

JUDGMENT DEBTOR BOOKLET

Keep this booklet for future use.

Court staff generally can inform you about court procedures, court rules, court records, and forms. Court staff must remain neutral and impartial. They are not allowed to give legal advice. Court staff cannot:

- advise you how statutes and rules apply to your case,
- tell you whether the documents you prepare properly present your case,
- tell you what the best procedures are to accomplish a particular objective, or
- interpret laws for you.

If you need help with your case, you should talk to a lawyer.

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ALASKA COURT SYSTEM

This booklet and most of the forms mentioned in it are available on the court system's website: www.courts.alaska.gov/forms.htm

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Alaska Court System.

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INTRODUCTION

Attention Debtor:

If the creditor has NOT already seized the property listed in the enclosed creditor's affidavit, you need to keep this booklet and the claim of exemptions form until your property is taken so you can claim your exemptions at that time.

If the creditor has already seized the property listed in the enclosed creditor's affidavit, you need to file any claim of exemptions right away. You also need to keep this booklet and a copy of all the forms you received for at least 45 days in case the creditor seizes more of your property. If additional property listed in the enclosed creditor's affidavit is seized within 45 days, the creditor is not required to send you additional booklets or notices.

A "judgment" is a judge's written decision in a court case. The judgment states who owes money, to whom the money is owed and how much is owed.

The "judgment creditor" is the person who is owed the amount stated in the judgment.

The "judgment debtor" is the person who owes the judgment creditor the amount stated in the judgment.

This booklet is a basic explanation of the legal procedure which may be used to take your property from you in order to pay the judgment against you. The booklet outlines the rights you may have to protect your property from being taken away from you permanently. The word "property" is used in this booklet to mean anything you own.

For more information, you may want to read the Alaska Statutes on execution procedures: Chapter 35 and Chapter 38 of Title 9 of the Alaska Statutes (abbreviated as AS 09.35.010 etc. and AS 09.38.010 etc.). Be sure to check the supplement to see if any of the statutes have been amended. You can find the statutes online at www.legis.state.ak.us/basis/folio.asp. You may also want to read Civil Rule 69 in the Alaska Rules of Court. Civil Rule 69 is also online at: www.courts.alaska.gov/civ2.htm#69.

You may want to contact a lawyer for assistance. If you do not have a lawyer, the Lawyer Referral Service of the Alaska Bar Association may be able to help you find a lawyer. Call 272-0352 in Anchorage or 800-770-9999 if you are outside Anchorage (toll free within Alaska).

There may be some words used in this booklet which are unfamiliar to you or which have special meanings when used in this type of legal procedure. The Glossary, which begins on page 20, may be helpful to you.

I. WHAT MAY HAPPEN IF YOU DO NOT PAY A COURT JUDGMENT AGAINST YOU

A. YOUR PROPERTY CAN BE SEIZED BY COURT ORDER

If you do not pay a court judgment, your creditor can ask the court for a court order (called a "writ of execution") which allows the creditor to seize some of your property and sell it to pay your debt.

If the court issues a WRIT OF EXECUTION against you and if your creditor uses the WRIT to seize (levy upon*) some of your property, you will need to act quickly if you want to try to protect your property from being taken from you permanently.

Within three days after seizing any of your property, your creditor must send you a notice telling you what was seized and your right to claim that your property is "exempt." "Exempt" means "protected by law from being taken permanently from you to pay the judgment against you." This is explained more fully in the section on Exemptions, beginning on page 4.

Exception: The creditor is not required to send you additional notices or documents for a second or subsequent seizure if (1) you were already served notice once within the past 45 days, and (2) the creditor's affidavit described the property that was seized by the second or subsequent seizure.

B. HOW TO CLAIM AN "EXEMPTION"

If you want to try to protect some of the property your creditor has seized or plans to seize, you must act quickly.

1. As soon as you receive the NOTICE OF LEVY* from your creditor, look at the CREDITOR'S AFFIDAVIT attached to the NOTICE to see what your creditor has seized or plans to seize.
2. Then look at the Exemptions section of this booklet, beginning on page 4, to see if you may claim that any of the property is "exempt."
3. If the property has already been seized, fill out the CLAIM OF EXEMPTIONS form which is attached to the NOTICE. If the property has not yet been seized, you may want to wait to fill out the CLAIM OF EXEMPTIONS form until you know exactly what has been seized. If you file your claim before anything has been seized, the court may not be able to decide your claim.
4. File this CLAIM OF EXEMPTIONS form with the clerk of court at the address shown on the NOTICE within 15 days of the date your property was seized. (Note: You may either mail the CLAIM form to the clerk or deliver it in person. However, if you mail it, it must arrive at the clerk's office within 15 days from the date your property was seized.)

Note: If another seizure of property listed on the CREDITOR'S AFFIDAVIT occurs within the next 45 days, you may not receive another one of these notices but you will still have the right to claim exemptions.

* "Levy" means to seize property under the authority of a court order for the purpose of collecting a debt.

Your 15 days to claim exemptions will begin the date the court receives the seized property. To find the date:

- a. Go to the court's records management website at www.courtrecords.alaska.gov.
- b. Select "Click to begin Search" near the bottom of the page.
- c. If you know your case number, enter it on the Search page. If you do not know the case number, select the "Name" tab and type in your last name and first name in the spaces provided.
- d. Click on "Search" or hit the enter key.
- e. Click on the case number you wish to research.
- f. Click on the "Docket" tab.
- g. Under the Docket tab, scroll down to view any "Return of Service on Execution & Payment."

