

2015 HOUSE JUDICIARY

HB 1086

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1086
1/14/2015
21954

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to absolute exemptions from process, levy, or sale.

Minutes:

Acting Chairman Rep. Kretschmar: Opened the hearing on HB 1086 with testimony in support. We are going to hold this bill and reschedule it since Chairman K.Koppelman and Rep. L. Klemin both a sick and they are sponsors on this bill.

Hearing closed.

:

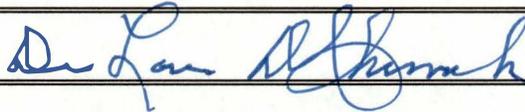
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1086
1/19/2015
22115

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to absolute exemptions from processing, levy, or sale.

Minutes:

Testimony #1

Chairman K.Koppelman: Reopened the hearing on HB 1086.

Rep. L. Klemin: (See testimony #1) (:32-5:50)

Chairman K.Koppelman: Is there language in the Homestead Exemption that would lead you to believe if a trailer home was your domicile that it could be claimed under the Homestead Exemption without going to the trailer exemption?

Rep. L. Klemin: It would be depended upon whether that mobile home was affixed to the reral estate then you would use the Homestead Exemption.

Opposition: None

Hearing Closed.

Motion Made Do Pass by Rep. Maragos; Seconded by Rep. K. Wallman:

Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. D. Larson:

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1086**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. K. Wallman

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. D. Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1086: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1086

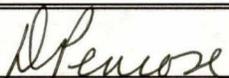
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1086
3/4/2015
24299

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on HB 1086.

Rep. Lawrence Klemin: Sponsor, support (see attached 1). In a bankruptcy proceeding, a debtor cannot take the mobile home exemption of \$100,000 plus the \$7,500 payment in lieu of. The bill changes that to either the \$100,000 mobile home exemption or the in lieu of payment of \$7,500.00, but not both.

Ch. Hogue: When we raised the homestead from \$80,000 to \$100,000, did we also raise the \$7500 in lieu of or was it always the \$7,500.00.

Rep. Klemin: I'm not sure about that. I think we probably did raise the in lieu amount.

Ch. Hogue: Do you recall which session we went from \$80,000 to \$100,000.

Rep. Klemin: I do not.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1086
3/10/2015
24540

- Subcommittee
 Conference Committee

Committee Clerk Signature

D. Penrose

Minutes:

1

Ch. Hogue: Let's take a look at HB 1086. This is the bill that Rep. Klemin testified on, relating to clarifying the exemptions that a person claims when there is a judgment against them and the judgment creditor is trying to levy on their assets. The bill says if you claim the Homestead exemption and you live in a mobile home, you would not be able to claim the general \$7,500.00 exemption. You can't claim both the homestead exemption and the in lieu of payment of \$7,500.00, which is a substitute for the homestead exemption. If your assets are being levied on, you can claim a \$100,000 in your house of equity, you can protect that against your creditors under the homestead exemption. We allow people in mobile homes to make the same claim and this \$7,500.00 exemption we give them is in lieu of a homestead for people who don't own a home. The last time this in lieu of payment was increased was 1981 and it hasn't been raised since. I thought that as long as we are clarifying this, we should probably raise the exemption, the in lieu of exemption. We raised the homestead from \$80,000 to \$100,000 and we didn't raise the in lieu of homestead exemption. It's been at \$7,500.00 for 30+ years. I thought we should raise that from \$7,500 to \$10,000. What are the committee's wishes?

Sen. Grabinger: I move the amendments, 15.0306.01001, title 02000 (#1)

Sen. Armstrong: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended.

Senate Judiciary Committee
HB 1086
3/10/2015
Page 2

Sen. Luick: Second the motion.

Ch. Hogue: The clerk will call the roll.

6 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Ch. Hogue

March 10, 2015

✓
3/10/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1086

Page 1, line 1, after "28-22-02" insert "and subsection 1 of section 28-22-03.1"

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. In lieu of the homestead exemption, up to ~~seventen~~ seventeen thousand ~~five hundred~~ dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02."

