

Debt Problems

For more information call the LREP toll-free Legal Helpline at 1-800-876-6657 or 505-797-6005 (Albuquerque area) or visit us online at www.nmbar.org.

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** (someone who goes to court and gets a court order or judgment 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.**



- Life, accident and health insurance benefits and life insurance proceeds.
- Personal property worth \$500.
- Tools you use for your work worth \$1,500.
- A vehicle valued at \$4,000 (a married couple could have one vehicle valued at \$8,000).
- Jewelry worth \$2,500.
- Clothing, furniture, books, and medical equipment that is used for the health of the person, not for his/her work.

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.
- Money that you put in your bank account could be **garnished** (taken directly from the bank to pay the judgment) even though it comes from Social Security, your pension or from some other exempt source. So, you may want to stop direct deposit once you have a judgment against you.

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

- Social Security, pension, 401(k), 403(b), IRA and retirement funds.

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.

DEBT PROBLEMS (Cont.)

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 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 mortgage 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 the terms and costs of a reverse mortgage before you sign any papers.

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.