

UNITED STATES BANKRUPTCY COURT

District of Arizona



EXEMPTIONS IN ARIZONA

August 2005

IMPORTANT WARNINGS

Neither the Bankruptcy Court nor the Clerk's office can give you legal advice. This pamphlet is not intended to give you legal advice, and is not a substitute for the legal advice specific to your situation that you should obtain from a qualified attorney. To find an attorney who has been certified as a specialist in bankruptcy, you may go to the State Bar of Arizona website at www.azbar.org, click on "Legal Resources" in the top menu bar, then click on "Find a Certified Specialist," and then click on "Bankruptcy."

This pamphlet addresses only the filing of bankruptcy cases by individuals and married couples. It does not address the very different chapters, law and rules that apply to bankruptcy cases filed by corporations, partnerships and LLCs (which, for example, cannot claim any property as exempt). If a corporation, partnership or LLC is considering filing bankruptcy, it will absolutely need a lawyer because the law of this Circuit is that such organizations can be represented in court only by a lawyer, not by a nonlawyer individual such as the president of the corporation.

One of the schedules of assets and liabilities which will be filed by the individual debtor is a schedule of “exempt” property, Schedule C. Federal bankruptcy law provides that an individual debtor can protect some property from the claims of creditors either because it is exempt under federal bankruptcy law or because it is exempt under the laws of the debtor’s home state. 11 U.S.C. § 522(b). Arizona is an “opt-out” state and has taken advantage of a provision in the bankruptcy law that permits each state to adopt its own exemption law, in place of the federal exemptions. Thus, those debtors filing bankruptcy in Arizona are allowed the exemptions as set forth in the Arizona statutes and federal non-bankruptcy statutes. Check the second box on the top of Schedule C, because Arizona law does not allow debtors to claim the exemptions provided by 11 U.S.C. § 522(d).

Legal counsel should be consulted to determine what property can be claimed as exempt and how to apply the value limitations found in the Arizona statutes.

As of October 17, 2005, Arizona residents may claim the exemptions made available by Arizona law only if they were domiciled in Arizona for all of the two years before the bankruptcy filing. If the debtor was not domiciled in Arizona for all of those two years, then the debtor must claim the exemptions provided by the state where the debtor was domiciled for the greater part of the six months between two years and two and a half years before the bankruptcy filing. 11 U.S.C. § 522(b)(3)(A) (effective for cases filed after October 17, 2005). If the debtor is ineligible to claim exemptions provided by that state’s law, then the debtor may claim exemptions provided in Bankruptcy Code § 522(d), which are not listed in this pamphlet. Legal counsel must be consulted if the debtor was not an Arizona resident for all of the two years before filing bankruptcy.

Asset	Exemption Description	Statutory Provision
HOMESTEAD	<p>Interest in real property upon which debtor's house sits, condominium or cooperative, mobile home, or mobile home in which debtor resides plus the land upon which the mobile home is located in the amount of \$150,000. May not be doubled by husband and wife.</p> <p>Effective as of October 17, 2005, the amount of the homestead <i>may</i> be limited to \$125,000 if it was purchased by the debtor within 1,215 days before filing bankruptcy. See Bankruptcy Code § 522(p) and consult a lawyer if this applies to you.</p>	A.R.S. § 33-1101

<p>PERSONAL PROPERTY</p> <p><i>Husband and wife may double all personal property exemptions</i></p>	<p>Household furniture, furnishings and appliances personally used by debtor in an amount not to exceed \$4,000 (fair market value):</p> <ul style="list-style-type: none"> - one kitchen and one dining room table with four chairs each, plus one additional chair for each dependent of the debtor who resides in the household if the debtor and dependents exceed four in number - one living room couch - one living room chair, plus one additional chair for each department of the debtor who resides in the household - three living room coffee or end tables - three living room lamps - one living room carpet or rug - two beds, plus one additional bed for each dependent of the debtor who resides in the household - one bed-table, dresser and lamp for each bed allowed above - bedding for each bed allowed above - pictures, oil paintings and drawings, drawn or painted by debtor and family portraits in their necessary frames - one television set or radio or stereo - one radio alarm clock - one stove - one refrigerator - one washing machine - one clothes dryer - one vacuum cleaner 	<p>A.R.S. § 33-1123</p>
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	All food, fuel and provisions for debtor's individual or family use to last up to six months	A.R.S. § 33-1124
	All wearing apparel used primarily for personal, family or household purposes with a fair market value not to exceed \$500	A.R.S. § 33-1125(1)
	All musical instruments for debtor's individual or family use with an aggregate fair market value not to exceed \$250	A.R.S. § 33-1125(2)
	Domestic pets, horses, milk cows and poultry with a fair market value not to exceed \$500	A.R.S. § 33-1125(3)

