



RESIDENTIAL EXEMPTIONS FROM JUDGMENT EXECUTIONS

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TABLE OF CONTENTS

	Page #
A. INTRODUCTION	1
B. RATIONALE FOR A RESIDENTIAL EXEMPTION	3
C. LEVEL OF EQUITY EXEMPTION	6
D. CO-OWNERSHIP	7
E. EXEMPT PROCEEDS OF SALE	8
F. PERSONAL PROPERTY RESIDENCES	9
G. TRANSITION	10
H. IMPLEMENTATION	11
I. LIST OF RECOMMENDATIONS	11
APPENDIX A - THE STATUTE LAW AMENDMENT (EXEMPTIONS) ACT	13
APPENDIX B - ANNOTATION TO AMENDED SECTIONS OF <i>THE EXECUTIONS ACT AND THE JUDGMENTS ACT</i>	15
EXECUTIVE SUMMARY	21
SOMMAIRE	25

RESIDENTIAL EXEMPTIONS FROM JUDGMENT EXECUTIONS

A. INTRODUCTION

A person who obtains a money judgment against someone else can enforce it in a number of ways. One option for the judgment creditor is garnishment of the judgment debtor's income. Another is execution against the assets of the judgment debtor. Execution is the process by which the debtor's assets are seized and sold in order to satisfy the debt.¹

As a general rule, a judgment creditor can have a judgment executed against any or all of the debtor's assets. At common law, the only exception to this general rule was that the judgment debtor was entitled to retain the clothes he or she was wearing at the time of the execution.² However, legislation has expanded this limited exception so that a debtor in Canada today enjoys significantly more protection from creditors.

For the most part, statutory exemptions appear to be intended to preserve for judgment debtors the basic necessities of life, permitting them and their families a decent standard of living and the possibility of regaining their economic well-being in the future.³ In Manitoba, the following assets are among those which cannot be seized and sold to satisfy a debt:

- furniture not exceeding a value of \$4500;
- "necessary" clothing of the debtor and his or her family;
- food and fuel needed by the debtor and his or her family for a period of six months or the cash equivalent;
- a farmer's animals, machinery and other equipment (including a motor vehicle) "reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months";
- "tools, implements, professional books and other necessities" used by the debtor in the practice of his or her "trade, occupation or profession or to carry on his business" to a limit of \$7500 in value;
- "articles and furniture necessary to the performance of religious services";
- health aids, including a wheelchair, an air conditioner, an elevator, a hearing aid, eye glasses and prosthetic or orthopedic equipment.⁴

¹The remedies available to a creditor should not be confused with the related area of bankruptcy. In the situation which will be dealt with in this Report, the debtor is not bankrupt.

²F. Bennett, *Bennett on Collections* (2nd ed., 1992) 98.

³Ontario Law Reform Commission, *The Enforcement of Judgment Debts and Related Matters, Part III* (Report, 1981) 32; C.R.B. Dunlop, *Creditor-Debtor Law in Canada* (2nd ed., 1995) 454-455.

⁴*The Executions Act*, C.C.S.M. c. E160, s. 23(1). It is worth noting that the items which are exempt from seizure or sale under the laws of a province in which the property is situated and within which the person resides are also exempt from bankruptcy proceedings: *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 67(1)(b).

In addition to exempting certain items of personal property from execution, all four provinces of western Canada and the two territories have acted to protect, at least partially, the debtor's home from seizure.⁵ In Manitoba, the law grants debtors who own their own residences two advantages over those who do not. First, they are granted a one year period during which no seizure and sale of the residence can take place.⁶ Initially, this postponement of execution could only be used by those debtors whose residences were classified as real property; it did not apply to personal property, such as mobile homes, which were also used as residences.⁷ However, thanks to legislative amendments which adopted an earlier recommendation of the Manitoba Law Reform Commission, this one year "grace period" now also applies to mobile homes, whether or not they constitute real property.⁸

This Report deals with an additional form of protection from creditors which is currently extended to debtors who own the homes in which they reside. So long as such a residence is classified as real property, a debtor in this position is granted a \$2500 equity exemption from creditors if he or she is a sole owner and a \$1500 equity exemption if he or she owns the residence as a joint tenant or tenant in common.⁹ The effect of these provisions is that, if a debtor's equity in his or her residence is less than the exemption, the residence is absolutely protected from seizure and sale. However, if his or her equity exceeds the exemption, the house will be seized and sold and the debtor will retain the exempt amount from the sale proceeds.

The research which resulted in this Report was initiated by a letter from a legal practitioner, Donald Little, Q.C., who pointed out that the "equity exemption" granted to debtors who own their residences does not apply to debtors who own mobile homes (which are often classified as personal property). Mr. Little suggested that the Commission make recommendations which would resolve this inconsistency.

Mr. Little's letter raised an issue which we agreed should be examined (and which is, in fact, addressed in this Report). However, in considering the differential treatment of real and personal property residences, we quickly came to the conclusion that the existence of the residential equity exemption itself required re-examination. In addition, we noted several other problems with the current equity exemption which also needed to be addressed. Accordingly, this Report deals with the issue of the residential equity exemption in broader terms than was suggested by Mr. Little.

