

## Part 5 Utah Exemptions Act

### **78B-5-501 Title.**

This part is known as the "Utah Exemptions Act."

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-502 Definitions.**

As used in this part:

- (1) "Debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise.
- (2) "Dependent" means the spouse of an individual, and the grandchild or the natural or adoptive child of an individual who derives support primarily from that individual.
- (3) "Exempt" means protected, and "exemption" means protection from subjection to a judicial process to collect an unsecured debt.
- (4) "Judicial lien" means a lien on property obtained by judgment or other legal process instituted for the purpose of collecting an unsecured debt.
- (5) "Levy" means the seizure of property pursuant to any legal process issued for the purpose of collecting an unsecured debt.
- (6) "Lien" means a judicial, or statutory lien, in property securing payment of a debt or performance of an obligation.
- (7) "Liquid assets" means deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.
- (8) "Security interest" means an interest in property created by contract to secure payment or performance of an obligation.
- (9) "Statutory lien" means a lien arising by force of a statute, but does not include a security interest or a judicial lien.
- (10) "Value" means fair market value of an individual's interest in property, exclusive of valid liens.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-503 Homestead exemption -- Definitions -- Excepted obligations -- Water rights and interests -- Conveyance -- Sale and disposition -- Property right for federal tax purposes.**

(1) For purposes of this section:

- (a) "Household" means a group of persons related by blood or marriage living together in the same dwelling as an economic unit, sharing furnishings, facilities, accommodations, and expenses.
  - (b) "Mobile home" is as defined in Section 57-16-3.
  - (c) "Primary personal residence" means a dwelling or mobile home, and the land surrounding it, not exceeding one acre, as is reasonably necessary for the use of the dwelling or mobile home, in which the individual and the individual's household reside.
  - (d) "Property" means:
    - (i) a primary personal residence;
    - (ii) real property; or
    - (iii) an equitable interest in real property awarded to a person in a divorce decree by a court.
- (2)

- (a) An individual is entitled to a homestead exemption consisting of property in this state in an amount not exceeding:
    - (i) \$5,000 in value if the property consists in whole or in part of property which is not the primary personal residence of the individual; or
    - (ii) \$30,000 in value if the property claimed is the primary personal residence of the individual.
  - (b) If the property claimed as exempt is jointly owned, each joint owner is entitled to a homestead exemption; however
    - (i) for property exempt under Subsection (2)(a)(i), the maximum exemption may not exceed \$10,000 per household; or
    - (ii) for property exempt under Subsection (2)(a)(ii), the maximum exemption may not exceed \$60,000 per household.
  - (c) A person may claim a homestead exemption in either or both of the following:
    - (i) one or more parcels of real property together with appurtenances and improvements; or
    - (ii) a mobile home in which the claimant resides.
  - (d) A person may not claim a homestead exemption for property that the person acquired as a result of criminal activity.
- (3) A homestead is exempt from judicial lien and from levy, execution, or forced sale except for:
- (a) statutory liens for property taxes and assessments on the property;
  - (b) security interests in the property and judicial liens for debts created for the purchase price of the property;
  - (c) judicial liens obtained on debts created by failure to provide support or maintenance for dependent children; and
  - (d) consensual liens obtained on debts created by mutual contract.
- (4)
- (a) Except as provided in Subsection (4)(b), water rights and interests, either in the form of corporate stock or otherwise, owned by the homestead claimant are exempt from execution to the extent that those rights and interests are necessarily employed in supplying water to the homestead for domestic and irrigating purposes.
  - (b) Those water rights and interests are not exempt from calls or assessments and sale by the corporations issuing the stock.
- (5)
- (a) When a homestead is conveyed by the owner of the property, the conveyance may not subject the property to any lien to which it would not be subject in the hands of the owner.
  - (b) The proceeds of any sale, to the amount of the exemption existing at the time of sale, is exempt from levy, execution, or other process for one year after the receipt of the proceeds by the person entitled to the exemption.
- (6) The sale and disposition of one homestead does not prevent the selection or purchase of another.
- (7) For purposes of any claim or action for taxes brought by the United States Internal Revenue Service, a homestead exemption claimed on real property in this state is considered to be a property right.

