

## **EXEMPT PROPERTY UNDER TEXAS LAW**

The most common exemptions under Texas law are collected in Chapter 41 (real property) and Chapter 42 (personal property) of the Texas Property Code. Other exemptions for personal property are scattered throughout the Texas statutes.

### **Real Property Exemptions: Chapter 41 of the Property Code**

Texas exempts only two types of real property: (1) one or more cemetery plots; and (2) a homestead. Texas Property Code § 41.001(a).

#### *Urban and Rural Homesteads*

Either families or single adults may claim homesteads. The homestead may be either rural or urban. Texas Property Code § 41.002(a). An urban homestead may be used as a home and business. The size of the urban homestead is the same for families or single adults: it may consist of up to ten acres on one or more contiguous lots, including any improvements on the land. Texas Property Code § 41.002(a). A rural homestead for a family is limited to 200 acres and includes any improvements on the land. A rural homestead for a single person is limited to 100 acres and any improvements on the land. Texas Property Code § 41.002(b).

#### *Encumbrances on Homesteads*

Although homesteads are generally exempt from creditors' claims, they are subject to certain liens. The most common liens to which homesteads are subject are the following: (1) a lien for purchase money; (2) a lien for taxes due on the property; and (3) a lien for work and materials furnished in building improvements on the property, but only if the work and labor were furnished pursuant to a written contract. Texas Property Code § 41.001(b).

#### *Proceeds from the Sale of a Homestead*

If a person sells the homestead, the proceeds from the sale are exempt for six months after the sale. Texas Property Code § 41.001(c).

### **Personal Property Exemptions under Chapter 42 of the Property Code**

Chapter 42 of the Property Code contains two different types of exemptions for personal property: (a) an "aggregate" exemption for certain kinds of personal property, limited by the combined value of the property; and (2) unlimited exemptions for other kinds of personal property.

*Aggregate Exemption Authorized by Section 42.001(a)*

Under section 42.001(a) of the Texas Property Code, families and single adults may exempt certain kinds of personal property from the claims of creditors as long as the combined fair market value of the property does not exceed (1) \$100,000 for a family, or (2) \$50,000 for a single adult. Generally, a debtor may pick and choose what particular items of property to include within the aggregate exemption as long as the items fall within the specified categories and the total value of the property does not exceed the \$100,000 or \$50,000 cap. If the combined value of the items in the different categories exceeds the value cap, the debtor must designate which items to exempt. Texas Property Code § 42.003. (For bankruptcy proceedings filed prior to September 1, 2015, the maximum value for a family is \$60,000. For a single person, the maximum value is \$30,000.)

*Types of Personal Property That May Be Included in the  
Aggregate Exemption: Section 42.002(a) of the Property Code*

With one exception, the kinds of personal property that may be included in the aggregate exemption are listed in section 42.002(a) of the Property Code. The kinds of personal property listed in section 42.002(a) that may be included within the aggregate exemption are as follows:

1. home furnishings and family heirlooms;
2. provisions for consumption;
3. farming or ranching vehicles and implements;
4. tools, equipment, books and apparatus, including boats and motor vehicles used in a trade or profession;
5. clothes;
6. jewelry, as long as it does not exceed 25% of the value of the aggregate exemption;
7. two firearms;
8. athletic and sporting equipment, including bicycles;
9. a motor vehicle for each member of a family or single adult who (A) holds a driver's license, or (B) does not hold a driver's license but relies on another person to operate the vehicle for the unlicensed person;
10. the following animals, including forage on hand for their consumption: (A) horses, mules, or donkeys, including a saddle, blanket and bridle for each one; (B) 12 head of cattle; (C) 60 head of other types of livestock; and (D) 120 fowl;
11. household pets.

In addition to the kinds of personal property listed in section 42.002(a), a debtor may also include within the aggregate exemption unpaid commissions for personal services as long as the amount does not exceed 25% of the value cap. Texas Property Code § 42.001(d). "Commissions for personal services" are compensation owed to an employee. They do not include compensation owed to independent contractors.