The "Docket Date" to the left of "Docket Text" is the date the court received the money.

BE AWARE: Even though the law says you are entitled to an exemption, you will not be given the exemption unless you claim it. You must claim your exemptions or you will lose them. **YOU MUST FILE YOUR CLAIM WITHIN 15 DAYS** after your property is seized.

Additional copies of the claim of exemption forms and other court forms are available from the court clerk or online at www.courts.alaska.gov/forms.htm#civ.

C. AFTER YOU FILE YOUR CLAIM

After you file your CLAIM OF EXEMPTIONS with the court, the court will send a copy of the claim to the creditor and give the creditor 10 days to respond. The court will decide your claim based on the information submitted, or the court will schedule a hearing.

If a hearing is ordered, you will be notified of the date and time it will be held. You must attend the hearing. At the hearing, you must prove your right to an exemption. You should bring to the hearing any documents or other evidence supporting your claim.

If the hearing is scheduled to be held in a city other than where you live and you believe it will be too inconvenient and expensive for you to attend the hearing, you may ask the court to move the hearing to another city more convenient to you.

D. THINGS TO REMEMBER

1. You must file your CLAIM OF EXEMPTIONS with the court within 15 days after your property is taken.
2. It is not enough to notify the creditor or the creditor's attorney of your claim, you must file your claim with the court.
3. If you do not file your claim within 15 days or if you do not attend the hearing (if there is one) on your claim, the court may decide you have given up your right to the exemptions.

E. CAN SOMEONE ELSE CLAIM YOUR EXEMPTIONS FOR YOU?

If you fail to claim your exemptions, your spouse or a dependent or any other person authorized by law (for example, a guardian) may claim your exemptions for you or assert the rights provided in the exemptions law. Note: At the hearing on the claim of exemptions, the court may require that you (judgment debtor) be present since court rules state that no one except you or your attorney can represent you in court.

If neither you, nor your spouse, nor anyone else claims your exemptions for you, then the property listed on the CREDITOR'S AFFIDAVIT can be sold to pay the judgment against you. Even exempt property can be sold if you have not claimed the exemption.

F. DOES IT COST ANYTHING TO DELAY PAYING THE JUDGMENT?

Yes. You will be charged interest from the date of the judgment until you pay it. (The interest rate is usually stated in the judgment.) You will also be charged for the judgment creditor's costs in trying to enforce the judgment. For example, if the creditor has to get a WRIT OF EXECUTION from the court to seize your property because you did not pay the judgment voluntarily, the creditor will have to pay a process server to serve the WRIT on whoever holds your property. If anything is seized, the creditor will also have to have the NOTICE OF LEVY and other papers served on you. These costs of service will be added to the judgment against you. Also, the costs of storing the property until it is sold and the costs of conducting the public sale will be added to the judgment.

You should also be aware that property sold at this type of public sale may not bring as high a price as it would if you sold it privately.

G. NONRESIDENT EXEMPTIONS.

If you are not an Alaska resident, you are not entitled to the exemptions provided in the Alaska Exemptions Act. Instead, you are entitled to claim the exemptions provided by the laws of your state of residence. You are also, of course, entitled to claim the exemptions provided by federal law. The term "resident" means an individual who is physically present in the state and who intends to maintain his/her permanent home in Alaska. AS 09.38.120.

II. EXEMPTIONS

An "exemption" is a right to protect your property from being taken from you to pay your debts. State and federal laws define the types of property for which you may claim an exemption. It is very important to remember that these laws require you to ask for the exemptions before you can be given them. If you do not claim the exemptions, you will lose them.

The following are some of the main exemptions you should know about. The exemptions are listed in alphabetical order. Along with an explanation of each exemption, there is a reference to the statute which creates the exemption.

References to Alaska laws begin with the letters "AS" for "Alaska Statutes."

References to federal laws include the letters "USC" for "United States Code" and "CFR" for the "Code of Federal Regulations."

There are also some references to Alaska Administrative Code regulations on exemptions. These references include the letters "AAC" for "Alaska Administrative Code."

If you want to read these laws, you can find them in the State Law Library in Anchorage, in the court libraries at some court locations, and in many city libraries. They are also available on the Internet. You can find links to them on the court system's website: www.courts.alaska.gov

The following list may not contain all the possible exemptions that exist. Although the list includes all the major Alaska and federal exemptions, there may be others. If you have questions about these exemptions or want to know if there are other exemptions which might help you, you are urged to seek the advice of a lawyer.

1. Adult Public Assistance. See #55, Welfare Benefits.

2. Alimony.

Money or property received for alimony or separate maintenance may be treated as income or "liquid assets." See #12c.

3. Annuities.

For annuity contracts that have not yet matured (i.e., that have not yet begun making payments to you), see #26, Life Insurance Policies and Annuity Contracts.

Once you begin receiving payments from an annuity contract, the payments may be treated as income or "liquid assets." AS 09.38.030(e)(5). See #12c.

See also:

#14, Federal Judicial Survivor's Annuity

#32, Military Annuity

#44, Retirement Benefits

4. ATAP (Alaska Temporary Assistance Program). See #55, Welfare Benefits.

5. Automobiles. May be partly exempt. See #40.

6. Books. Partly exempt. See #40.

7. Building Materials.

If you have furnished the material for the construction, alteration or repair of a building or other improvement, these furnished materials are exempt from execution except when the debt arises from the purchase price of these materials. AS 34.35.105.