Amended by Chapter 192, 2013 General Session

**78B-5-504 Declaration of homestead -- Filing -- Contents -- Failure to file -- Conveyance by married person -- No execution sale if bid less than exemption -- Redemption rights of judgment creditor.**

An individual may select and claim a homestead by complying with the following requirements:

- (1) Filing a signed and acknowledged declaration of homestead with the recorder of the county or counties in which the homestead claimant's property is located or serving a signed and acknowledged declaration of homestead upon the sheriff or other officer conducting an execution prior to the time stated in the notice of execution.
- (2) The declaration of homestead shall contain:
  - (a) a statement that the claimant is entitled to an exemption and if the claimant is married a statement that the claimant's spouse has not filed a declaration of homestead;
  - (b) a description of the property subject to the homestead;
  - (c) an estimate of the cash value of the property; and
  - (d) a statement specifying the amount of the homestead claimed and stating the name, age, and address of any spouse and dependents claimed to determine the value of the homestead.
- (3) If a declaration of homestead is not filed or served as provided in this section, title shall pass to the purchaser upon execution free and clear of all homestead rights.
- (4) If an individual is married, no conveyance of or security interest in, or contract to convey or create a security interest in property recorded as a homestead prior to the time of the conveyance, security interest, or contract is valid, unless both the husband and wife join in the execution of the conveyance, security interest, or contract.
- (5) Property that includes a homestead may not be sold at execution if there is no bid which exceeds the amount of the declared homestead exemption.
- (6) If property that includes a homestead is sold under execution, the sale is subject to redemption by the judgment debtor as provided in Rule 69C of the Utah Rules of Civil Procedure. If there is a deficiency, the property may not be subject to another execution to cover the deficiency.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-505 Property exempt from execution.**

- (1)
  - (a) An individual is entitled to exemption of the following property:
    - (i) a burial plot for the individual and the individual's family;
    - (ii) health aids reasonably necessary to enable the individual or a dependent to work or sustain health;
    - (iii) benefits the individual or the individual's dependent have received or are entitled to receive from any source because of:
      - (A) disability;
      - (B) illness; or
      - (C) unemployment;
    - (iv) benefits paid or payable for medical, surgical, or hospital care to the extent they are used by an individual or the individual's dependent to pay for that care;
    - (v) veterans benefits;
    - (vi) money or property received, and rights to receive money or property for child support;
    - (vii) money or property received, and rights to receive money or property for alimony or separate maintenance, to the extent reasonably necessary for the support of the individual and the individual's dependents;
    - (viii)
      - (A) one:
        - (I) clothes washer and dryer;
        - (II) refrigerator;
        - (III) freezer;

- (IV) stove;
- (V) microwave oven; and
- (VI) sewing machine;
- (B) all carpets in use;
- (C) provisions sufficient for 12 months actually provided for individual or family use;
- (D) all wearing apparel of every individual and dependent, not including jewelry or furs; and
- (E) all beds and bedding for every individual or dependent;
- (ix) except for works of art held by the debtor as part of a trade or business, works of art:
  - (A) depicting the debtor or the debtor and his resident family; or
  - (B) produced by the debtor or the debtor and his resident family;
- (x) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory;
- (xi) the proceeds or benefits of any life insurance contracts or policies paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, provided that the contract or policy has been owned by the debtor for a continuous unexpired period of one year;
- (xii) the proceeds or benefits of any life insurance contracts or policies paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, provided that the contract or policy has been in existence for a continuous unexpired period of one year;
- (xiii) proceeds and avails of any unexpired life insurance contracts owned by the debtor or any revocable grantor trust created by the debtor, excluding any payments made on the contract during the one year immediately preceding a creditor's levy or execution;
- (xiv) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code;
- (xv) the interest of or any money or other assets payable to an alternate payee under a qualified domestic relations order as those terms are defined in Section 414(p), Internal Revenue Code;
- (xvi) unpaid earnings of the household of the filing individual due as of the date of the filing of a bankruptcy petition in the amount of 1/24 of the Utah State annual median family income for the household size of the filing individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers for an individual whose unpaid earnings are paid more often than once a month or, if unpaid earnings are not paid more often than once a month, then in the amount of 1/12 of the Utah State annual median family income for the household size of the individual as determined by the Utah State Annual Median Family Income reported by the United States Census Bureau and as adjusted based upon the Consumer Price Index for All Urban Consumers; and
- (xvii) except for curio or relic firearms, as defined in Section 76-10-501, any three of the following:
  - (A) one handgun and ammunition for the handgun not exceeding 1,000 rounds;
  - (B) one shotgun and ammunition for the shotgun not exceeding 1,000 rounds; and
  - (C) one shoulder arm and ammunition for the shoulder arm not exceeding 1,000 rounds.

- (b) The exemption granted by Subsection (1)(a)(xiv) does not apply to:
  - (i) an alternate payee under a qualified domestic relations order, as those terms are defined in Section 414(p), Internal Revenue Code; or
  - (ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy. This may not include amounts directly rolled over from other funds which are exempt from attachment under this section.
- (2) The exemptions in Subsections (1)(a)(xi), (xii), and (xiii) do not apply to proceeds and avails of any matured or unmatured life insurance contract assigned or pledged as collateral for repayment of a loan or other legal obligation.
- (3) Disability benefits, as described in Subsection (1)(a)(iii)(A), and veterans benefits, as described in Subsection (1)(a)(v), may be garnished on behalf of a child victim if the person receiving the benefits has been convicted of a felony sex offense against a child and ordered by the convicting court to pay restitution to the victim. The exemption from execution under this section shall be reinstated upon payment of the restitution in full.
- (4) Exemptions under this section do not limit items that may be claimed as exempt under Section 78B-5-506.

