

[First Reprint]

SENATE, No. 2423

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

SYNOPSIS

Concerns exemptions from bankruptcy proceedings.

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on June 25, 2020, with amendments.



1 AN ACT concerning bankruptcy exemptions ¹【, amending
2 N.J.S.2A:17-19 and N.J.S.2A:17-56】¹ and supplementing Title
3 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. ¹【(New section)】¹ a. As used in this section:

9 "Condominium" means the form of real property ownership
10 provided for under the "Condominium Act," P.L.1969, c.257
11 (C.46:8B-1 et seq.).

12 "Dwelling house" means any residential property assessed as real
13 property but shall not include a unit in a condominium or a
14 horizontal property regime.

15 "Homestead" means:

16 (1) a dwelling house and the land on which that dwelling
17 house is located which constitutes the place of the owner's domicile
18 and is owned and used by the owner as the owner's principal
19 residence;

20 (2) a condominium unit or a unit in a horizontal property regime
21 which constitutes the place of the owner's domicile and is owned
22 and used by the owner as the owner's principal residence; or

23 (3) a manufactured home as defined in section 2 of P.L.1990,
24 c.61 (C.54:4-8.58).

25 ¹"Homestead exemption" means the exemption provided by this
26 section for real property of a bankruptcy estate. Any reference to
27 the homestead exemption under this section shall be limited to this
28 definition and purpose.¹

29 "Horizontal property regime" means the form of real property
30 ownership provided for under the "Horizontal Property Act,"
31 P.L.1963, c.168 (C.46:8A-1 et seq.).

32 "Owner" means, but is not limited to, a purchaser under a deed of
33 trust, mortgage or contract

34 "Principal residence" means a homestead occupied by the owner
35 as the owner's permanent residence, as distinguished from a
36 vacation home, property owned and rented or offered for rent by the
37 owner, and other secondary real property holdings.

38 b. (1) Any resident of this State ¹who is an individual debtor in
39 a bankruptcy proceeding¹ may hold exempt from ¹【attachment,
40 execution and forced sale】 property of the bankruptcy estate¹ a
41 homestead exemption not exceeding \$340,000 in value.

42 (2) The homestead exemption shall attach to the owner's interest
43 in identifiable cash proceeds from the voluntary or involuntary sale
44 of the homestead. The homestead exemption in identifiable cash

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted June 25, 2020.

1 proceeds continues for 18 months after the date of the sale of the
2 homestead or until the person establishes a new homestead with the
3 proceeds, whichever period is shorter. Only one homestead
4 exemption at a time may be held by an owner under this **'[act]**
5 **section**¹.

6 (3) A person who is entitled to a homestead exemption shall
7 hold that exemption by operation of law and no written claim or
8 recording shall be required.

9 c. If the owner is married, **'in a civil union, or domestic**
10 **partnership.**¹ the homestead may consist of the jointly owned property
11 of the spouses **'or partners**¹ or the separate property of the spouses **'or**
12 **partners**¹. **'[Each spouse may claim a homestead exemption in an**
13 **amount not to exceed the value provided in paragraph (1) of**
14 **subsection b. of this act.]**¹

15 d. (1) A homestead exemption may be abandoned by any of
16 the following:

17 (a) a declaration of abandonment **'[or waiver]**¹;

18 (b) a transfer of the homestead property by deed of conveyance
19 or contract for conveyance; or

20 (c) a permanent removal of the owner as a resident of this State.
21 The owner may remove from the homestead for up to two years
22 without an abandonment **'[or a waiver]**¹ of the exemption.

23 (2) A declaration of abandonment **'[or waiver]**¹ shall be
24 executed by the owner and acknowledged. A declaration of
25 abandonment **'[or waiver]**¹ is effective only from the time of its
26 recording in the office of the county clerk.