8. Burial Plot.

A burial plot for yourself and your family is entirely exempt. AS 09.38.015. See definition of "burial plot" in the Glossary. Land held by a cemetery association for use as a cemetery is also exempt. AS 10.30.060 and .120. Note: You may not claim this exemption if you are holding your cemetery lot with the intention of selling it for profit. AS 10.30.120.

See also #50, Tracing, and section III on page 18 about Claims Enforceable Against Exempt Property.

9. Child Support.

Child support collections made by the Child Support Services Division are exempt while the money is held by CSSD. AS 09.38.015. However, when CSSD pays the money to the person to whom it is owed, the money is no longer exempt. It might, however, be partly or wholly protected by the income or liquid asset exemption described in #12c.

Also, automatic payroll deductions for child support sent by a person's employer to the court are exempt. AS 25.24.160(a)(1).

10. Clothes. Partly exempt. See #40.

11. Crime Victims Reparations.

An award under a crime victim's reparations act (for example, a payment from the Alaska Violent Crimes Compensation Board) is entirely exempt. AS 09.38.015 See, however, section III on page 18 about Claims Enforceable Against Exempt Property.

12. Earnings, Wages, Salary, Benefit Payments, Other Income, Cash on Hand or in a Bank, etc.

There are two different exemptions for this money: (a) the regular earnings exemption and (b) the liquid assets exemption. You may be eligible for either one of these two exemptions, but not both.

Note: You will not be eligible for either of these exemptions if the judgment against you is for child support, the payment of an employee's wages (up to one month's earnings), state or local taxes, or payment to a victim of a crime or delinquent act committed by you. AS 09.38.030(c) and AS 09.38.065(a)(1) and (a)(3). See sub-paragraph e. for an explanation of this. Also see Section III on page 18. You will also not be eligible for these exemptions if the creditor's claim is enforceable under an order of a federal bankruptcy court under 11 USC §§ 1301-1330 (Bankruptcy Reform Act of 1978). AS 09.38.030(c)(2).

a. Regular earnings exemption.

You are eligible for this exemption if you receive "earnings" either weekly, twice a month or monthly. "Earnings" means money received for personal services, including wages, salary, commissions, etc.

If you receive money for personal services on a regular basis as described above, the following part of your earnings is exempt (protected from seizure): \$473 per week or 75% of your weekly disposable earnings, whichever is more. AS 09.38.030(a), 8 AAC 95.030 and 15 USC § 1673. "Disposable earnings" means the money left after subtracting any amounts required by law to be withheld. 15 USC § 1672.

Note: This exemption may be increased to \$743 per week if you give the court an affidavit (a sworn written statement) stating, under penalty of perjury, that your earnings alone (and not anyone else's) support your household. AS 09.38.050(b) and 8 AAC 95.030. See form CIV-531.

Also Note: Federal law prohibits employers from discharging any employee because the employee's earnings have been garnished (seized by court order) for any one indebtedness. 15 USC § 1674.

b. Liquid Assets Exemption.

You are eligible for this exemption if you do not receive earnings (money for personal services) weekly, twice a month or monthly. That means you are eligible for the liquid asset exemption:

- 1) if you receive "earnings" (money received for personal services) on an irregular basis*, or
- 2) if you do not receive "earnings" at all, but do receive other payments (like interest or dividends or government benefits).*

If you do not receive earnings weekly, twice a month, or monthly, you are entitled to an exemption of \$1,890 for the total value of any cash or other liquid assets available to you in any month. AS 09.38.030(b) and 8 AAC 95.030. "Liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments and receivables, but does not include Alaska Permanent Fund dividends.

Note: This exemption may be increased to \$2,970 if you give the court an affidavit stating, under penalty of perjury, that your earnings alone support your household. AS 09.38.050(b) and 8 AAC 95.030.

* Be aware that some types of income that appear to be "earnings" may actually be something else. For example, a crewman on a fishing boat may in some cases be working as an independent contractor rather than as an employee. If so, there would be no employer-employee relationship, and the money the crewman receives might not be considered "earnings."

c. Items Treated as Earnings, Income or Liquid Assets.

AS 09.38.030(e) states that the following are other items which will be treated as earnings, income, cash or other liquid assets when they are in your possession (that is, after you have received them):

- 1) Benefits paid by reason of disability, illness or unemployment;
- 2) Money or property received for alimony or separate maintenance;
- 3) Proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury to you or the wrongful death or bodily injury of another individual of whom you were or are a dependent;
- 4) Proceeds or benefits paid or payable on the death of an insured, if you were the spouse or a dependent of the insured; and
- 5) Amounts paid under a stock bonus, pension, profit sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service.

This means these assets are only partially protected as described in paragraphs a. and b. above, unless they fit within one of the categories described in AS 09.38.015 (Property Exempt Without Limitation) or AS 09.38.017 (Exemption of Retirement Plan Interests and Payments).

See #44, Retirement Benefits.

d. Increased Exemption for Injury or Disability Payments.

If you have money you obtained as payment for an injury or disability, you may ask the court to increase the exemption amounts described in paragraphs a. and b. above. You will have to give the court affidavits (sworn written statements) or offer sworn testimony in support of your request as required by the court. The court will determine the exemption amount after considering your responsibilities and all your present and anticipated property and income. AS 09.38.050(a).

e. Earnings Exemption If Debt Is For Child Support, Employee Wages or State or Local Taxes.

