

Debt Problems

For more information call the LREP toll-free Legal Helpline
at 800-876-6657 or 505-797-6005 (Albuquerque area)
www.nmbar.org/public/LREP

If you are having financial problems and cannot make the payments on your credit card bills or other debts, you should be aware of protections that are available to you under New Mexico law before you consider filing for bankruptcy.

New Mexico Exemptions

If your creditor sues you, New Mexico law may protect some of your assets and income by making them exempt from collection to pay your debts. Each person has the following exemptions protecting property from most **judgment creditors**. A judgment creditor is someone who goes to court and gets a court order or judgment stating that you owe them money.

Homestead Exemption

Your home equity up to \$60,000 per person (\$120,000 for a married couple owning the home jointly). **THIS EXEMPTION DOES NOT APPLY WHEN SOMEONE IS COLLECTING TAXES, MORTGAGES, HOME EQUITY LOANS, OR LIENS PLACED ON THE TITLE BECAUSE OF WORK DONE ON YOUR HOME.**

In lieu of the Homestead Exemption

If you don't own a home, you may be able to exempt up to \$5,000 of personal property in addition to the standard personal property exemption listed below.

Other Exemptions

- Personal property worth \$500.
- Tools used for your work worth \$1,500.
- Motor vehicle equity valued at \$4,000 (a married couple could have one vehicle valued at \$8,000).
- Jewelry worth \$2,500.
- Clothing, furniture, books, medical-health equipment, used for the health of the person, not for his/her work, worth unlimited value.

Income and Pension Exemptions

- Pension funds, 401(k), 403(b) and pension annuities have unlimited exemptions. Most IRA funds are



exempt; however very high value IRA funds are subject to some exemption limitations.

- Life insurance proceeds, accident and health insurance benefits-unlimited value.
- Social Security benefits-unlimited value exemption. Social Security Benefits are also protected in a segregated bank account.

The above exemption rules do not apply when:

- Personal property is used as security (collateral). So, if you bought a car and it was security for the loan you used to buy it, there would be no exemption protection for the car.
- The attempt to collect is based on your owing taxes, child support, alimony or student loans.

If your only income and assets consist of items listed in the above exemptions, then you are what is commonly called "**judgment-proof**". This means that, if your creditor or a collection agency sues you, there is nothing they can take away from you. If you are judgment-proof and your creditor is not trying to collect taxes, student loans, child support or alimony, you may not need to file for bankruptcy since you are already protected under New Mexico law.

If your creditors sue you for the debt, you should file an Answer within the time indicated on the summons. **If you do not file a timely Answer you will lose the lawsuit by default and the creditor will get a judgment against you.** If the creditor gets a judgment

against you, you should complete your Claim of Exemption form and file the form with the court. If you need assistance, call LREP at 800-876-6657 or 505-797-6005.

Home Equity Loans

Sometimes people take out home equity loans to pay off creditors. **The Homestead Exemption does not apply to loans against your home.** If you borrow money on your home to pay off your credit cards and can't keep up the payments on that loan, there may be a foreclosure and you may lose your home. On the other hand, if you didn't pay the credit card debt to begin with and were sued by the creditor, you would be able to protect \$60,000 worth of equity in your home (or \$120,000 for a married couple).

Frequently Asked Questions

Q. I owe a lot of money to credit card companies. I haven't made payments for a long time and now collection agencies are contacting me. I feel bad about not making the payments, but I just don't have enough money for food and medicine. What should I do?

A. If you own only property as listed in the New Mexico exemptions and have only Social Security and retirement income, you may be judgment-proof. This means that, if your creditor or a collection agency sues you, there is nothing they can take away from you. If your creditor sues you and gets a judgment against you, you need to file a **claim of exemption** with the court. This claim of exemption lets the judge and your creditor know that your property and income are exempt from collection.

Before they sue you, collection agencies can be aggressive in trying to collect. You have rights under Federal law not to be harassed by debt collectors. Call us for information about how to assert your rights.

Q. I hear ads from debt consolidators or negotiators who say they can help me fix my debt problems. Can they help me?

A. You should be cautious of any business that offers a quick fix for debt problems. You may end up paying money to them for services that won't help your situation. It's better to get information from a lawyer who understands how the law applies to your circumstances and can give you objective advice.

Q. I have very little income and don't own any property. Car insurance is too expensive. Since I seem to be judgment-proof, would I have any problems if I drive without insurance and get into an accident?

A. The State of New Mexico requires that drivers take financial responsibility for any damage they may cause another person. So, if you're in an auto accident, are sued, and a judgment is entered against you, you must pay that judgment. If you don't, your driver's license (and sometimes your car license) may be revoked and you will not be able to drive.

Q. I think I am judgment-proof except for the equity I have in my home. My equity is over the exemption amount. Should I get a home equity loan to pay off my creditors?

A. As explained above, if you do not meet your payments on a home equity loan, you may lose your house. There is another type of loan that might help you. It's called a **reverse mortgage**. With this type of loan, you don't repay the debt with monthly payments. Instead, the loan is paid off either when you move out of the home or when you die and your estate is probated. You must be at least 62 years old to qualify for a reverse mortgage. Because your home is a valuable asset, be sure you read and understand all of the terms and costs of a reverse mortgage before you sign any papers.