

4-808A Notice of right to claim exemptions from execution.

[For use with district, magistrate and metropolitan court rules of civil procedure 1-065.1, 2-801, 3-801 NMRA]

STATE OF NEW MEXICO
COUNTY OF DONA ANA
IN THE MAGISTRATE COURT

_____, Plaintiff

v.

No. _____

_____, Defendant

NOTICE OF RIGHT TO CLAIM EXEMPTIONS FROM EXECUTION

**1. THE JUDGMENT CREDITOR (IS SEIZING) (HAS A RIGHT TO SEIZE)¹
YOUR PROPERTY**

A ruling has been made in this case that you owe money to the judgment creditor. The judgment creditor may collect that money from seizure and sale of your property. *(Before the judgment creditor has the sheriff seize your property, you may have a right to claim exemptions of certain property.)*

2. PURPOSE OF THIS NOTICE:

This notice is to tell you that some kinds of property or money may NOT be taken from you even after the court has ruled that you owe the judgment creditor money. This property is protected under state law. The property which may not be taken is called "exempt property". **YOU MUST FILE A CLAIM OF EXEMPTION FORM TO CLAIM ANY EXEMPT PROPERTY. YOU MAY WISH TO CONSULT WITH AN ATTORNEY BEFORE COMPLETING AND FILING THE CLAIM OF EXEMPTION FORM.**

Here is a list of some exempt money and property. Other kinds of money or property not listed may also be exempt.

3. PARTIAL LIST OF EXEMPTIONS FROM EXECUTION

Part I. Homestead exemption

(This exemption may only be used in the district court.)

A judgment debtor who owns, leases or is purchasing a dwelling occupied by the judgment debtor is entitled to hold as exempt property a homestead in the amount of sixty thousand dollars (\$60,000) under Section 42-10-9 NMSA 1978.

Part II. Exemption in lieu of homestead exemption

(Parts II and III are for use in the district court, magistrate court and metropolitan court.)

Residents of this state who do not claim a homestead exemption are entitled to an exemption of real or personal property in the amount of five thousand dollars (\$5,000) under Section 42-10-10 NMSA 1978. You may not claim this exemption if you claimed a homestead exemption above.

Part III. Personal property exemptions

In addition to the property claimed as exempt above, judgment debtors are entitled to claim certain personal property exemptions. Most of those exemptions are listed below.

- a. personal property worth up to \$500;
- b. tools of the trade worth up to \$1,500;
- c. a motor vehicle worth up to \$4,000 or that amount of equity in a more valuable vehicle;
- d. jewelry worth up to \$2,500;
- e. clothing, furniture, books and medical-health equipment being used for the health of the claimant or a member of the household of the claimant and not in a profession;
- f. pension or retirement funds;
- g. not more than \$5,000 in benefits from a benevolent association of which the judgment debtor is a member;
- h. building materials not financed by the judgment creditor in this action as provided by Section 48-2-15 NMSA 1978;
- i. a partner's interest in specific partnership property subject to the limitations of Section 54-1-25 NMSA 1978;
- j. worker's compensation benefits subject to the limitations of Section 52-1-52 NMSA 1978;

- k. occupational health benefits as provided by Section 52-3-37 NMSA 1978;
- l. unemployment compensation benefits subject to the limitations of Section 51-1-37 NMSA 1978 for necessities furnished while the debtor was unemployed and child support;
- m. public assistance and welfare benefits;
- n. cash surrender values and benefits of life insurance contracts;
- o. payment from life, accident and health insurance policies or annuity contracts;
- p. crime victims' reparation fund payments;
- q. fraternal benefit society benefits;
- r. the minimum amount of shares necessary for certain cooperative associations subject to the limitations provided by Section 53-4-28 NMSA 1978;
- s. the debtor's membership interest in the property of a club or association pursuant to Section 53-10-2 NMSA 1978;
- t. oil and gas equipment not financed by the judgment creditor to be used for purposes for which it was purchased as provided by Section 70-4-12 NMSA 1978;
- u. allowances to surviving spouse and children from estate of a deceased estate subject to the limitations of Sections 45-2-401 and 45-2-402 NMSA 1978.

You may not claim an exemption for personal property which is subject to a security interest under the Uniform Commercial Code given to the judgment creditor.

4. HOW TO PROTECT EXEMPT PROPERTY.

The sheriff may not seize your personal clothing, furniture and books or any jewelry unless the total value of all jewelry is more than \$2,500. For other property, you must claim an exemption or it may be seized and sold. A claim of exemptions on execution form is attached for you to complete and file with the court.

YOU MUST COMPLETE AND RETURN THE ATTACHED CLAIM OF EXEMPTIONS ON EXECUTION FORM TO THE CLERK OF THE COURT WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE UPON YOU. YOU MUST ALSO SERVE A COPY OF THE COMPLETED AND SIGNED CLAIM OF EXEMPTIONS ON EXECUTION FORM ON THE JUDGMENT CREDITOR.

If the judgment creditor disputes a claimed exemption, the clerk or the judge will notify you of the date and time for a court hearing on your claim. You must go to that hearing and explain why your money or property is exempt. You must bring to the hearing any proof that your money or property is exempt.

If you do not complete and file the claim of exemptions on execution form within ten (10) days and attend the hearing, your property may be seized and sold by the sheriff.

FAILURE TO COMPLETE AND FILE A CLAIM OF EXEMPTIONS ON EXECUTION FORM WITHIN TEN (10) DAYS AND SERVE A COPY ON THE JUDGMENT CREDITOR WILL RESULT IN THE LOSS OF YOUR RIGHT TO CLAIM AN EXEMPTION.

(The following proof of service may be used ONLY if the judgment debtor has entered an appearance in the case.)

AFFIDAVIT OF SERVICE

I declare, under penalty of perjury, that this notice, a claim of exemptions on execution form and a copy of the judgment in the above cause of action were mailed on the _____ day of _____, _____ from _____ (street address or post office branch) in _____, New Mexico.

Signature

Date of signature

(If the judgment debtor has not entered an appearance, personal service of this notice must be made on the judgment debtor and the following Return of Service must be completed and filed with the court.)

R E T U R N

STATE OF NEW MEXICO)
) ss
COUNTY OF _____)

(check one box and fill in appropriate blanks)

[] I, being duly sworn, on oath, say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served the notice of right to claim exemptions (executions) and a claim of exemptions on execution form (in said county) (in _____ County) on the _____ day of _____, _____, by delivering a copy thereof, with copy of the judgment attached, in the

following manner: _____

(check only if service by sheriff or deputy)

I certify that I served the Notice of Right to Claims Exemptions (Execution) (in said county) (in _____ County) on the ____ day of _____, _____, by delivering a copy thereof, with copy of judgment attached in the following manner: _____

(check one box and fill in appropriate blanks)

to defendant _____

to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, who at the time of such service was absent therefrom. Abode located at _____
_____.

by posting a copy of the Notice of Right to Claim Exemptions in the most public part of the premises of defendant _____ *(used if no person found at dwelling house or usual place of abode)*. Abode located at _____
_____.

to _____, an agent authorized to receive service of process for defendant _____.

to _____, *(parent) (guardian)* of defendant _____ *(used when defendant is a minor or an incompetent person)*.

after due diligence I was unable to serve this notice.

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn² to
before me this _____
day of _____, _____

Judge, notary or other officer
authorized to administer oaths

Official title

USE NOTE

1. Strike out the inapplicable alternative.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy need not be notarized.

[As amended, effective January 1, 1993; May 1, 1994; January 1, 1996; as amended by Supreme Court Order No. 09-8300-030, effective October 12, 2009.]