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Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

The effect of a valid confirmation order is to insulate the sale procedure from subsequent challenge based upon a mere irregularity in the conduct of the sale, e.g. that the conduct of the sale did not comply with AS 09.35.160. Lunsford v. Kaiser Gypsum Co., Sup. Ct. Op. No. 961 (File No. 1915), 516 P.2d 151 (1973).

Failure to list liquor license in public notice of sale and failure to sell license as directed by decree of foreclosure constitute a substantial irregularity in the

sale for purposes of this section. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Burden of proving commercial reasonableness of a sale was on the secured party, especially where the creditor purchased the property. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

This section specifies no standard for appellate review of a trial court confirmation of sale. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Chapter 38. Alaska Exemptions Act.

Section

- 10. Homestead exemption
- 15. Property exempt without limitation
- 20. Exemptions of personal property subject to value limitations
- 25. Exemption of unmaturing life insurance and annuity contracts
- 30. Exemption of earnings and liquid assets
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Section

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Cross references. — For general provisions concerning execution, see AS 09.35.

Editor's notes. — Section 1, ch. 62, SLA 1982, provides: "It is the intent of the legislature to modernize the procedures for execution on a judgment and to afford to a judgment debtor adequate protection of the debtor's personal property and income necessary to provide for the debtor's own needs and the needs of the debtor's dependents while remaining independent of further public assistance."

Section 15, ch. 62, SLA 1982, provides: "All writs of execution, claims of exemption, sales, confirmations of sales, rights of redemption and priorities of redemption issued or filed under any law repealed under this Act and in full force and effect on the effective date of this Act [August 26, 1982], shall remain in full force and effect for the term issued or until revoked, vacated, or modified under the provisions of this Act."

Sec. 09.38.010. Hort...
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(b) If property owned...
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value of multiple home...
single living unit may r...
of property exempt as a...
individual owner may...
portion of \$27,000.

(c) If property that in...
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If the individual does...
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repurchase of property...
creditor or the creditor...
property repurchased.

(d) Upon entry of the...
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a deed to the property...
convey all title of the i...
at the sale. (§ 2 ch 62)

Cross references. — F...
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Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of that individual or the dependents of that individual, but the value of the homestead exemption may not exceed \$27,000.

(b) If property owned by the entirety or in common is used by one or more individual owners or their dependents as their principal residence, each owner is entitled to a homestead exemption of that owner's interest in the property as provided in (a) of this section. The aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$27,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed that individual owner's pro rata portion of \$27,000.

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982)

Cross references. — For provisions exempting homestead held by tenants by the entirety from execution on debts to the value specified under subsection (b) of this section, see AS 34.15.140(b).

NOTES TO DECISIONS

Construction of former statute, providing for rural and urban homesteads. — See Dalton v. Interior Credit Bureau, Inc., Sup. Ct. Op. No. 2158 (File No. 4265), 615 P.2d 631 (1980).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 13.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;
- ~~(5) benefits paid or payable as a longevity bonus under AS 47.45;~~
- ~~(6) compensation or benefits paid or payable and exempt under federal law;~~
- ~~(7) liquor licenses granted under AS 04;~~
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

(c) Property of the state, a general law or home rule municipality, the Alaska State Housing Authority, the Alaska Municipal Bond Bank Authority, or other state public corporation is exempt.

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — As to the applicability of the exemptions from execution in income assignment orders for child support, see AS 09.65.132(g). For provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200. For provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e). For provisions exempting workers' compensation benefits from levy to enforce the collection of a debt, see AS 23.30.160(b). For provisions exempting amounts held in the public employee pen-

sion fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.500(b). For provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b). As to applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES

Legislative intent as to liquor licenses. — Former AS 09.35.087 (see note (a)(7) of this section) indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. Cf. Inc. v. Brown, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Sec. 09.38.020. Exemptions value limitations. (a) An individual property not to exceed an aggregate value of the following categories:

- (1) household goods and wearables of one household;
- (2) if reasonably held for the dependent, books and musical instruments;
- (3) family portraits and heirlooms of the individual.

(b) An individual is entitled to a value not exceeding \$500 in aggregate value, if held for the individual or a dependent.

(c) An individual is entitled to a value not exceeding \$500 in aggregate value, of implements, trade fixtures, and tools.

(d) An individual is entitled to a value not exceeding \$500.

(e) An individual is entitled to a value not exceeding \$10,000 in aggregate value, of a motor vehicle does not exceed \$10,000.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 09.38.020.