Renumber accordingly

Date: 3/10/2015
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1086

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.0306.01001

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen. Grabinger Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Motion Carried

Date: 3/10/2015

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1086

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation:
- Adopt Amendment
 - Do Pass Do Not Pass Without Committee Recommendation
 - As Amended Rerefer to Appropriations
 - Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Luick

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Hogue

REPORT OF STANDING COMMITTEE

HB 1086: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Sixth order on the calendar.

Page 1, line 1, after "28-22-02" insert "and subsection 1 of section 28-22-03.1"

Page 1, after line 12, insert:

"SECTION 2. AMENDMENT. Subsection 1 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. In lieu of the homestead exemption, up to ~~seventen~~ ^{seventen} thousand ~~five~~ hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02."

Renumber accordingly

2015 TESTIMONY

HB 1086

#1
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1-19-15
pg 1

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE JUDICIARY COMMITTEE
HOUSE BILL NO. 1086
JANUARY 19, 2015**

Current law provides that a debtor can claim a homestead exemption of \$100,000, or, in lieu of the homestead exemption, \$7,500. Current law also allows a debtor to claim a mobile home exemption of \$100,000, and the additional \$7,500. HB1086 amends the law to provide that a debtor can get either the mobile home exemption or the \$7,500 additional exemption, but not both. This equalizes the treatment of the homestead exemption and the mobile home exemption for state law purposes and for federal bankruptcy purposes.

28-22-02. Absolute exemption.

The property mentioned in this section is absolutely exempt from all process, levy, or sale:

7. The homestead as created, defined, and limited by law. [See 47-18-01 below- \$100,000]

10. In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption [\$100,000], any houstrailer or mobile home occupied as a residence by the debtor or the debtors family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead. [HB1086: The exemption in this subsection is not available if the debtor has chosen the exemption provided for under subsection 1 of section 28 - 22 - 03.1.]

28-22-03.1. Additional exemptions for residents.

In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. *This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.*

47-18-01. Homestead exemption Area and value.

The homestead of any individual, whether married or unmarried, residing in this state consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed *one hundred thousand dollars in value, over and above liens or encumbrances or both*. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. The homestead may not embrace different lots or tracts of land unless the lots or tracts of land are contiguous. For purposes of this section, contiguous means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

#1
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1-19-15
Pg 2

BANKRUPTCY TRUSTEE

KIP M. KALER

3429 Interstate Blvd
PO Box 9231
Fargo, ND 58106
Telephone: 701-232-8757
Facsimile: 701-232-0624

VIA EMAIL ONLY lklemin@nd.gov

January 9, 2015

To: House Judiciary Committee
c/o Lawrence R. Klemin
District 47, Bismarck

Re: NDCC §28-22-02(10)
Hearing HB1086 Wed 1/14 9:00 a.m.

Greetings, House Judiciary Committee. I am making this presentation in support of this House bill as it concerns exemptions allowed owners of mobile homes.

In North Dakota, a family or individual is generally allowed a homestead exemption [allows up to \$100,000], a mobile home exemption [allows up to the same limit as the homestead], or an "in lieu of homestead" exemption [allows up to \$7,500 in any kind of property], and then a personal exemption of \$3,750 for an individual and \$7,500 for a family. NDCC 28-22-02(10) allows an individual or family to exempt and retain from their creditors, a mobile home [with a value up to the same as a homestead]. Generally exemption of a mobile home might be perceived as a homestead exemption and the mobile home owner would not be entitled to use the "in lieu of homestead" additional exemption. The North Dakota Bankruptcy Court has recently issued a decision concluding that a mobile home owner is entitled to exempt the mobile home and utilize the "in lieu of homestead" exemption. That bankruptcy court decision is attached.

The bankruptcy court interpreted NDCC 28-22-1-02(10) as allowing an individual/family to exempt a mobile home and use the "in lieu of homestead" exemption (\$7,500 each). This interpretation gives an individual/family that resides in a mobile home as their primary residence, \$7,500 per individual more in exemptions than the same individual would have if they lived in a "non-mobile house" type home. This is a "final" decision (this has not been appealed) and is the law in North Dakota in the bankruptcy court, unless someone would choose to appeal another similar decision, or the law is changed. The fact pattern is readily capable of repetition.