### *Unlimited Exemptions Under Property Code Section 42.001(b)*

In addition to the kinds of personal property that may be exempted under the aggregate exemption of section 42.001(a), a debtor may also exempt, without regard to value, the following kinds of property:

1. current wages for personal services;
2. professionally prescribed health aids of the debtor or a dependent of the debtor;
3. alimony, support, or separate maintenance received or to be received by the debtor for the debtor's support or a dependent of the debtor; and
4. a bible or similar religious book, unless the book is seized by a landlord with a contractual or statutory lien.

“Current wages” are wages owed to an employee. Once the wages have been paid to the employee, they are no longer “current wages” for purposes of section 42.001(a), and they are no longer exempt.

### *Savings Plans Under Section 42.0021*

In addition to the exemptions under sections 42.001 and 42.002, a debtor is entitled to an exemption for his or her rights in a variety of savings plans, contracts, annuities, and accounts. Texas Property Code § 42.0021(a). Although there are restrictions on whether particular plans qualify, the exemption includes the debtor's right to payments under, or the right to assets held in, stock bonus plans, various pension plans, various annuities, deferred compensation plans, profit-sharing plans, health savings accounts, and various individual retirement plans and accounts, including Roth IRAs. Section 42.0021(a). If the debtor receives distributions from these plans, the distributions are exempt from seizure for 60 days if the distributions qualify as nontaxable rollover contributions. Section 42.0021 (c). For bankruptcy proceedings filed prior to September 1, 2015, Roth IRAs are not exempt.)

### *“Exempt” Property May Nonetheless Be Subject to Certain Liens*

Even though section 42.001 of the Property Code declares that certain property is exempt, section 42.001 does not prevent seizure of that property by a secured creditor with a contractual landlord's lien or other security in the property. Texas Property Code § 42.001(c). Personal property also may be encumbered by a security interest under section 9.203 of the Uniform Commercial Code, a lien under Subchapter F of Chapter 301 of the Transportation Code, or a lien fixed by other law. Texas Property Code § 42.002(b). The exemptions under sections 42.001, 42.002, and 42.0021 do not apply to a child support lien established under the Family Code. Texas Property Code § 42.005. Likewise, although unemployment benefits are generally exempt, a portion of those benefits may be subject to child support obligations. Texas Labor Code § 207.093. Property exempt from forced sale is still subject to an agricultural landlord's lien on agricultural products, animals, and tools under Subchapter A of Chapter 54 of the Property Code. Texas Property Code § 54.002.

### *Exemption for College Savings Plans*

A debtor is entitled to an exemption for college savings plans authorized under the following statutes: (1) any plan established by Subchapter F of Chapter 54 of the Education Code; (2) any plan established by Subchapter G of Chapter 54 of the Education Code; and (3) any qualified tuition program of any state that satisfies the requirements of section 529 of the Internal Revenue Code. Texas Property Code § 42.0022. Chapter 54 of the Education Code creates three specific exemptions. First, Subchapter F exempts prepaid tuition contracts under the Texas Tomorrow Constitutional Trust Fund. Section 54.639. Second, Subchapter G exempts savings trust accounts under the Higher Education Savings Plan. Section 54.709. And third, Subchapter H exempts prepaid tuition contracts under the Texas Tomorrow Fund II. Section 54.769.

### **Personal Property Exemptions Under Other Statutes**

As noted earlier, the most common personal property exemptions are listed in chapter 42 of the Property Code. The Texas legislature, however, has enacted a patchwork system of exemptions for moneys received from various sources. Most of these other exemptions fall into two broad categories: (1) retirement plans and other benefits for public employees; and (2) public or private moneys paid to people in need or for other humanitarian purposes. Most of these exemptions are too complex to explain in detail, so only the title of the program and its citation are listed.

#### *Public Employee Benefit Programs: Municipal Employees*

Texas Municipal Retirement System. Texas Government Code §§ 851.006, 855.608.

Municipal Retirement System in Municipalities of 460,000 to 500,000 [now more than 760,000 but less than 860,000]. Texas Revised Civil Statutes art. 6243n § 11(d), (e).

Municipal Pension System in Cities of 1,500,000 or more. Texas Revised Civil Statutes art. 6243h §§ 22(a), 24(j).

#### *Public Employee Benefit Programs: County Employees*

Texas County and District Retirement System. Texas Government Code § 841.006.

#### *Public Employee Benefit Programs: State Employees*

Employees Retirement System of Texas. Texas Government Code § 811.005.