NOTES TO

Editor's notes. — Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09.35.080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

NOTES TO DECISIONS

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Liquor licenses not exempted from coverage under Article 9 of the

Uniform Commercial Code (AS 45.09). — See Gibson v. Alaska Alcoholic Beverage Control Bd., 377 F. Supp. 151 (D. Alas. 1974), decided under former AS 09.35.087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$1,500 chosen by the individual from the following categories of property:

(1) household goods and wearing apparel reasonably necessary for one household;

(2) if reasonably held for the personal use of the individual or a dependent, books and musical instruments; and

(3) family portraits and heirlooms of particular sentimental value to the individual.

(b) An individual is entitled to exemption of jewelry, not exceeding \$500 in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$1,400 in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$500.

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$1,500 if the full value of the motor vehicle does not exceed \$10,000. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

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Exemption statute should not be interpreted in a way which completely eliminates a debtor's exemption rights in an item of property within an exempt category because that item's value exceeds the statutory allowance. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Purpose of personal and household property exemptions. — Personal and

~~(b)~~ A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

(1) enforceable against exempt property under AS 09.38.065(a)(1);

or

(2) enforceable under an order of a court of bankruptcy under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1301 et seq.).

~~(c)~~ If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

~~(d)~~ The following property, unless exempt without limitation under AS 09.38.015, ~~upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:~~

- (1) benefits paid by reason of disability, illness, or unemployment;
- (2) money or property received for alimony or separate maintenance;
- (3) 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;
- (4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and
- (5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was with AS 01.05.031(c) and § 4, Chapter 58, redrafted by the revisor of statutes to SLA 1982. remove personal pronouns in conformity

Sec. 09.38.035. Continuing lien on wages. (a) In the case of a garnishment of earnings, when the garnishee's answer reflects that the defendant is employed by the garnishee, the judgment or balance due as reflected on the writ of garnishment shall become a lien on earnings due at the time of service of the writ to the extent that they are not exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment, except that the lien on subsequent earnings shall terminate sooner if the employment relationship is terminated, if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.

(b) A garnishee shall pay into court all nonexempt earnings of the defendant subject to the continuing lien under (a) of this section. Accrued interest on the judgment or balance due as reflected on the writ of attachment may be garnished under a supplemental writ of garnishment after the principal amount stated on the original writ of garnishment has been paid. (§ 2 ch 62 SLA 1982)

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. (§ 2 ch 62 SLA 1982)

Sec. 09.38.060. Tracing exempt property. (a) If property, or a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for ~~12~~¹⁸ months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for ~~one~~^{three} months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

~~(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first in first out, last in first out, or any other reasonable basis for tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.065. Claims enforceable against exempt property.

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) 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

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcement of certain security interests, this chapter does not affect any statutory lien or security interest in exempt property.

~~(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)~~

~~Sec 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual, (2) being used by that individual or a dependent, and (3) exempt under AS 09.38.020(a) (d).~~

~~(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce the security interest according to its terms without an order or process of court.~~

~~(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.~~

~~(d) The court, upon application of the creditor or the individual and notice to the other and after a hearing and finding of changed circumstances, may vacate or modify an order or authorization under this section. (§ 2 ch 62 SLA 1982)~~

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

~~Sec. 09.38.075. Special procedures relating to limited value exemptions. (a) Unless a creditor is seeking collection of a claim enforceable against exempt property under AS 09.38.065, the creditor may obtain a levy on an individual's property of a kind listed in AS 09.38.020 only by complying with this section. Before levy, the creditor shall file with the court out of which the process issues~~

~~(1) an affidavit stating that the creditor has reason to believe the individual has property of a kind listed in AS 09.38.020 that is not exempt, identifying the property, setting out facts constituting the basis for believing the property is not exempt; and~~

(2) a request for an order (A) of the creditor's claim as nonexempt,

(B) of the individual's right to levy by filing with the clerk of the court, but not exceeding 10 days after the written objection to the property, for the objection and of the setting its value,

(C) of the possible consequences provided in (c) of this section

(D) of the information received under (b) Notice of an order issued under this section, together with the individual. The order shall not encumbering, damaging, or otherwise affecting the property in AS 09.38.020 for 30 days. If the order reduces, extends, or otherwise affects the 30-day period.

(c) If exemption of property is granted under (b) of this section, the order shall describe the property in the amount of any indebtedness within the time allowed by the notice served under (b) of this section. If the debtor has nonexempt property, the court may order the individual to appear and disclose the location, and value of the individual's nonexempt property. If the individual waives objection to the order, the court may order the individual to appear and disclose the location, and value of the individual's nonexempt property.