We assume that the legislature did not intend to allow mobile home residents the additional "in lieu of homestead" exemption not available to non-mobile home owners/residents. The essence of the bankruptcy court's interpretation of the current mobile home exemption is the owner can utilize the mobile home exemption and the "in lieu of homestead [additional \$7,500]", in addition to the other personal exemptions.

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pg 3

Lawrence R. Klemin
January 9, 2015
Page two

Gene Doeling and I are attorneys and partners in a law firm, but also bankruptcy trustees. As trustees it is our duty to administrate bankruptcy cases filed and collect non-exempt assets for distribution to creditors. In this instance, we felt that the legislature may not have intended to allow mobile home owner/residents an additional exemption not available to owners of other homes, and that we should bring this to your attention.

If it is the intention of the legislature to allow mobile home owners the exemption for mobile homes and the "in lieu of homestead" exemption [additional \$7,500], you need do nothing. However, if you do not intend to allow mobile home owners to exempt their mobile homes and use the "in lieu of homestead" exemption, you might consider changing the law as drafted in HB1086.

If you need additional information or help, please contact me.

Sincerely,



Kip M. Kaler
Bankruptcy Trustee

Enc.

#1
HB1086
1-19-15
rg 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In re: Bankruptcy No. 11-30782
Chapter 7
John J. Vranicar and Katie D. Vranicar,
Debtors.

_____ /

MEMORANDUM AND ORDER

The Chapter 7 Trustee assigned to this case, Gene W. Doeling, filed an Objection to Claim of Exemptions. The Court heard the matter on November 15, 2011.

Debtors John J. Vranicar and Katie D. Vranicar filed a voluntary chapter 7 bankruptcy petition on August 9, 2011. On Schedule C, Debtors claimed \$25,285 in equity in a mobile home as exempt under N.D.C.C. § 28-22-02(10). They also claimed \$779.79 in equity in other assets as exempt under N.D.C.C. § 28-22-03.1(1).

Section 541(a)(1) of the Bankruptcy Code provides that, at the commencement of a case, the bankruptcy estate includes “all legal or equitable interests of the debtor in property.” 11 U.S.C. § 541(a)(1). The Code allows debtors to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b)(1). “Exempt property is excluded from property of the estate available to satisfy debts.” Benn v. Cole (In re Benn), 491 F.3d 811, 813 (8th Cir. 2007). Section 522(b)(2) authorizes states to opt out of the federal scheme of property exemptions enumerated in section 522(d). Exercising this grant of authority, North Dakota enacted its own set of property exemptions for purposes of bankruptcy, limiting its residents to claiming the state exemptions rather than the federal exemptions. See N.D.C.C. § 28-22-17. Exemption statutes are construed liberally in favor of the debtor. Wallerstedt v. Sosne (In re Wallerstedt), 930 F.2d 630, 631 (8th Cir. 1991). The objecting

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party has the burden of showing that an exemption is not properly claimed. Fed. R. Bankr. P. 4003(c).

The Trustee objects to Debtors' claimed exemptions, arguing that exemptions under N.D.C.C. §§ 28-22-02(10) and 28-22-03.1(1) are mutually exclusive. Section 28-22-02(10) provides the following absolute exemption:

In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

N.D.C.C. § 28-22-02(10).¹ Debtors exempted \$25,285 in equity in a mobile home under section 28-22-02(10).

Debtors also exempted equity in other assets under section 28-22-03.1(1), which provides:

In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.

¹ Section 28-22-02(10) was amended in 2009. Prior to amendment, it provided:

Any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-11.

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N.D.C.C. § 28-22-03.1(1). Section 28-22-03.1(1) expressly provides that the \$7,500 exemption is not available if the claimant has chosen the homestead exemption provided under section 28-22-02(7). Claiming a homestead exemption is the only circumstance specified by section 28-22-03.1(1) that prohibits a debtor from claiming the \$7,500 exemption in this subsection. Significantly, the relevant statutes do not provide that a debtor who claims a mobile home exemption is precluded from claiming the \$7,500 exemption in section 28-22-03.1(1). Debtors did not claim the homestead exemption provided under section 28-22-02(7); but rather, they claimed the mobile home exemption under section 28-22-02(10).