27 e. The homestead exemption provided pursuant to this **'[act]**
28 **section**¹ shall not affect or apply to attachments, executions and
29 sales in connection with:

30 (1) government liens, including, but not limited to, taxes, special
31 assessments or charges for other government services that, under
32 State law, are senior liens;

33 (2) voluntarily created liens, including, but not limited to,
34 mortgages and liens secured by real property;

35 (3) liens created pursuant to the "Construction Lien Law,"
36 P.L.1993, c.318 (C.2A:44A-1 et al.); and

37 (4) court judgments concerning:

38 (a) fraud;

39 (b) fraudulent transfers or conveyances;

40 (c) duress; or

41 (d) fraud, deceit or manipulation in a fiduciary capacity.

42 **'f. Any resident of this State who is an individual debtor in a**
43 **bankruptcy proceeding may hold exempt from property of the**
44 **bankruptcy estate goods and chattels, shares of stock or interests in any**
45 **corporation and personal property of every kind, not exceeding in**
46 **value, exclusive of wearing apparel, \$10,000; all essential and ordinary**

1 household goods; any bank account valued at an amount less than
2 \$5,000; and all wearing apparel.

3 g. Any resident of this State who is an individual debtor in a
4 bankruptcy proceeding may hold exempt from property of the
5 bankruptcy estate payments made to the individual under federal law
6 relating to the national emergency declared by the President of the
7 United States under the National Emergencies Act (50 U.S.C. 1601 et
8 seq.) with respect to the coronavirus disease 2019.

9 h. On the September 30 of the third year next following the
10 effective date of this act, and on September 30 of each third year
11 thereafter, the dollar amounts in this section shall be increased,
12 effective the following January 1, by any increase during the three
13 years prior to that September 30 in the consumer price index for all
14 urban wage earners and clerical workers as calculated by the federal
15 government.

16 i. Nothing in this section shall be construed to violate any
17 provision of federal law.¹

18
19 ¹**2. N.J.S.2A:17-19 is amended to read as follows:**

20 2A:17-19. Goods and chattels, shares of stock or interests in any
21 corporation and personal property of every kind, not exceeding in
22 value, exclusive of wearing apparel, **[\$1,000.00] \$15,000, all**
23 essential and ordinary household goods, any bank account valued at
24 an amount less than \$5,000 , and all wearing apparel, the property
25 of a debtor shall be reserved, both before and after his death, for his
26 use or that of his family or his estate, and shall not be liable to be
27 seized or taken by virtue of any execution or civil process whatever,
28 issued out of any court of this State.

29 Nothing herein contained shall be deemed or held to protect from
30 sale under execution or other process any goods, chattels or
31 property, for the purchase whereof the debt or demand for which
32 the judgment on which such execution or process was issued, shall
33 have been contracted, or to apply to process issued for the
34 collection of taxes or assessments.

35 (cf: P.L.1973, c.162, s.1)¹

36
37 ¹**3. N.J.S.2A:17-56 is amended to read as follows:**

38 2A:17-56. a. In no case shall the amount specified in an
39 execution issued out of any court against the wages, debts, earnings,
40 salary, income from trust funds or profits due and owing, or which
41 may thereafter become due and owing to a judgment debtor, exceed
42 **[10%] 10 percent,** unless the income of such debtor shall exceed
43 **[250 %] 400 percent** of the poverty level for an individual taking
44 into account the size of the individual's family, in which case the
45 court out of which the execution shall issue may order a larger
46 percentage.

1 b. Notwithstanding subsection a. or any other law to the
2 contrary, for all wage execution applications filed by the State
3 pursuant to subsection b. of N.J.S.2A:17-50 after the effective date
4 of P.L.2005, c.124 (C.2A:16-11.1 et al.), the State may seek a wage
5 execution of up to **【25%】** 25 percent of the debtor's gross earnings,
6 provided that after the execution the debtor's income will not be less
7 than **【250%】** 400 percent of the poverty level for an individual
8 taking into account the size of the individual's family.

9 Nothing in this subsection shall be construed to violate any
10 provision of federal law.

11 (cf: P.L.2005, c.124, s.11)**】**¹

12

13 ¹**【4.】** 2.¹ This act shall take effect ¹**【90 days】** immediately¹
14 after enactment ¹and shall apply prospectively to proceedings
15 commenced on or after that date¹.