(d) Except to the extent that AS 09.38.080(e) governs a procedure in respect to a claim to exempt property,

(e) Costs incurred in making a sale of property of a kind listed in AS 09.38.020 are insufficient to cover the costs of a sale of property of that kind under this section, the creditor may recover them from the individual, or other parties to the contrary.

(f) The burden of proving the exemption of the property is on the creditor. The burden of proving the preponderance of the evidence is on the creditor. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

~~(2) a request for an order by the court notifying the individual~~

~~(A) of the creditor's claim of a right to levy on the property identified as nonexempt,~~

~~(B) of the individual's right to contest the creditor's claim of a right to levy by filing with the clerk of the court, on or before a date fixed by the court, but not exceeding 15 days after the issuance of the order, a written objection to the proposed levy and a statement of the grounds for the objection and of the right to describe the property in lieu of setting its value,~~

~~(C) of the possible consequences of failure to respond to the notice as provided in (c) of this section, and~~

~~(D) of the information required by AS 09.38.085(a).~~

~~(b) Notice of an order issued in accordance with a request under (a) of this section, together with the creditor's affidavit, shall be served on the individual. The order shall restrain the individual from removing, encumbering, damaging, or disposing of any property of the kind listed in AS 09.38.020 for 30 days after receipt of the order, unless the court reduces, extends, or otherwise modifies the restraining order during the 30 day period.~~

~~(c) If exemption of property identified in a notice served on an individual under (b) of this section depends on its value, the individual may describe the property in the responsive statement and indicate the amount of any indebtedness chargeable against it. If the individual, within the time allowed by the order of the court, fails to respond to a notice served under (b) of this section that the creditor believes the debtor has nonexempt property of a kind listed under AS 09.38.020, the court may order the individual to appear and disclose the description, location, and value of the individual's property. If the individual fails to appear and disclose the information specified in the order, the individual waives objection to the creditor's levy on property of that kind.~~

~~(d) Except to the extent the procedure is prescribed by this section, AS 09.38.080(e) governs a proceeding for the determination of a contest in respect to a claim to exemption of property under AS 09.38.020.~~

~~(e) Costs incurred in making or proposing to make, a levy on property of a kind listed in AS 09.38.020 shall be paid out of the proceeds of a sale of property of that kind. If the proceeds of a sale of the property are insufficient to cover the costs incurred in proceedings commenced under this section, the creditor shall pay the costs and may not recover them from the individual, notwithstanding any agreement of the parties to the contrary.~~

~~(f) The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. (§ 2 ch 62 SLA 1982)~~

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.080. Procedures applicable to a levy on property of an individual. (a) Except in a proceeding under AS 09.38.065, a creditor shall comply with this section in obtaining a levy on property of an individual. In a proceeding to levy on personal property of a kind listed in AS 09.38.020, a creditor shall comply with this section and AS 09.38.075.

~~(b) Before, at the time of, or within three days after levy against property of an individual, the creditor shall file with the court from which the process issued an affidavit stating that the creditor has reason to believe the individual has property that is not exempt, identifying the property, and stating facts constituting the basis for that belief.~~

(c) Before, at the time of, or within three days after levy, the creditor shall serve on the individual a notice under AS 09.38.085, including a copy of the affidavit filed under (b) of this section.

(d) A bid for property that is less than the amount of the exempt value is not acceptable at a sale of property under a levy. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, the bid must exceed the amount of the indebtedness secured plus the amount of the exempt value. If sufficient bid is not received, the officer shall file a notation of the fact with the clerk of the court and return the property to the individual. The costs incurred during levy, offering the property for sale, and returning the property shall be assessed against the creditor and are not recoverable from the individual, notwithstanding any agreement of the parties to the contrary.

(e) If any question arises as to the rights of an individual entitled to an exemption under this chapter, an interested person may file with the clerk of the court from which the process issued a statement of the claim of exemptions and the question raised. The statement shall be referred to the court as soon as practicable thereafter. The court shall order that notice of a hearing be given. After hearing the matter, the court shall make findings and issue an appropriate order. The court may award to the prevailing party costs of a proceeding under this subsection.

(f) An objection to levy on the ground that the property seized is exempt must be filed with the clerk of the court within 15 days after the levy. The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. Failure to file a timely objection ^{shall} be held to be a waiver of a claim to exemption in the property, unless for cause shown the court excuses the failure. (§ 2 ch 62 SLA 1982) *Failure to file an objection prior to sale shall be an absolute waiver of exemption rights.*

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 68, SLA 1982.