If the judgment against you is for child support, employee wages, state or local taxes, or payment to a victim of a crime or delinquent act committed by you, there is no "liquid asset" exemption. You may, however, be able to claim an exemption for part of your regular earnings as described below.

If the judgment is for child support, both state and federal law exempt 50% of your "disposable earnings" if you are supporting a spouse or dependent children and 40% if you are not. These exemption percentages decrease to 45% and 35% respectively if your support payments are 12 weeks or more in arrears. 15 USC § 1673(b), AS 25.27.062(i) and AS 25.27.250(i).

If the judgment is for any of the following, there is no state exemption protecting your wages:

- (1) employee wages (up to an amount equal to one month's full-time earnings),
- (2) local taxes, or
- (3) payment to a victim of a crime or delinquent act committed by you.

However, federal law would still exempt 75% of your "disposable earnings" each week or 30 times the federal minimum hourly wage, whichever is more. 15 USC § 1673.

If the judgment is for state taxes or is an order of a federal bankruptcy court, neither state law nor federal law provides an exemption to protect your wages. AS 09.38.030(c) and 15 USC § 1673(b).

f. For Fishermen's and Seamen's Wages, see #46.

g. Earnings of Nonresidents.

If you are not a resident of Alaska, the above exemptions are not available to you. Instead, the limitations on garnishment imposed under 15 USC § 1673 apply (exempting 75% of your "disposable earnings" each week or 30 times the federal minimum hourly wage, whichever is more). AS 09.38.030(d).

h. Money in Prisoner Accounts.

If you are being held in a correctional facility and have money in an account at that facility, all the money in the account can be seized to pay certain debts (support of dependents, child support, restitution, fines, civil judgments resulting from your criminal conduct, reimbursements to the state for violent crimes compensation awards made because of your criminal conduct, and other judgments against you resulting from litigation against the state). AS 09.38.030(f) & (g)

13. Escrow Accounts.

Money held in an escrow account under AS 06.60.360 is exempt. AS 06.60.360(e) and AS 09.38.015(e). (Effective July 1, 2008.)

14. Federal Judicial Survivor's Annuity.

If you are the widow, widower or surviving child of a federal judge (or certain other federal judicial officials) and are receiving annuity payments from the Federal Judicial Survivors' Annuity Fund, this annuity is exempt. 28 USC § 376(n).

15. Fishermen's Wages. See #46.

16. General Relief Assistance. See #55, Welfare Benefits.

17. Health Aids.

Health aids reasonably necessary to enable you or a dependant to work or to sustain health are exempt. AS 09.38.015.

See also #50, Tracing, and section III on page 18 about Claims Enforceable Against Exempt Property.

18. Heirlooms. Family heirlooms may be partly exempt. See #40.

19. Homes. See #20, Homestead.

20. Homestead.

a. State Homestead Exemption

You are entitled to an exemption of up to \$72,900 for your equity in property in Alaska used as your "principal residence." AS 09.38.010 and 8 AAC 95.030. See Glossary for definition of "principal residence." Note: This definition includes mobile homes and other similar dwellings. If you have more than \$72,900 equity in your home, it may be sold as described below.

If you have an equity in excess of \$72,900, your residence may be offered for sale by public auction after advertisement of the time and place of the sale. For 60 days after such a sale, you can repurchase your home by paying the clerk of court the costs of the levy and the sale plus the lesser of either (1) the difference between the highest bid and the amount of your exemption in the property, or (2) the amount of the creditor's claim. If the highest bid for your homestead at the execution sale is not enough to pay you the value of your exemption, the sale will be cancelled, and you will not be charged for the expenses of the attempted sale. AS 09.38.080(d).

See also #50 on Tracing, and section III on page 18 about Claims Enforceable Against Exempt Property.

b. Federal Homesteads.

The federal homestead exemption is quite different. It applies to land being homesteaded under the federal homestead laws. Federal law states that land acquired under the federal homestead laws is exempt from execution to satisfy any debt which came into existence prior to the issuance of the patent for the land ("title" to the land from the federal government). 43 USC § 175. Therefore, if the judgment against you is for a debt which was created after you received the patent to your federal homestead, this exemption is not available to you.

Note that although the federal homestead laws were repealed in 1976 (effective in 1986 in Alaska), the protections for existing homesteads will continue to exist.

c. Native Allotments. See #35.

21. House or House Trailer or Mobile Home. See #20, Homestead.

22. Household Goods. Partly exempt. See #40.

23. Health Insurance Proceeds. See #31, Medical Benefits, and #24, Insurance Proceeds.

24. Insurance Proceeds.

As stated in #31, benefits paid or payable for medical, surgical or hospital care to the extent they are or will be used to pay for the care are completely exempt. AS 09.38.015. See, however, section III on page 18 about Claims Enforceable Against Exempt Property.

However, if you receive insurance proceeds as a result of bodily injury to yourself or as a result of the wrongful death or bodily injury of someone of whom you are a dependent and the proceeds do not fit within the medical benefits exemption, then upon your receipt of these proceeds, they become "liquid assets" as described in #12c. This money will be combined with all your other "liquid assets," and \$1,890 per month out of that total will be exempt (if you are not receiving regular "earnings" and are otherwise eligible for the liquid assets exemption). See #12 and AS 09.38.030(e)(3).