	All engagement and wedding rings with a fair market value not to exceed \$1,000	A.R.S. § 33-1125(4)
	Debtor's library, including books, manuals, published materials and personal documents not with a fair market value not to exceed \$250	A.R.S. § 33-1125(5)
	One watch with a fair market value not to exceed \$100	A.R.S. § 33-1125(6)
	One typewriter, one bicycle, one sewing machine, a family bible, a burial plot, one shotgun or one rifle or one pistol, with a fair market value not to exceed \$500	A.R.S. § 33-1125(7)

	One car with a fair market value not to exceed \$5,000 . If debtor is physically disabled, the fair market value of the motor vehicle shall not exceed \$10,000 .	A.R.S. § 33-1125(8)
	Professional prescribed prostheses for debtor or a dependent of the debtor, including a wheelchair	A.R.S. § 33-1125(9)
MONEY, BENEFITS OR PROCEEDS	Life insurance proceeds not to exceed \$20,000 if payable to surviving spouse or child upon the life of a deceased spouse, parent or legal guardian.	A.R.S. § 33-1126(A)(1)
	Minor child's earnings unless debt to be discharged was contracted for the special benefit of the minor child.	A.R.S. § 33-1126(A)(2)

	Child support or spousal maintenance received pursuant to a court order.	A.R.S. § 33-1126(A)(3)
	All money, proceeds or benefits from employer health, accident, disability insurance benefits or similar employer benefit program.	A.R.S. § 33-1126(A)(4)
	All proceeds from destruction of or damage to exempt property and all proceeds or benefits arising from fire or other insurance on exempt property.	A.R.S. § 33-1126(A)(5)

	<p>Cash surrender value of life insurance policies where for a continuous unexpired period of two years such policies have been owned by a debtor and have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except for the amount of any premium that is avoidable by a creditor as a fraudulent transfer.</p>	<p>A.R.S. § 33-1126(A)(6) and A.R.S. § 20-1131(D) (effective April 20, 2005)</p>
	<p>An annuity contract where for a continuous unexpired period of two years such contract has been owned by a debtor and has named as beneficiary the debtor, debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except for the amount of any premium that is avoidable by a creditor as a fraudulent transfer</p>	<p>A.R.S. § 33-1126(A)(7) (effective April 20, 2005)</p>

	<p>Any claim for damages for levy upon or sale under execution of exempt personal property or for wrongful taking or detention of exempt personal property. Does not apply to annuities, nor to cash surrender values increased by premium payments made within two years in excess of the average annual premium paid during the previous three years.</p>	<p>A.R.S. § 33-1126(A)(8)</p>
	<p>Bank deposit not to exceed \$150. This sum is not exempt from normal service charges assessed by the bank holding the funds.</p>	<p>A.R.S. § 33-1126(A)(9)</p>
	<p>Benefits from ERISA-qualified retirement plan or deferred compensation plan except those amounts contributed within 120 days before a debtor files for bankruptcy. Does not apply to an alternate payee under a qualified domestic relations order. Does not apply to assets of bankruptcy proceedings filed before July 1, 1987. Not exempt from orders resulting from a judgment for child support arrearages or child support debt.</p>	<p>A.R.S. § 33-1126(B)</p>