Texas Employees Group Benefits Act. Texas Insurance Code § 1551.011.

*Public Employee Benefit Programs: Education System Employees*

Teacher Retirement System of Texas. Texas Government Code § 821.005.

Texas Public School Retired Employees Group Benefits Act. Texas Insurance Code § 1575.006.

State University Employees Uniform Insurance Benefits Act. Texas Insurance Code § 1601.008.

Texas School Employees Uniform Group Health Coverage Act. Texas Insurance Code § 1579.006.

*Public Employee Benefit Programs: Judicial System Employees*

Judicial Retirement System of Texas Plan One. Texas Government Code § 831.004.

Judicial Retirement System of Texas Plan Two. Texas Government Code § 836.004.

*Public Employee Benefit Programs: Police Officers and Fire Fighters*

Police Officers' Pension System in Cities of 50,000 to 400,000. Texas Revised Civil Statutes art. 6243j § 20.

Police Retirement Fund in Municipalities of 50,000 to 400,000. Texas Revised Civil Statutes art. 6243p § 2.08(b), (c).

Police Officers Pension System in Certain Municipalities [with populations of 1.5 million or more]. Texas Revised Civil Statutes art. 6243g-4 §§ 22(a), 24(j).

Policemen's Relief and Retirement Fund [for cities with populations of 290,000 or more]. Texas Revised Civil Statutes art. 6243d-1 § 17.

Firefighters Relief and Retirement Fund in Cities of 450,000 to 500,000 [now more than 750,000 but less than 850,000]. Texas Revised Civil Statutes art. 6243e.1 § 1.04.

Police Officers Retirement System in Municipalities of 460,000 to 500,000 [now more than 750,000 but less than 850,000]. Texas Revised Civil Statutes art. 6243n-1 § 9.01 (c), (d).

Firefighters' Relief and Retirement Fund in Municipalities of at least 1,600,000 Population. Texas Revised Civil Statutes art. 6243e.2(1) § 15.

Texas Local Fire Fighters Retirement Act. Texas Revised Civil Statutes art. 6243e § 5.

Pension System for Police Officers and Firefighters in Certain Cities. Texas Revised Civil Statutes

art. 6243a-1 § 8.03(a).

Firemen and Policemen Pension Fund in Cities of 500,000 to 600,000 [now more than 600,000 but less than 700,000]. Texas Revised Civil Statutes art. 6243b § 15.

Police and Firefighter Retirement System in Municipalities of 750,000 to 1,000,000. Texas Revised Civil Statutes art. 6243o § 1.05(b).

Retirement Health Trust for Firefighters and Police Officers [in municipalities with populations of 1.3 to 1.5 million]. Texas Revised Civil Statutes art. 6243q § 1.05.

Texas Emergency Services Retirement System. Texas Government Code § 861.004.

#### *Humanitarian Exemptions*

Financial Assistance to Survivors of Law Enforcement Officers, Firefighters, and Others. Texas Government Code § 615.005.

Financial Assistance and Service Programs (Aid to Families with Dependent Children). Texas Human Resources Code § 31.040.

Medical Assistance Program. Texas Human Resources Code § 32.036.

Crime Victims' Compensation Act. Texas Code of Criminal Procedure art. 56.49.

Worker's Compensation Benefits. Texas Labor Code § 408.201.

Unemployment Benefits. Texas Labor Code § 207.075.

Benefits Provided by Fraternal Benefit Societies. Texas Insurance Code § 885.316.

Church Benefit Plans. Texas Business Organizations Code § 22.407.

Exemptions for Certain Insurance and Annuity Benefits. Texas Insurance Code § 1108.051.

#### *Miscellaneous Exemptions*

Money deposited with the Texas Comptroller in lieu of purchasing automobile insurance is exempt from claims unless those claims arise out of the ownership, maintenance, use, or operation of a motor vehicle. Texas Transportation Code § 601.122

Membership fees in a cooperative association up to \$50 are exempt. Texas Business Organizations Code § 251.204.

Permits and licenses for the manufacture or sale of alcoholic beverages are considered to be privileges, not property, so they are not subject to execution. Texas Alcoholic Beverage Code §§ 11.03, 61.02.