If you receive proceeds from a life insurance policy, the proceeds are also "liquid assets." AS 09.38.030(e)(4). See the description of the liquid assets exemption in #12c.

Be aware that if you have money which you received as payment for an injury or disability, you may ask the court to order an increase in the liquid assets exemption. You can do so by explaining this to the court on your CLAIM OF EXEMPTIONS form. The court will require an affidavit (a sworn written statement) from you or will require you to appear and testify in court about this. AS 09.38.050(a).

25. Jewelry. Partly exempt. See #40.

26. Life Insurance Policies and Annuity Contracts.

Unmatured life insurance and annuity contracts (in other word, those that have not yet begun making payments) owned by you are exempt except for any accrued dividends and loan values exceeding \$500,500.[†]

If the contracts have accrued dividends and loan values available to you totaling more than \$500,500, a creditor may obtain a court order requiring you to pay the creditor and authorizing the creditor on your behalf to obtain payment of either (a) the amount of the accrued dividends and loan values in excess of \$500,500 or (b) the amount of the creditor's claim, whichever is less. AS 09.38.025 and 8 AAC 95.030.

27. Limited Entry Permits.

Limited entry permits granted under AS 16.43 are exempt except as provided in AS 16.43.170(g) and 16.43.945.

[†] AS 09.38.025(a) exempts life insurance and annuity contracts up to \$500,000 of accrued dividends and loan values available to the individual. (This was increased from \$10,000 in 2010 in House Bill 101, Chapter 97 SLA 10.) Under AS 09.38.115, the exemption amount increased from \$500,000 to \$500,500 as of October 1, 2012. The increased exemption amount for life insurance and annuity contracts currently listed in 8 AAC 95.030(c) as \$13,500 is an error in the regulation which is in the process of being corrected. Refer to the forthcoming revised regulation at 8 AAC 95-030(c) for the corrected increased exemption amount.

28. Liquor Licenses.

Liquor licenses are entirely exempt. AS 09.38.015. See, however, section III on page 18 about Claims Enforceable Against Exempt Property.

29. Longevity Bonus Payments.

Alaska longevity bonus payments paid or payable are entirely exempt. AS 09.38.015 and AS 47.45.120(b). See, however, section III on page 18 about Claims Enforceable Against Exempt Property.

30. Longshore and Harbor Workers.

The Longshore and Harbor Workers' Compensation Act provides compensation when a longshore or harbor worker is injured or killed on the job. Compensation or benefits "due or payable" under this Act are "exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived." 33 USC § 916.

31. Medical Benefits.

Benefits paid or payable for medical, surgical or hospital care to the extent they are or will be used to pay for the care are exempt. AS 09.38.015. See, however, section III on page 18 about Claims Enforceable Against Exempt Property.

32. Military Annuity.

An annuity payable under the "Retired Serviceman's Family Protection Plan" is exempt. 10 USC § 1440.

Note: This exemption probably does not exist if the debt is for child support or alimony. 42 USC § 659. However, the money may be eligible for the income and liquid assets exemption. See #12c.

33. Money.

See #12. As explained in sub-paragraph b of #12, if you are not eligible for the regular earnings exemption, then you are entitled to an exemption of \$1,890 in cash or other "liquid assets" each month.

34. Musical Instruments. Partly exempt. See #40.

35. Native Allotment.

If you are an Alaska Native (either Indian, Aleut or Eskimo) and you have received land as a native allotment under a restricted deed from the federal government, this land is exempt. 43 USC § 270-1 (1970). This exemption does not apply if an unrestricted deed was issued to you.

Note that even though the federal law which created allotments for Alaska Natives has been repealed, this protection for these allotments continues to exist.

36. Native Corporation Stock.

The stock of Native Regional Corporations and Native Village Corporations created under the Alaska Native Claims Settlement Act (ANCSA) is exempt from execution. Also, dividends and other distributions paid on this stock are exempt. 43 USC § 1606(h)(1)(B) and 1607(c). Note, however, that these federal laws limiting the transfer of this stock do not apply to transfers of stock pursuant to a court decree of separation, divorce or child support. Also note that a Native Corporation may amend its articles of incorporation to allow execution on its stock (that is, to "terminate the alienability restrictions" set out in ANCSA) effective after December 18, 1991. Public Law 100-241, section 8.

37. Partnership Property.

Partnerships are not entitled to exemptions because exemptions belong only to individual persons. However, if the debtor is an individual person who also happens to have an interest in a partnership, the partnership property is exempt from execution to collect the debts of that individual debtor (which are not partnership debts). AS 09.38.100(b).

The income to the individual from the partnership is not exempt under the "partnership property exemption," but it may be exempt under the income or liquid asset exemption. See #12c. For further information about partnerships, see Title 32 of the Alaska Statutes.

38. Pensions. See #44, Retirement Benefits.

39. Permanent Fund Dividend.

Twenty percent of the annual permanent fund dividend payable to an individual is exempt from execution. No other exemption applies to a dividend. AS 43.23.065(a). This exemption is not available if the debt is for child support, court ordered restitution, a scholarship loan from the state, a court ordered fine, a debt owed to an agency of the state or the other types of obligations listed in AS 43.23.065(b). Also see Section III on page 18 about Claims Enforceable Against Exempt Property.

40. Personal Property Subject to Value Limits.

AS 09.38.020 and 8 AAC 95.030.