	<p>Prepaid rent, including security deposits as provided in § 33-1321(A) for debtor's residence, not exceeding the lesser of \$1,000 or 1½ month's rent where debtor has not claimed a homestead exemption. Not exempt from orders resulting from a judgment for child support arrearages or child support debt.</p>	<p>A.R.S. § 33-1126(C)</p>
	<p>Exemptions listed in § 33-1126 are not exempt property from orders resulting from a judgment for child support arrearages or child support debt</p>	<p>A.R.S. § 33-1126(D)</p>
	<p>Group life insurance policy or proceeds</p>	<p>A.R.S. § 20-1132</p>

<p>SCHOOL EQUIPMENT</p>	<p>Library and philosophical and chemical or other apparatus used for instruction of youth in any university, college, seminary of learning, or school</p>	<p>A.R.S. § 33-1127</p>
<p>FIRE FIGHTING EQUIPMENT</p>	<p>All fire engines, hooks and ladders, with the carts, trucks, carriages, hose, buckets, implements and apparatus, all furniture and uniforms of any fire company or department formed under Arizona law</p>	<p>A.R.S. § 33-1128</p>
<p>PUBLIC PROPERTY</p>	<p>All court houses, jails, public offices, buildings, lots, grounds and personal property, the fixtures, furniture, books and papers and appurtenances belonging and pertaining to the jail and public offices belonging to any county or any city of this state and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or city or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under Arizona law</p>	<p>A.R.S. § 33-1129</p>

<p>TOOLS AND EQUIPMENT</p>	<p>Tools, equipment, instruments and books of debtor or debtor's spouse primarily used and necessary to carry on the commercial activity, trade, business or profession of debtor or debtor's spouse, with a fair market value not to exceed \$2,500. Tools does not include a motor vehicle primarily used for personal, family or household purposes such as transportation to debtor's employment.</p>	<p>A.R.S. § 33-1130(1)</p>
	<p>Farm machinery, utensils, implements of husbandry, feed, seed, grain and animals belonging to debtor, with a value not to exceed \$2,500, where debtor's primary income is derived from farming</p>	<p>A.R.S. § 33-1130(2)</p>
	<p>All arms, uniforms and accoutrements required by law to be kept by a debtor</p>	<p>A.R.S. § 33-1130(3)</p>

<p>WAGES, SALARY, COMPENSATION</p>	<p>Seventy-five percent (75%) of disposable earnings. Only one-half of disposable income may be claimed exempt in response to an order for support of any person. These exemptions do not apply in a Chapter 13 bankruptcy filing. “Disposable earnings” means that remaining portion of a debtor’s wages, salary or compensation for his personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or deferred compensation plan, after deducting from such earnings those amounts required by law to be withheld.</p>	<p>A.R.S. § 33-1131(B), (C), (D)</p>
<p>WAIVER</p>	<p>Waiver of exemption rights void and unenforceable unless specifically provided in § 33-1122 and when done with notice</p>	<p>A.R.S. § 33-1132</p>
<p>PENSIONS</p>	<p>Arizona Board of Regents members – benefits, annuities and employee and employer contributions established by the Arizona Board of Regents pursuant to A.R.S. § 15-1628</p>	<p>A.R.S. § 15-1628(I)</p>

	IRAs	<i>In re Herrscher</i> , 121 B.R. 29 (D. Ariz. 1990)
	Police Officers Pension. Exemption does not apply to court orders which are the result of a judgment for arrearages of child support or for a child support debt.	A.R.S. § 9-931
	Fire Fighters' Relief and Pension Fund and distributive portions therefrom. Exemption does not apply to court orders which are the result of a judgment for arrearages of child support or for a child support debt.	A.R.S. § 9-968
	Arizona State Retirement System – state employee's survivor benefits before retirement	A.R.S. § 38-762

	Public Safety Personnel Retirement System – benefits, employee contributions or employer contributions, including interest, earnings and all other credits	A.R.S. § 38-850(C)
	Arizona Rangers’ Pension	A.R.S. § 41-955
PUBLIC BENEFITS	Unemployment compensation benefits are exempt where proceeds are not commingled with other funds, except debts incurred for necessities furnished to the individual or his or her spouse or dependents during the time when the individual was employed	A.R.S. § 23-783
	Workers’ compensation benefits	A.R.S. § 23-1068

