

RULE 76
EXEMPTIONS

A. Substantive nature of exemptions. Provisions that certain kinds of property belonging to a debtor may not be applied to compulsory satisfaction of a creditor's claim are matters of substantive law and outside the scope of these Rules. For convenience, sections 76 B., C., and D. provide a catalog of such provisions, but presence or absence from this list is not conclusive as to the existence or non-existence of an exemption.

B. State statutory exemptions.

- B.(1) Homesteads. ORS 23.240
- B.(2) Mobile homes. ORS 23.164, .168
- B.(3) Houseboats. ORS 23.164
- B.(4) Condominiums. ORS 91.581
- B.(5) Earnings from personal services. ORS 23.185
- B.(6) Motor vehicles. ORS 23.160
- B.(7) Tools, etc., necessary to earn living. ORS 23.160
- B.(8) Household goods, provisions, fuel. ORS 23.160
- B.(9) Clothing, jewelry, personal items. ORS 23.160
- B.(10) Books, pictures, musical instruments. ORS 23.160
- B.(11) Domestic animals, poultry. ORS 23.160
- B.(12) Firearms. ORS 23.200
- B.(13) Life insurance proceeds. ORS 743.099
- B.(14) Group life insurance proceeds. ORS 743.102
- B.(15) Annuity policies. ORS 743.105

B.(16) Health insurance proceeds. ORS 743.108
B.(17) Insurance company security deposits. ORS 731.644
B.(18) Credit union shares. ORS 743.192
B.(19) War savings accounts. ORS 29.070
B.(20) Servicemen's property. ORS 408.440
B.(21) Burial lots. ORS 61.770
B.(22) Cemeteries, crematoriums. ORS 61.755
B.(23) Bank deposits. ORS 23.166 exempts bank deposits of personal earnings, social security payments, and disabled veterans benefits exempted by federal law, and the exempt funds listed in subsections 24 to 37.

B.(24) Pensions. ORS 23.170
B.(25) Public employee retirement payments. ORS 237.201
B.(26) School district retirement payments. ORS 239.261
B.(27) Vocational rehabilitation payments. ORS 344.580
B.(28) Civil defense injury benefits. ORS 401.840
B.(29) Veterans' loans. ORS 407.110
B.(30) General assistance grants. ORS 411.760
B.(31) Aid to blind and disabled persons. ORS 412.115, .610
B.(32) Old age assistance. ORS 413.130
B.(33) Medical assistance. ORS 414.095
B.(34) Benefits for injured trainees and inmates. ORS 655.530
B.(35) Workers' compensation payments. ORS 656.234
B.(36) Unemployment compensation. ORS 657.855
B.(37) Fraternal Benefit society payments. ORS 748.225

C. Federal statutory exemptions.

- C.(1) Earnings from personal services. 15 U.S.C. § 1673
- C.(2) Social security payments. 42 U.S.C. § 407
- C.(3) Veterans' benefits. 38 U.S.C. § 3101
- C.(4) Medal of honor holders' pensions. 38 U.S.C. § 502
- C.(5) Civil service employees' retirement benefits.
5 U.S.C. § 775
- C.(6) Armed forces retirement benefits. 10 U.S.C. § 1440
- C.(7) Foreign service retirement and disability benefits.
22 U.S.C. § 1104
- C.(8) Justices' and judges' annuities. 28 U.S.C. § 376
- C.(9) Lighthouse service employees' benefits. 33 U.S.C.
§ 775
- C.(10) Longshoremen's and harbor workers' compensation pay-
ments. 33 U.S.C. § 916
- C.(11) Railroad employees' annuities. 45 U.S.C. § 231
- C.(12) CIA employees' retirement and disability payments.
50 U.S.C. § 403
- C.(13) Seamen's wages and clothing. 46 U.S.C. §§ 503, 601
- C.(14) Public land settlers homesteads. 43 U.S.C. § 175

D. Common law exemptions.

- D.(1) Claims to recover compensatory damages for personal in-
juries, injuries to reputation or invasion of privacy of a natural
person, or for invasions of dignitary interests.

D.(2) Claims to recover compensation for taking or injuring exempt property.

D.(3) Judgments on, or direct proceeds of, claims within subsections D.(1) or D.(2).

D.(4) With some exceptions, a beneficial interest in a spend-thrift trust.

E. Notice to debtor respecting exemptions. As a part of the notice required by Rule 77 A., the creditor shall serve on a debtor who is a natural person a notice containing:

E.(1) A statement that a debtor may be entitled to claim that the property levied on is exempt from the claims of the creditor.

E.(2) A list of all property and funds declared exempt under state or federal law, drawing attention to those that may be applicable to the instant situation.

E.(3) An explanation of the procedure by which the judgment debtor may claim an exemption;

E.(4) A statement that the forms necessary to claim an exemption are available at the county courthouse at no cost to the judgment debtor.

F. Claim of exemptions.

F.(1) Any time after property has been levied on and before it is transferred from the debtor, the debtor or someone on his behalf may file a Claim of Exemption with the clerk of the court in which the judgment or order for provisional process underlying the levy was made. The claim may be made on a form supplied by the clerk and shall:

F.(1)(a) Identify the judgment sought to be enforced or the action in which the property was attached.

F.(1)(b) Describe the property claimed as exempt.

F.(1)(c) Estimate the total value of the property.

F.(1)(d) List the names and addresses of any third persons having interests in the property, such as co-owners and lienors. If there are liens on the property senior to that of the levying creditor, the nature of the lien and the amount presently secured thereby shall be stated.

F.(1)(e) State the debtor's name and address.