“Generally, the law is what the Legislature says, not what is unsaid.” Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). ““It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed.”” Id. (citation omitted). Likewise, the Legislature’s inclusion of certain exceptions to a general rule is the implicit exclusion of other exceptions.² See Hartford Underwriters Ins. Co. v. Magna Bank, N.A. (In re Hen House Interstate, Inc.), 177 F.3d 719, 723 n.4 (8th Cir. 1999); see also Little, 497 N.W.2d at 705 (“the mention of one thing implies the exclusion of another”) (citation omitted). Had the North Dakota Legislature intended a debtor claiming an exemption under section 28-22-02(10) to be precluded from claiming an exemption under section

² This principle of statutory construction is often referenced in caselaw as *expressio unius est exclusio alterius*.

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HB1086
1-19-15
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28-22-03.1(1), it would have said so, as it did with debtors claiming an exemption under section 28-22-02(7).³

The plain meaning of section 28-22-03.1(1) is that it is not mutually exclusive with section 28-22-02(10). The Trustee failed to meet his burden of showing that Debtors' exemptions are not properly claimed. His objection is OVERRULED.

SO ORDERED.

Dated this February 2, 2012.

/s/ SHON HASTINGS
SHON HASTINGS, JUDGE
UNITED STATES BANKRUPTCY COURT

³ Given the plain language of the North Dakota exemption statutes, it is not necessary or appropriate to consider legislative history. See Little, 497 N.W.2d at 705; N.D.C.C. § 1-02-05 (“When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY COMMITTEE
HOUSE BILL NO. 1086
MARCH 4, 2015

Current law provides that a debtor can claim a homestead exemption of \$100,000, or, in lieu of the homestead exemption, \$7,500. Current law also allows a debtor to claim a mobile home exemption of \$100,000, and the additional \$7,500. HB1086 amends the law to provide that a debtor can get either the mobile home exemption or the \$7,500 additional exemption, but not both. This equalizes the treatment of the homestead exemption and the mobile home exemption for state law purposes and for federal bankruptcy purposes.

28-22-02. Absolute exemption.

The property mentioned in this section is absolutely exempt from all process, levy, or sale:

7. The homestead as created, defined, and limited by law. [See 47-18-01 below- \$100,000]

10. In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption [\$100,000], any house trailer or mobile home occupied as a residence by the debtor or the debtors family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead. [HB1086: The exemption in this subsection is not available if the debtor has chosen the exemption provided for under subsection 1 of section 28 - 22 - 03.1.]

28-22-03.1. Additional exemptions for residents.

In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. *This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.*

47-18-01. Homestead exemption Area and value.

The homestead of any individual, whether married or unmarried, residing in this state consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed *one hundred thousand dollars in value, over and above liens or encumbrances or both*. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. The homestead may not embrace different lots or tracts of land unless the lots or tracts of land are contiguous. For purposes of this section, contiguous means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

BANKRUPTCY TRUSTEE

KIP M. KALER

3429 Interstate Blvd
PO Box 9231
Fargo, ND 58106
Telephone: 701-232-8757
Facsimile: 701-232-0624

VIA EMAIL ONLY lklemin@nd.gov

January 9, 2015

To: House Judiciary Committee
c/o Lawrence R. Klemin
District 47, Bismarck

Re: NDCC §28-22-02(10)
Hearing HB1086 Wed 1/14 9:00 a.m.

Greetings, House Judiciary Committee. I am making this presentation in support of this House bill as it concerns exemptions allowed owners of mobile homes.

In North Dakota, a family or individual is generally allowed a homestead exemption [allows up to \$100,000], a mobile home exemption [allows up to the same limit as the homestead], or an "in lieu of homestead" exemption [allows up to \$7,500 in any kind of property], and then a personal exemption of \$3,750 for an individual and \$7,500 for a family. NDCC 28-22-02(10) allows an individual or family to exempt and retain from their creditors, a mobile home [with a value up to the same as a homestead]. Generally exemption of a mobile home might be perceived as a homestead exemption and the mobile home owner would not be entitled to use the "in lieu of homestead" additional exemption. The North Dakota Bankruptcy Court has recently issued a decision concluding that a mobile home owner is entitled to exempt the mobile home and utilize the "in lieu of homestead" exemption. That bankruptcy court decision is attached.