	Welfare assistance benefits	A.R.S. § 46-208
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Federal Non-bankruptcy Exemptions

RETIREMENT BENEFITS	Government employees' retirement payments	5 U.S.C. § 8346(a)
	Annuities paid to members of the armed services, based on retirement or retainer pay	10 U.S.C. § 1440
	Foreign service employees – Benefits, annuities, or payments to survivors of foreign service employees under the Foreign Service Retirement and Disability System	22 U.S.C. § 4060(c)

	Special pensions awarded to persons on the Army, Navy, Air Force and Coast Guard Medal of Honor roll	38 U.S.C. § 1562(c)
	Payments of benefits due or to become due under any law administered by the Veterans' Administration	38 U.S.C. § 3101
	Retirement annuities paid pursuant to the Railroad Retirement Act of 1974, 45 U.S.C. §§ 231 et seq.	45 U.S.C. § 231m
	Social security benefits	42 U.S.C. § 407

	Central Intelligence Agency retirement benefit payments	50 U.S.C. § 403
SURVIVORS' BENEFITS	Military survivor annuities paid pursuant to the Survivor Benefits Plan	10 U.S.C. § 1450(i)
	Annuities paid to survivors of a Justice or judge of the United States, a Director of the Administrative Office of the United States Courts, a Director of the Federal Judicial Center, or an administrative assistant to the Chief Justice of the United States.	28 U.S.C. § 376(n)
	Benefits paid to surviving spouses of lighthouse service personnel	33 U.S.C. § 775

DEATH & DISABILITY BENEFITS	Disability and death benefits paid to federal government employees as a result of work injuries	5 U.S.C. § 8130
	75% of earned but unpaid wages	15 U.S.C. § 1673
	Death and disability payments paid pursuant to the Longshoremen's and Harbor Workers' Compensation Act	33 U.S.C. § 916
	Seamen's clothing	46 U.S.C. § 1110

	Seamen's wages exempt except from execution other than for the support of a spouse or minor children	46 U.S.C. § 1111(a)
	Compensation paid for injury or death resulting from a war risk hazard under the War Hazards Compensation Act, 42 U.S.C. § 1701 et seq.	42 U.S.C. § 1717
MONEY, BENEFITS, PROCEEDS	A United States service member's deposits in a savings institution while the depositor is on permanent duty outside of the United States	10 U.S.C. § 1035(d)
	Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance	38 U.S.C. § 770(g)

	Benefits due or to become due under servicemen's group life insurance	38 U.S.C. § 1970(g)
	Veterans' benefits	38 U.S.C. § 5301(a)
	Exempts from offset by federal government agencies an amount not to exceed \$9,000 owing to a debtor under the Social Security Act, the Black Lung Benefits Act, or laws administered by the Railroad Retirement Board.	31 U.S.C. § 3716(c)(3)(A)(i)

	The Secretary of Treasury “shall exempt from administrative offset ... payments under means-tested programs when requested by the head of the respective agency,” and the Secretary is given discretion to exempt from administrative offset such other payments that are requested for exemption by the “head of a payment certifying agency.”	31 U.S.C. § 3716(c)(3)(B)
	Railroad workers’ unemployment insurance benefits	45 U.S.C. § 352(e)
PERSONAL PROPERTY	Personal property exempted from levy for collection of federal taxes	26 U.S.C. § 6334

	Property of organizations designated by the President of the United States as being entitled to the privileges, exemptions, and immunities provided by the International Organizations Immunities Act (22 U.S.C. §§ 288, et seq.)	28 U.S.C. §§ 1609-1611
MISCELLANEOUS	Credits given to members of the Klamath Indian tribes in Oregon by the Secretary of the Interior	25 U.S.C. §§ 543, 545
	Money accruing from any lease or sale of lands held in trust by the United States for any Indian.	25 U.S.C. § 410

	Homesteads purchased out of the trust or restricted funds of individual Indians from taxation and title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior.	25 U.S.C. § 412a
	Debts incurred by a seaman while on a voyage	46 U.S.C. § 11111