F.(2) The Claim of Exemption shall be filed in duplicate, one copy to be mailed by the clerk promptly to the creditor. Thereupon all enforcement proceedings respecting the property claimed as exempt shall be suspended.

G. Determination of right to exemptions. If the creditor disputes the debtor's right to a claimed exemption, he may move within 10 days of the mailing of the notice for an adjudication thereon under Rule 77 E. If no such motion is made the debtor's claim establishes the exemption; the creditor's lien on the property shall be discharged of record and, if the property has been seized, it shall be returned to debtor.

H. Discharge of lien on homestead in connection with sale by judgment debtor or after discharge in bankruptcy.

H.(1) A debtor against whom a judgment has been docketed

may transfer real property in which he has a homestead exemption free of the lien of such judgment by proceeding under Rule 77 F.(2).

H.(2) If no such proceeding was instituted by the debtor, or was instituted but terminated without decision on the merits, the transferee of the property may apply to the court at any time after the transfer in a manner analogous to that provided in Rule 77 F.(2) and obtain an order discharging the property from the liens of any judgments docketed against the debtor-transferor by showing that the debtor's equity at the time of transfer did not exceed the sum of \$12,000 or by tendering to the court the amount by which the debtor's equity exceeded \$12,000 at the time of transfer.

H.(3) If a debtor has been discharged in bankruptcy and property was set apart to him as a homestead in the bankruptcy but a creditor claims that a pre-bankruptcy judgment is still a lien on the property, the debtor or a transferee of the property may apply to the court in a manner analogous to that provided in Rule 77 F.(2) and obtain an order discharging the claimed lien by showing that the debtor's equity on the date of the petition in bankruptcy did not exceed \$12,000 or by tendering to the court the amount by which the debtor's equity exceeded \$12,000 on that date.

I. Escrowing proceeds of homestead sale. If funds are claimed as exempt under ORS 23.240(2), a creditor otherwise entitled

to levy thereon may obtain, ex parte, an order requiring the debtor to deposit the funds on condition that they may be withdrawn only: (a) by the debtor to pay the price of a new homestead or, (b) by the creditor after one year from the date of sale of the former homestead.

COMMENT

Rule 76

While ORS 23.160 and 29.140 state that all non-exempt property is subject to levy, the case law does not quite bear this out. For example, see Pringle v. Robertson, 258 Or. 309, 465 P.2d 223 (1970) (debtor's claim against liability insurer for wrongful failure to settle not garnishable); Atty. Gen. Op. 1948-50, p 377 (judgment not garnishable). It is submitted that the creditors were denied access to their debtor's assets in those cases because of perceived deficiencies in the machinery for reaching them. Rules 75-87 attempt to remedy these deficiencies. In other cases, however, it is believed that the court's refusal to let a creditor reach a certain asset is based on a belief that policy considerations require that the debtor be allowed to retain it. These are best regarded as judicially created exemptions and identified in D.(1)-(4). D.(1) is very widely recognized. For D.(2) and D.(3), see C.J.S. 2d Exemptions §§ 60, 61; 31 Am. Jur. 2d 119. Oregon's recognition of spendthrift trusts, and the limitation thereon, is explained in 40 Or. L. Rev. 243.

Subsection E.(2) is derived from ORS 29.178(2) adding the requirement that the creditor identify possibly applicable exemptions.

Sections F. and G. provide a procedure for claiming and resolving disputes regarding exemptions. Section F. is similar to 23.270(2). Section G. is essentially identical in effect to ORS 23.168 as regards personal property. With respect to real property, it replaces the appraisal procedure of 23.270(1). If the dispute is about the existence

or amount of a senior security interest or whether the property is the debtor's home, these are fact issues appropriately triable by the court. If the dispute is about the value of the property, the court need do nothing. If after six months the creditor assumes ownership and pays the debtor \$12,000 (Rule 80 C.(4)(b)(iv)), the debtor who claimed his equity was worth less than \$12,000 cannot complain; if the creditor does not take the property, the debtor's possession of the property will not have been disturbed. If the debtor wants to sell his home during the six-month period for less than \$12,000 and free of the creditor's lien, he may proceed under Rule 77 F.(2).

Section H. replaces ORS 23.280-.300. Subsection H.(2) makes it clear that a transferee of a homestead may clear his title of a purported lien by proving that the property was wholly exempt at the time of transfer. Cf. Credit Service Co. v. Cameron, 41 Or. App. 57 (1979).

Subsection H.(3) will become obsolete as the new Bankruptcy Code becomes fully effective.

Section I. is explained in CLE, Real Property 30-19.

ORS sections superseded: 23.168, 23.270-.300, 29.178(2).

many consumer transactions. See ORS 83.670(1), 91.745(1)(b), and 697.733(3). The language used was adapted from Cal. Code of Civ. Proc. § 1132.

Section 73 B. is new and is intended to allow confessions of judgments based upon agreement by the debtor after the amounts claimed were due and not allow confessions of judgment based upon a cognovit agreement in the original agreement or instrument creating the debt. The cognovit situation is the one most open to abuse and where due process may require some hearing or notice before entry of the judgment. Testimony received by the Council indicated that confessions of judgments based upon cognovit agreements were not used in Oregon practice, but the confession of judgment was needed to encourage some settlements when a debtor acknowledges that a debt is due but cannot pay immediately.

Sections 73 C. and D. were adapted from N.Y. C.P.L.R. § 3218.

RULE 74 (RESERVED)

RULE 75 (RESERVED)

RULE 76 (RESERVED)

RULE 77 (RESERVED)