
- (2) 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.
- (3) After judgment, except as provided in G.S. 1C-1603(a)(2) 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 him of his rights. The judgment creditor must cause the notice 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 above, the judgment creditor may serve him by mailing a copy of the notice to the judgment debtor at his 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. The notice must be substantially in the following form:

NORTH CAROLINA COUNTY ) Judgment Creditor)) vs.)) Judgment Debtor)	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY
GREETINGS:	

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

- (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.

14. That I wish to claim as exempt the following compensation which I received for the personal injury of myself or a person upon whom I was dependent for support or compensation which I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury which resulted in the payment of the compensation to me.

- (a) amount of compensation
- (b) method of payment: lump sum or installments
(If installments, state amount, frequency and duration of payments)
-
- (c) name and relationship to debtor of person(s) injured or killed giving rise to compensation
- (d) location of compensation if received in lump sum or installments
- (e) unpaid debts arising out of the injury or death giving rise to compensation

Name and Address	Services Rendered	Amount of Debt
.....

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than \$2,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to \$2,500 in any property only if I made no claim under section (8) above and that if I make a claim under section (8) above, that I am entitled to \$2,500 in any property minus any amount I claimed under section (8). (Examples: claim of \$1,000 under section (8), \$1,500 allowed here; claim of \$2,450 under section (8), \$50 allowed here; claim of \$2,600 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding is not exempt.

Property	Location	Amount of Liens or Purchase Money Security Interests	Estimated Value of Debtor's Interest
.....
.....
.....

16. That the following is a complete listing of all of my assets which I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated value
.....
.....

This the day of, 19.

.....
Judgment Debtor

Sworn to and Subscribed before me this day of, 19.

.....
Notary Public

My Commission Expires:

(d) Notice to Persons Affected. - If the judgment debtor moves to designate his 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 provided in G.S. 1C-1603(a)(3), the judgment debtor may either file a motion to designate his 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 twenty days after notice of his rights were served in accordance with G.S. 1C-1603(a)(3) or if he does not request a hearing before the clerk within twenty 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 shall issue a writ of execution or writ of possession.
- (3) If the judgment debtor moves to designate his exemptions by filing a motion and schedule of assets, the judgment creditor is served as provided in G.S. 1C-1603(d).
- (4) If the judgment debtor requests a hearing before the clerk to claim exemptions, the clerk sets a hearing date and gives notice of the hearing to the judgment debtor and judgment creditor. At the hearing, the judgment debtor may claim his exemptions.
- (5) The judgment creditor has ten 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 shall 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 shall issue a writ of 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 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 his 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 ten 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 G.S. 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 shall 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 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 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.

§ 1C-1604. Effect of exemption.

(a) Property allocated to the debtor as exempt is free of the enforcement of the claims of creditors for indebtedness incurred before or after the exempt property is set aside, other than claims excepted by G.S. 1C-1601(e), for so long as the debtor owns it. When the property is conveyed to another, the exemption ceases as to liens attaching prior to the conveyance. Creation of a security interest in the property does not constitute a conveyance within the meaning of this section, but a transfer in satisfaction of, or for the enforcement of, a security interest is a conveyance. When exempt property is conveyed, the debtor may have other exemptions allotted. The statute of limitation on judgments is suspended for the period of exemption, as to the property which is exempt.

(b) Exempt property which passes by bequest, devise intestate succession or gift to a dependent spouse, child or person to whom the debtor stands in loco parentis, continues to be exempt while held by that person. The exemption is terminated if the spouse remarries, or, with regard to a dependent, when the court determines that dependency no longer exists. (1981, c. 490, s. 1.)