The bankruptcy court interpreted NDCC 28-22-1-02(10) as allowing an individual/family to exempt a mobile home and use the "in lieu of homestead" exemption (\$7,500 each). This interpretation gives an individual/family that resides in a mobile home as their primary residence, \$7,500 per individual more in exemptions than the same individual would have if they lived in a "non-mobile house" type home. This is a "final" decision (this has not been appealed) and is the law in North Dakota in the bankruptcy court, unless someone would choose to appeal another similar decision, or the law is changed. The fact pattern is readily capable of repetition.

We assume that the legislature did not intend to allow mobile home residents the additional "in lieu of homestead" exemption not available to non-mobile home owners/residents. The essence of the bankruptcy court's interpretation of the current mobile home exemption is the owner can utilize the mobile home exemption and the "in lieu of homestead [additional \$7,500]", in addition to the other personal exemptions.

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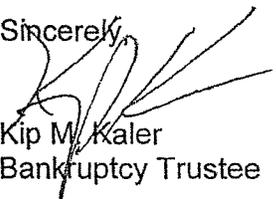
Lawrence R. Klemin
January 9, 2015
Page two

Gene Doeling and I are attorneys and partners in a law firm, but also bankruptcy trustees. As trustees it is our duty to administrate bankruptcy cases filed and collect non-exempt assets for distribution to creditors. In this instance, we felt that the legislature may not have intended to allow mobile home owner/residents an additional exemption not available to owners of other homes, and that we should bring this to your attention.

If it is the intention of the legislature to allow mobile home owners the exemption for mobile homes and the "in lieu of homestead" exemption [additional \$7,500], you need do nothing. However, if you do not intend to allow mobile home owners to exempt their mobile homes and use the "in lieu of homestead" exemption, you might consider changing the law as drafted in HB1086.

If you need additional information or help, please contact me.

Sincerely,



Kip M. Kaler
Bankruptcy Trustee

Enc.

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3/4/15

1-4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

In re: Bankruptcy No. 11-30782
Chapter 7
John J. Vranicar and Katie D. Vranicar,
Debtors.

MEMORANDUM AND ORDER

The Chapter 7 Trustee assigned to this case, Gene W. Doeling, filed an Objection to Claim of Exemptions. The Court heard the matter on November 15, 2011.

Debtors John J. Vranicar and Katie D. Vranicar filed a voluntary chapter 7 bankruptcy petition on August 9, 2011. On Schedule C, Debtors claimed \$25,285 in equity in a mobile home as exempt under N.D.C.C. § 28-22-02(10). They also claimed \$779.79 in equity in other assets as exempt under N.D.C.C. § 28-22-03.1(1).

Section 541(a)(1) of the Bankruptcy Code provides that, at the commencement of a case, the bankruptcy estate includes "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1). The Code allows debtors to exempt certain property from the bankruptcy estate. 11 U.S.C. § 522(b)(1). "Exempt property is excluded from property of the estate available to satisfy debts." Benn v. Cole (In re Benn), 491 F.3d 811, 813 (8th Cir. 2007). Section 522(b)(2) authorizes states to opt out of the federal scheme of property exemptions enumerated in section 522(d). Exercising this grant of authority, North Dakota enacted its own set of property exemptions for purposes of bankruptcy, limiting its residents to claiming the state exemptions rather than the federal exemptions. See N.D.C.C. § 28-22-17. Exemption statutes are construed liberally in favor of the debtor. Wallerstedt v. Sosne (In re Wallerstedt), 930 F.2d 630, 631 (8th Cir. 1991). The objecting

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1-5

party has the burden of showing that an exemption is not properly claimed. Fed. R. Bankr. P. 4003(c).

The Trustee objects to Debtors' claimed exemptions, arguing that exemptions under N.D.C.C. §§ 28-22-02(10) and 28-22-03.1(1) are mutually exclusive. Section 28-22-02(10) provides the following absolute exemption:

In lieu of the homestead, and subject to the same value limitations that exist with respect to the homestead exemption, any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This section does not preclude the debtor from claiming a mobile home as a dwelling house as part of the homestead.