Sec. 09.38.085. Contents of 09.38.075(b) and 09.38.080(c) sh

(1) the amount and date of the sale or other mode of appropriation must be filed;

(2) the name and address of the parties must be filed;

(3) the name and address of the attorney, if any;

(4) a copy of the affidavit filed;

(5) a summary statement in conformity with the laws of this state;

(6) a summary statement in conformity with the laws of this state claiming exemptions, objecting to the venue, and exercising the right to a sale before its confirmation; a

(7) a statement in lay terminology of the rights of the individual as provided in AS 09.38.085.

(b) The supreme court may prohibit the sale of property of debtors and court officers under this chapter.

(c) A notice substantially conforming to the requirements of this section, even though the notice contains a substantial prejudice to the rights of dependents of the individual debtor, shall be valid.

Editor's notes. — Subsection (c) was enacted as the second sentence of subsection (b) but was redesignated by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 09.38.090. Assertion of right to a levy on the property or to assert a claim against the spouse or a dependent of the individual

fails to select property entitled to a levy on the property or to assert a claim against the spouse or a dependent of the individual may make the claimant liable for the costs provided by this chapter. (§ 2 ch 62 SLA 1982)

(b) The court may prohibit the sale of property of debtors and court officers under this chapter.

Sec. 09.38.095. Judicial relief

dependent of the individual, or a person entitled to injunctive relief, damages, or other person to prevent or redress a claim provided in the Alaska Rules of Civil Procedure and reasonable attorney fees to the claimant.

(a) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter.

(b) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter.

(c) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.085. Contents of notice. (a) The notice required by AS ~~09.38.075(b)~~ 09.38.080(c) shall include the following information:

(1) the amount and date of the judgment to be enforced by levy and sale or other mode of appropriating the individual's property;

(2) the name and address of the clerk of the court with whom objections must be filed;

(3) the name and address of the creditor and of the creditor's attorney, if any;

~~(4) a copy of the affidavit filed under AS 09.38.080(b);~~

~~(5) a summary statement in lay terminology of the exemptions provided by the laws of this state;~~

~~(6) a summary statement in lay terminology of the procedures for claiming exemptions, objecting to a levy on exempt property, changing venue, and exercising the right to repurchase homestead property from a sale before its confirmation; and~~

~~(7) a statement in lay terminology of the rights of persons other than the individual as provided in AS 09.38.090.~~

(b) The supreme court may prescribe forms to be used by creditors, debtors and court officers under this chapter.

(c) A notice substantially complying with this section is effective even though the notice contains errors if those errors do not result in substantial prejudice to the rights of the individual debtor or of the dependents of the individual debtor. (§ 2 ch 62 SLA 1982)

Editor's notes. — Subsection (c) was enacted as the second sentence of subsection (b) but was redesignated by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.090. Assertion of rights by another. 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 chapter, the spouse or a dependent of the individual or any other person authorized by law may make the claim or objection or assert the rights provided by this chapter. (§ 2 ch 62 SLA 1982)

~~Sec. 09.38.095. Judicial relief. (a) An individual or the spouse, a dependent of the individual, or any other person authorized by law is entitled to injunctive relief, damages, or both, against a creditor or other person to prevent or redress a violation of this chapter as provided in the Alaska Rules of Civil Procedure. A court may award costs and reasonable attorney fees to a party entitled to injunctive relief or damages.~~

~~(b) For cause shown the court may relieve a person from the consequences of failing to take timely action to assert rights under this chapter. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.100. Debtor's property owned with another. (a) If an individual and another own property in this state as tenants in common or tenants by the entirety, a creditor of the individual, subject to the individual's right to claim an exemption under this chapter, 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.

~~(b) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this chapter. (§ 2 ch 62 SLA 1982)~~

Cross references. — For provisions ant after petition of tenancy, see AS making homestead held by tenants for the 34.15.140(b). entirety liable for the debts of either ten-

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a section of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

~~**Sec. 09.38.115. Adjustment of dollar amounts.** (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers 101.31 - Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.~~

~~(b) The dollar amounts change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index, is 10 percent or more, but~~

~~(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on the effective date of this chapter; and~~

~~(2) the dollar amounts do not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.~~

(c) If the index is revised, the basis of the revised index reference base index, a revised multiplying the reference base furnished by the United States is superseded, the index represented by the Bureau of Labor Statistics changes in the purchase prices of consumer goods and services.