The following property is partially exempt:

- a. Up to \$4,050 worth of household goods, clothes ("wearing apparel"), books, musical instruments, family portraits and heirlooms.
- b. Up to \$1,350 worth of jewelry.
- c. Up to \$3,780 worth of professional books and tools of your trade.
- d. Up to \$1,350 for pets.
- e. Up to \$4,050 for one motor vehicle if the full value of the motor vehicle does not exceed \$27,000.

The exempt amounts shown above are for the fair market value of your interest in the property, exclusive of liens of record.

Concerning sub-paragraphs a. and c., see also #50, Tracing.

The judgment creditor may not have the property listed in this section seized before you are served with a notice of your exemption rights and given a chance to claim your exemptions. AS 09.38.075.

WARNING: You may not claim an exemption for any of the items in this section if the judgment against you is

- a. for the purchase price of that item, or
- b. for a loan made to enable you to purchase the item (and used for that purpose), or
- c. for labor or materials furnished to make, repair, improve, preserve, store, or transport the item. AS 09.38.065(a)(2).

For example, if the debt you owe is for the purchase price of a car, you cannot claim an exemption for that car.

NOTE: These exemptions are not available if the judgment against you is for child support, the payment of an employee's wages (up to one month's earnings) or state or local taxes. AS 09.38.065(a)(1). Also, some of the exemptions are not available if the judgment is for payment to a victim of a crime or delinquent act which you committed. AS 09.38.065(a)(3). See Section III on page 18 for the exemptions which are still available in such a case.

41. Pets. Partly exempt. See #40.

42. Portraits. Family portraits may be partly exempt. See #40.

43. Public Corporation Property.

If a judgment is against a borough, city or other public corporation, no writ of execution may be issued on the judgment. Instead, the creditor must follow the procedure described in AS 09.30.040 to collect the amount due. A "public corporation" is a corporation organized for governmental purposes. See also AS 09.38.015(c).

44. Retirement Benefits.

- a. State Law.

Pension or retirement plan payments become part of your income or "liquid assets" when you receive them. AS 09.38.030(e)(5). See #12c.

However, your interest in a retirement plan and the amounts held on your behalf in such a plan are exempt while held in the plan. AS 09.38.017. (Also see AS 09.38.015(b), AS 39.35.505, 14.25.200, and AS 22.25.100 about the Alaska Public Employee's Retirement System, Alaska Teacher's Retirement System, Judicial Retirement System and Elected Public Officers' Retirement System and AS 39.30.162(b) about the State of Alaska Supplemental Annuity Plan.) Once the benefits are paid to you, however, they become income or "liquid assets" as described above, and thus may be only partially exempt.

Note that money held in a retirement plan is protected by this exemption only if the retirement plan is qualified under certain sections of the Internal Revenue Code as specified in AS 09.38.017(e)(3).

See also #26, Life Insurance Policies and Annuity Contracts.

b. Federal Law.

There are federal laws protecting many (if not all) retirement, pension and annuity programs for federal employees (and sometimes others). The following are the laws:

- | | |
|-------------------|--|
| 5 USC § 8346. | Civil Service Retirement money is exempt. |
| 5 USC § 8470(a) | Federal Employees' Retirement System money is exempt. |
| 45 USC § 231m. | An annuity under the Railroad Retirement Act is exempt. |
| 38 USC § 1562(c). | The special pensions given to persons who have been awarded the Medal of Honor are exempt. |
| 33 USC § 775. | Benefit payments for widows of Lighthouse Service employees are exempt. |
| 50 USC § 2094. | Payments from the Central Intelligence Agency Retirement and Disability Fund are exempt except when there is a legally enforceable spousal agreement or a court decree of divorce, annulment, separation, etc. which provides otherwise. |
- See also: #32, Military Annuity
 #14, Federal Judicial Survivors Annuity
 #53, Veterans' Benefits

There are also regulations that protect certain federal benefits from garnishment. See Section IV on page 19 for more information.

Note: These exemptions are probably not available where the debt is for child support or alimony. 42 USC § 659.

Also Note: There are court cases interpreting some of these laws which state that money is exempt (that is, protected by the federal exemption) only while it is held by the federal government and not after it has been received by the person entitled to it. However, even if the federal exemption is no longer available, the money may be eligible for the income or liquid asset exemption. See #12c.

45. Salary. See #12.

46. Seamen's and Fishermen's Wages.

Wages "due or accruing" to any master or seaman or to an individual employed on a fishing vessel or fish processing vessel are exempt, except in the following case. This exemption does not protect such a person's wages from a court order requiring payment of the wages for the support and maintenance of the person's spouse or minor children. 46 USC § 11109.

Note: This exemption apparently protects the wages only while they are in the hands of the employer and not after they have been received by the seaman or fisherman. See also #12.

47. Senior Benefits.

Benefits paid or payable under the Alaska Senior Benefits Payment Program (AS 47.45.301 - .309) are exempt. AS 09.38.015

Note: This program and the exemption are scheduled to be repealed June 30, 2011. (§ 4 ch. 1 FSSLA 2007)

48. Social Security.

Money "paid or payable" under the federal Social Security system (the Federal Old Age, Survivors, and Disability Insurance Benefits program) is exempt. 42 USC § 407.

There are regulations that protect these and other federal benefits from garnishment. See Section IV on page 19 for more information.

Exception: This exemption probably is not available where the debt is for child support or alimony. 42 USC § 659.