N.D.C.C. § 28-22-02(10).¹ Debtors exempted \$25,285 in equity in a mobile home under section 28-22-02(10).

Debtors also exempted equity in other assets under section 28-22-03.1(1), which provides:

In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars. This exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of the family of the resident exemption claimant has chosen the homestead exemption provided for under subsection 7 of section 28-22-02.

¹ Section 28-22-02(10) was amended in 2009. Prior to amendment, it provided:

Any house trailer or mobile home occupied as a residence by the debtor or the debtor's family, except that it is not exempt from process, levy, or sale for taxes levied on it pursuant to chapter 57-11.

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N.D.C.C. § 28-22-03.1(1). Section 28-22-03.1(1) expressly provides that the \$7,500 exemption is not available if the claimant has chosen the homestead exemption provided under section 28-22-02(7). Claiming a homestead exemption is the only circumstance specified by section 28-22-03.1(1) that prohibits a debtor from claiming the \$7,500 exemption in this subsection. Significantly, the relevant statutes do not provide that a debtor who claims a mobile home exemption is precluded from claiming the \$7,500 exemption in section 28-22-03.1(1). Debtors did not claim the homestead exemption provided under section 28-22-02(7); but rather, they claimed the mobile home exemption under section 28-22-02(10).

“Generally, the law is what the Legislature says, not what is unsaid.” Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). “It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed.” Id. (citation omitted). Likewise, the Legislature’s inclusion of certain exceptions to a general rule is the implicit exclusion of other exceptions.² See Hartford Underwriters Ins. Co. v. Magna Bank, N.A. (In re Hen House Interstate, Inc.), 177 F.3d 719, 723 n.4 (8th Cir. 1999); see also Little, 497 N.W.2d at 705 (“the mention of one thing implies the exclusion of another”) (citation omitted). Had the North Dakota Legislature intended a debtor claiming an exemption under section 28-22-02(10) to be precluded from claiming an exemption under section

² This principle of statutory construction is often referenced in caselaw as *expressio unius est exclusio alterius*.

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28-22-03.1(1), it would have said so, as it did with debtors claiming an exemption under section 28-22-02(7).³

The plain meaning of section 28-22-03.1(1) is that it is not mutually exclusive with section 28-22-02(10). The Trustee failed to meet his burden of showing that Debtors' exemptions are not properly claimed. His objection is OVERRULED.

SO ORDERED.

Dated this February 2, 2012.

/s/ SHON HASTINGS
SHON HASTINGS, JUDGE
UNITED STATES BANKRUPTCY COURT

³ Given the plain language of the North Dakota exemption statutes, it is not necessary or appropriate to consider legislative history. See Little, 497 N.W.2d at 705; N.D.C.C. § 1-02-05 (“When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”).

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PROPOSED AMENDMENTS TO HB 1086

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1 A BILL for an Act to amend and reenact subsection 10 of section 28-22-02 of the North 2
2 Dakota Century Code and subsection 1 of section 28-22-03.1, relating to absolute
3 exemptions from process, levy, or sale.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Subsection 10 of section 28-22-02 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 10. In lieu of the homestead, and subject to the same value limitations that exist with
8 respect to the homestead exemption, any housetrailer or mobile home occupied
9 as a residence by the debtor or the debtor's family, except that it is not exempt
10 from process, levy, or sale for taxes levied on it pursuant to chapter 57-55. This
11 section does not preclude the debtor from claiming a mobile home as a dwelling
12 house as part of the homestead. The exemption in this subsection is not
13 available if the debtor has chosen the exemption provided for under subsection 1
14 of section 28 - 22 - 03.1 .

15 **SECTION 2. AMENDMENT.** Subsection 1 of section 28-22-03.1 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 1. In lieu of the homestead exemption, up to ~~seventen~~ seventen thousand ~~five hundred~~
18 dollars. This exemption is not available if the resident exemption claimant, the
19 spouse of the resident exemption claimant, or other head of the family of the
20 resident exemption claimant has chosen the homestead exemption provided for
21 under subsection 7 of section 28-22-02.