Amended by Chapter 262, 2016 General Session

**78B-5-506 Value of exempt property -- Exemption of implements, professional books, tools, and motor vehicles.**

- (1) An individual is entitled to exemption of the following property up to an aggregate value of items in each subsection of \$1,000:
  - (a) sofas, chairs, and related furnishings reasonably necessary for one household;
  - (b) dining and kitchen tables and chairs reasonably necessary for one household;
  - (c) animals, books, and musical instruments, if reasonably held for the personal use of the individual or the individual's dependents; and
  - (d) heirlooms or other items of particular sentimental value to the individual.
- (2) An individual is entitled to an exemption, not exceeding \$5,000 in aggregate value, of implements, professional books, or tools of the individual's trade, including motor vehicles to which no other exemption has been applied, and that are actually used by the individual in the individual's principal business, trade, or profession.
- (3)
  - (a) As used in this Subsection (3), "motor vehicle" does not include any motor vehicle designed for or used primarily for recreational purposes, such as:
    - (i) an off-highway vehicle as defined in Section 41-22-2, except a motorcycle the individual regularly uses for daily transportation; or
    - (ii) a recreational vehicle as defined in Section 13-14-102, except a van the individual regularly uses for daily transportation.
  - (b) An individual is entitled to an exemption, not exceeding \$3,000 in value, of one motor vehicle.
- (4) This section does not affect property exempt under Section 78B-5-505.

Amended by Chapter 212, 2015 General Session

**78B-5-507 Exemption of proceeds from property sold, taken by condemnation, lost, damaged, or destroyed -- Tracing exempt property and proceeds.**

- (1)

- (a) An individual who owned property described in this Subsection (1) is entitled to an exemption of proceeds that are traceable for one year after the compensation for the property is received if:
    - (i)
      - (A) the property, or a part of the property, could have been claimed exempt under Subsection 78B-5-505(1)(a)(i) or (ii); or
      - (B) the property is personal property subject to a value limitation under Subsection 78B-5-506(1)(a), (b), or (c); and
    - (ii) the property has been:
      - (A) sold or taken by condemnation; or
      - (B) lost, damaged, or destroyed; and
      - (C) the owner has been compensated for the property.
  - (b) The exemption of proceeds under this Subsection (1) does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under Section 78B-5-503 or 78B-5-506.
- (2) Money or other property exempt under Subsection 78B-5-505(1)(a)(iii), (iv), (v), (vi), (vii), (xiii), or (xiv) remains exempt after its receipt by, and while it is in the possession of, the individual or in any other form into which it is traceable.
- (3) Money or other property and proceeds exempt under this chapter are traceable under this section by application of:
- (a) the principle of:
    - (i) first-in first-out; or
    - (ii) last-in last-out; or
  - (b) any other reasonable basis for tracing selected by the individual.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-508 Allowable claims against exempt property.**

- (1) Notwithstanding other provisions of this part, but subject to the provisions of the Utah Uniform Consumer Credit Code:
- (a) A creditor may levy against exempt property of any kind, except unemployment benefits, to enforce a claim for:
    - (i) alimony, support, or maintenance;
    - (ii) 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
    - (iii) state or local taxes.
  - (b) The only deductions that can be withheld from unemployment benefits are those listed in Section 35A-4-103.
  - (c) A creditor may levy against exempt property to enforce a claim for:
    - (i) the purchase price of the property or a loan made for the purpose of enabling an individual to purchase the specific property used for that purpose;
    - (ii) labor or materials furnished to make, repair, improve, preserve, store, or transport the specific property; and
    - (iii) a special assessment imposed to defray costs of a public improvement benefiting the property.
- (2) This section does not affect the right to enforce any statutory lien or security interest in exempt property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-509 Waiver of exemptions in favor of unsecured creditor unenforceable.**

A waiver of exemptions executed in favor of an unsecured creditor before levy on an individual's property is unenforceable.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-510 Assertion of individual's rights by spouse, dependent, or other authorized person.**

If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this part, the spouse or a dependent of the individual or any other authorized person may make the claim or objection or assert the rights provided by this part.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-511 Injunctive relief, damages, or both allowed against creditor to prevent violation of chapter -- Costs and attorney fees.**

An individual or the spouse or a dependent of the individual is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this part. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-512 Property held by joint tenants or tenants in common.**

If an individual and another own property in this state as joint tenants or tenants in common, a creditor of the individual, subject to the individual's right to claim an exemption under this part, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-513 Exemption provisions applicable in bankruptcy proceedings.**

An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in Subsection (d) of Section 522 of the Bankruptcy Reform Act (Public Law 95-598), unless the individual is a nonresident of this state and has been for the 180 days immediately preceding filing for bankruptcy.

Amended by Chapter 192, 2013 General Session