Note: Decisions from different courts in cases involving the social security exemption disagree on whether the money is protected only while held by the federal government or also after it has been received by the person entitled to it. However, even if the federal exemption is no longer available, the money may be eligible for the income or liquid asset exemption. See #12c.

49. Tools of Trade. Partly exempt. See #40.

50. Tracing. Property Traceable to Other Exempt Property. AS 09.38.060 and 8 AAC 95.030.

If any of the following exempt property has been taken or sold by condemnation or has been lost or damaged or destroyed and you have been indemnified (paid) for it, you are entitled to an exemption for proceeds that are traceable for 12 months after you receive the proceeds:

- a. Up to \$72,900 for a residence which could have been claimed as an exempt homestead (described in #19 above).
- b. A burial plot.
- c. A health aid.

- d. Up to \$4,050 for household goods, clothes, books and musical instruments.
- e. Up to \$3,780 for implements, professional books and tools of your trade.

If you voluntarily sell your exempt homestead (your residence), you can claim an exemption for up to \$72,900 of the proceeds for six months after you receive them if the money can be traced back to the sale.

AS 09.38.060(b) describes methods you can use to show that money you are seeking to protect under this section can be traced back to the proceeds of exempt property.

51. Tuition Credit or Savings Accounts.

Tuition credit or savings accounts under a higher education savings account established under AS 14.40.802 or an advance college tuition savings contract authorized under AS 14.40.809(a) are exempt. AS 09.38.015. Also, see AS 14.40.802(h).

52. Unemployment Benefits.

While these benefits are held by the state, they are exempt. AS 09.38.015(b). However, upon your receipt of these benefits, they become income or "liquid assets" as described in #12c. AS 23.20.405(e) and AS 09.38.030(e)(1).

53. Veterans' Benefits.

Payments of benefits due under any law administered by the federal Veterans' Administration are exempt. 38 USC § 5301.

There are regulations that protect these and other federal benefits from garnishment. See Section IV on page 19 for more information.

Court decisions in cases involving this exemption disagree about how long the exemption lasts after the money is paid to the beneficiary (for example, whether the exemption continues if the money is deposited in a checking or savings account). The courts seem to agree, however, that the exemption is lost if the money is invested in property or other investments.

Note: This exemption is probably not available where the debt is for child support or alimony. 42 USC § 659.

54. Wages. See #12.

55. Welfare Benefits.

The following benefits from the State of Alaska may be partly or entirely exempt:

- a. General Relief Assistance. AS 47.25.210.
- b. Alaska Temporary Assistance Program. AS 47.27.045.
- c. Adult Public Assistance (assistance to aged, blind or disabled needy residents). AS 47.25.550.

Upon your receipt of these payments, they become income or "liquid assets" as described in #12c. AS 09.38.030(e)(1).

56. Workers' Compensation Benefits.

If you receive payments under the Alaska Workers' Compensation Act, then upon your receipt of these payments, they become "liquid assets" as described in #12c. AS 23.30.160 and AS 09.38.030(e)(1) and (3).

Be aware that if you have money which you received as payment for an injury or disability, you may ask the court to order an increase in this exemption. You can do so by explaining this to the court on your CLAIM OF EXEMPTIONS form. The court will require an affidavit (a sworn written statement) from you or require you to appear and testify in court about this. AS 09.38.050(a). Also, see #31 about Medical Benefits.

III. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY

Alaska Statute 09.38.065(a)(1) states that, notwithstanding other provisions of AS 09.38, a creditor may make a levy against exempt property of any kind to enforce a claim for:

1. child support, or
2. unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee, or
3. state or local taxes.

In the case of Anderson v. Anderson, 736 P.2d 320 (Alaska 1987), the Alaska Supreme Court interpreted this statute to mean that a parent could execute against an otherwise exempt limited entry permit to collect past due child support.

Alaska Statute 09.38.065(a)(3) states that a creditor may make a levy against exempt property of any kind to enforce the claim of a victim (including a judgment of restitution on behalf of a victim of a crime or a delinquent act) if the claim arises from conduct of the debtor that results in a conviction of a crime or an adjudication of delinquency, except that the debtor is entitled to an exemption in property

- (a) not to exceed an aggregate value of \$3,000 chosen by the debtor from the following categories of property:
 - (1) household goods and wearing apparel reasonably necessary for one household;
 - (2) books and musical instruments, if reasonably held for the personal use of the debtor or a dependent of the debtor; and
 - (3) family portraits and heirlooms of particular sentimental value to the debtor; and
- (b) not to exceed an aggregate value of \$2,800 of the debtor's implements, professional books, and tools of the trade.

Note that a victim may enforce such a claim against exempt property only if the victim's claim arises from a crime committed on or after September 15, 1991. (sec. 24 ch 57 SLA 1991). "Victim" has the meaning given in AS 12.55.185. "Judgment of restitution" is defined in AS 09.38.500(8).

Note Re Limited Entry Permits. The AS 09.38.065 authorization to execute against "exempt property of any kind" does not apply to commercial fishing privileges granted under AS 16.43, including limited entry permits. AS 16.43.945

IV. FEDERAL REGULATIONS FOR PROTECTING ACCOUNTS WITH FEDERAL BENEFIT PAYMENTS

In May of 2011, new federal regulations went into effect requiring banks to identify electronic deposits of federal benefits and protect from garnishment those benefits that were deposited into your account in the two months before the levy. The following are protected by this regulation: SSA benefit payments protected under 42 USC 407 and 42 USC 1383(d)(1); VA benefit payments protected under 38 USC 5301(a); RRB benefit payments protected under 45 USC 231m(a) and 45 USC 352(3); and OPM benefit payments protected under 5 USC 8346 and 8470.