(d) The Department of Labor

(1) on or before April 30 of each year, change the changes in dollar amounts and

(2) promptly after the change by (c) of this section, including the reference base index under the designation or title of any individual.

(e) The Department of Labor change in exemption amount for each clerk of court in each judicial district.

Sec. 09.38.120. Protection of nonresidents. (a) Residents and nonresidents provided under this chapter. (b) The term "resident" means a person present in this state and who is domiciled in Alaska. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section redrafted by the revisor of statutes to remove personal pronouns in conflict with the

Sec. 09.38.500. Definitions. In this context otherwise requires,

(1) "burial plot" means a designated area in a cemetery for the interment of human remains and which is used for cemetery purposes by the state;

(2) "debt" means a legally enforceable obligation of an individual, whether or not secured;

(3) "dependent" means an individual who is dependent on another individual;

(4) "earnings" means money received for services and denominated as such;

(5) "exempt" means protected from subjection to process or

~~(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.~~

~~(d) The Department of Labor shall adopt a regulation announcing~~
~~(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and~~

~~(2) promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.~~

~~(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.120. Protection of property of residents and nonresidents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4. Chapter 58, SLA 1982.

Sec. 09.38.500. Definitions. As used in this chapter, unless the context otherwise requires,

(1) "burial plot" means a parcel of real estate used for burial of human remains and which is located within an area designated for cemetery purposes by the state or a general law or home rule municipality;

(2) "debt" means a legally enforceable monetary obligation or liability of an individual, whether arising out of contract, tort, or otherwise;

(3) "dependent" means an individual who derives support primarily from another individual;

(4) "earnings" means money received by an individual for personal services and denominated as wages, salary, commissions, or otherwise;

(5) "exempt" means protected, and "exemption" means protection, from subjection to process or a proceeding to collect an unsecured debt;

(6) "household goods" includes those items that make a residence habitable according to modern standards;

(7) "judicial lien" means a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding instituted for the purpose of collecting an unsecured debt;

(8) "levy" means the seizure of property under a writ of attachment, garnishment, execution, or any similar legal or equitable process issued for the purpose of collecting an unsecured debt;

(9) "lien" means a security interest, or a judicial, statutory, or common-law lien, or any other interest in property securing payment of a debt or performance of an obligation;

(10) "principal residence" means the actual dwelling place of an individual or dependents of the individual and includes real and personal property;

(11) "security interest" means an interest in property created by contract to secure payment or performance of an obligation;

(12) "serve notice" means to give the person to be served a written personal notice in the same manner a summons in a civil action is served, or to mail the notice to the person's last known address by first-class mail and by using a form of mail requiring a signed receipt;

(13) "statutory lien" means a lien arising by force of a statute under specified circumstances or conditions, but does not include a security interest;

(14) "value" means fair market value of an individual's interest in property, exclusive of liens of record;

(15) "wearing apparel" means clothing and garments intended and adapted to be worn on the person to protect the person against the elements or to provide personal comfort or decency, or serving to ornament the person but does not include jewelry. (§ 2 ch 62 SLA 1982; AS 09.38.125)

Editor's notes. — This section was enacted as AS 09.38.125 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.510. Short title. This chapter may be cited as the Alaska Exemptions Act. (§ 2 ch 62 SLA 1982; AS 09.38.130)

Editor's notes. — This section was enacted as AS 09.38.130 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Chapter 40

Ar

Sec. 09.40.010. Action

N

Applied in Aleut Corp. v. Al Regional Corp., 424 F. Supp. 39 (1976).

Sec. 09.40.025. Appoi process.

Stated in Cowles v. Wolfe, S No. 2512 (File No. 5731), 645 (1982).

Sec. 09.40.030. Prop

Cross references. — For ex liquor license from attachme 09.35.087.

Sec. 09.40.040. Third

Applied in Pennington v. Liab. Assurance Corp., Sup. C

Sec. 09.40.120. Arre

Applied in Aleut Corp. v. Regional Corp., 424 F. Supp. 3 (1976).

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 326
 Title: Exemptions
 Sponsor: Bussell
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545
 Division: Alaska Court System Date: 4/21/83

Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

I. REQUEST

Bill/Resolution No.: HB 326
 Title: "...Alaska Exemption Act."
 Sponsor: Repr. Bussell
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 15, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 15, 1983

Distribution:

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- Copy to Sponsor
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HB 326
 Fiscal Note
 Analysis

This bill deals with commercial transactions, which are primarily between private parties. Because the number of these matters involving the Department of Law is relatively insignificant, there will not be a fiscal impact.