For more information about the new regulations, see 31 CFR § 212.

V. GLOSSARY

Many of the definitions in this Glossary come from Alaska Statute 09.38.500. If a definition is from this statute, a reference to the statute follows the definition.

Affidavit: a written statement sworn to before a person officially permitted by law to administer an oath. Note that Alaska Statute 09.38.080(b) describes what must be included in the "Creditor's Affidavit" required for some types of executions.

Burial Plot: a parcel of real estate that is used for burial of human remains and that is located within an area designated for cemetery purposes by the state or a municipality. AS 09.38.500(1)

Certified Copy: a copy of a document or record, signed and certified as a full, true and correct copy by the person to whose custody the original is entrusted.

Creditor: the one who is owed money by the debtor as decided by the court in a judgment.

Debt: a legally enforceable obligation or liability of an individual, whether arising out of contract, tort, or otherwise. AS 09.38.500(3)

Debtor: the one who owes money to the creditor as decided by the court in a judgment.

Default: happens when a party fails to file an answer to a complaint or does not show up for a trial. A judgment may be entered automatically against someone who defaults.

Dependent: an individual who derives support primarily from another individual. AS 09.38.500(4)

District Court: that court in the court system which can hear cases for the recovery of money when the amount claimed does not exceed \$100,000 per defendant.

Earnings: money received by an individual for personal services and denominated as wages, salary, commissions, or otherwise. AS 09.38.500(5)

Execute: to carry out or enforce.

Execution Procedure: the procedure for carrying out or enforcing a court judgment.

Exempt: protected. AS 09.38.500(6)

Exempt Property: certain classes of property which the law protects either totally or partially from being taken to pay a debt established by a court judgment.

Exemption: protection from subjection to process or a proceeding to collect an unsecured debt. AS 09.38.500(6)

Household Goods: includes those items that make a residence habitable according to modern standards. AS 09.38.500(7)

Judgment: the final decision of a court in a case. A judgment states which person owes the other how much money (if any).

Judicial Lien: a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding instituted for the purpose of collecting an unsecured debt. AS 09.38.500(9)

Levy: the seizure of property under a writ of attachment, garnishment, execution, or any similar legal or equitable process issued for the purpose of collecting an unsecured debt. AS 09.38.500(10)

Lien: (A) a security interest;
(B) a judicial or statutory lien;
(C) a common law lien on property
(i) only if the lien was consented to by the owner of the property affected; or
(ii) if not consented to by the owner of the property affected as provided in (i) of this subparagraph, only when the lien is accompanied by a specific order authorizing the recording or filing of the lien issued by a court of competent jurisdiction recognized under state or federal law, which order shall be recorded or filed with the lien; or
(D) any interest in property other than one described in (A) - (C) of this paragraph securing payment of a debt or performance of an obligation. AS 09.38.500(11)

Motion: a request that a judge make a ruling or take some other action.

Principal Residence: the actual dwelling place of an individual or dependents of the individual and includes real and personal property. AS 09.38.500(12)

Resident: an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. AS 09.38.120(b)

Return of Service: a certificate signed by a peace officer or process server stating whether or not he/she delivered the order (or writ) the court directed him/her to deliver, how and when it was delivered and to whom.

Security Interest: an interest in property created by contract to secure payment or performance of an obligation. AS 09.38.500(13)

Serve Notice: to deliver legal documents to a person (in a way authorized by statute or court rule) notifying the person of certain required information. In the execution procedures law, to "serve notice" is specifically defined as follows: "to give the person to be served a written personal notice in the same manner a summons in a civil action is served, or to mail the notice to the person's last known address by first-class mail and by using a form of mail requiring a signed receipt. AS 09.38.500(14)

Small Claims: a type of case heard in district court for the recovery of money or property when the amount claimed does not exceed \$10,000. The formal rules of evidence and procedure are relaxed in order to allow people the chance to argue their case without the expense of a lawyer.

Statutory Lien: a lien arising by force of a statute under specified circumstances or conditions, but does not include a security interest. AS 09.38.500(15)

Superior Court: that court in the court system which can hear cases for the recovery of money in any amount, but usually hears cases for the recovery of \$100,000 or less only when they are appealed from the district court.

Tort: a private or civil wrong other than a breach of contract, in which the court will provide a remedy in the form of an action for damages.

Value: fair market value of an individual's interest in property, exclusive of liens of record. AS 09.38.500(16)

Wearing Apparel: clothing and garments intended and adapted to be worn on the person to protect the person against the elements or to provide personal comfort or decency, or serving to ornament the person but does not include jewelry. AS 09.38.500(19)

Writ: a court order requiring that something be done outside the courtroom or authorizing it to be done.

Writ of Execution: an order issued by a court stating the amount of money the debtor owes the creditor and directing a peace officer or process server to take the property of the debtor in order to pay that amount.

Writ of Execution for Garnishment of Earnings: a court order which is served on debtor's employer and which requires the employer to send part of the debtor's earnings to the court each payday to pay the amount owed the creditor.

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Office of Court Forms
Alaska Court System
820 West 4th Avenue
Anchorage, AK 99501-2005