⁵*The Judgments Act*, C.C.S.M. c. J10, ss. 3 and 13; *Homestead Act*, R.S.B.C. 1979, c. 173, s. 4; *Exemptions Act*, R.S.A. 1980, c. E-15, s. 1(1) as am. by S.A. 1984, c. 51, s. 2; *The Exemptions Act*, R.S.S. 1978, c. E-14, s. 2(1); *Exemptions Act*, R.S.N.W.T. 1988, c. E-9, s. 2(1); *Exemptions Act*, R.S.Y. 1986, c. 59, s. 2. Ontario and the Atlantic provinces do not exempt real property: Dunlop, *supra* n. 3, at 451-452, 470. Ontario's *Execution Act*, R.S.O. 1990, c. E.24, s. 9, specifically permits a sheriff to sell all a debtor's lands, including those held in joint tenancy.

⁶*The Judgments Act*, C.C.S.M. c. J10, s. 3(1).

⁷Houses and any buildings which are attached to land are considered real property. Depending on the extent to which it is affixed to land, a mobile home could either be classified as real or personal property.

⁸*The Executions Act*, C.C.S.M. E160, s. 36. The Commission made this recommendation in *Enforcement of Judgments Part III: Exemptions and Procedure Under "The Executions Act"* (Report #34, 1979) 30. Although the one year exemption from execution is not the primary focus of this Report, it should be noted that, in order to ensure consistency with our other recommendations, Recommendation 8 proposes that the current one year exemption for mobile homes should be expanded to apply to any personal property which is used as a judgment debtor's actual residence.

⁹*The Judgments Act*, C.C.S.M. J10, s. 13(1)(c) and (d).

B. RATIONALE FOR A RESIDENTIAL EXEMPTION

The first question which we believe must be considered is whether any residential exemption is needed in Manitoba. We note, for example, that no such exemption is currently offered to judgment debtors in Ontario or the Atlantic provinces. In those jurisdictions, the general common law rule applies and judgment creditors are permitted to have the home of a judgment debtor seized and sold if this is necessary to satisfy a judgment debt.¹⁰

There is much to be said for this approach. It must be remembered that, by definition, a judgment creditor has been found by a court to be owed a sum by the judgment debtor. Therefore, whatever the plight of a judgment debtor, it is the judgment creditor who must be regarded as the aggrieved party until the debt is paid. By placing what is often the chief asset of the judgment debtor beyond reach, a residential exemption may force the judgment creditor to wait weeks, months or years before receiving the amount which is owing. We view this as unfair to the creditor.

Moreover, to the extent that a residential exemption makes a judgment difficult to enforce, it risks rendering the court's decision irrelevant. Both debtor and creditor have had access to an impartial hearing from which a judgment has resulted. If the law is to have meaning, the court's decision must be enforceable. We believe that respect for our legal system of justice demands at least a presumption in favour of the judgment creditor's right to enforce a judgment by having the judgment debtor's residence seized and sold.

Finally, the common law rule has the advantage of promoting commerce. Individuals and lending institutions are more likely to extend unsecured credit when they are confident that an unpaid debt can be satisfied by the seizure and sale of the judgment debtor's home. They will be less likely to extend unsecured credit when this asset is unavailable. Therefore, although a residential exemption may appear beneficial to a particular debtor who is unable or unwilling to pay a debt, it may in fact prove detrimental to those who wish to have access to loans and other forms of credit.

Nevertheless, despite what we consider to be excellent reasons for the elimination of a residential exemption from judgment, a provision which has enjoyed a long history of use in Manitoba and is still in place in other western Canadian jurisdictions cannot be lightly dismissed. In particular, the logic which led to its introduction must be considered.

It seems clear that the residential exemption was introduced in western Canada as part of "homestead legislation" and was initially designed to attract settlers to the west and the north.¹¹ At the time of its enactment, the amount of the exemption was no doubt sufficient to purchase a modest home in Manitoba outright.¹² The residential equity exemption would have been

¹⁰Dunlop, *supra* n. 3, at 451-452.

¹¹Dunlop, *supra* n. 3, at 453-454; Ontario Law Reform Commission, *supra* n. 3, at 35.

¹²The residential exemption from executions was first introduced to Manitoba law in 1885: *The Administration of Justice Act, 1885*, S.M. 1885, c. 17, s. 117(11). At that time, the amount of the exemption was \$2500. However, within a year, an amendment to this statute reduced the amount of the exemption to \$1500: *An Act to amend the Administration of Justice Act, 1885*, S.M. 1886, c. 35, s. 3. In 1966-67, the current exemptions (\$2500 for sole owners and \$1500 for co-owners) were instituted: *An Act to amend The Judgments Act*, S.M. 1966-67, c. 27, s. 1.

It seems clear that, in the early years of this exemption, \$1500 would have been sufficient to purchase a modest home and \$2500 would have purchased a more substantial residence. For example, the home of architect James Shillinglaw in Brandon was built in 1882 for \$3500 and was considered one of the finest houses in the city: R.R. Rostecki, *James S. Shillinglaw Residence, 302 Russell Street, Brandon, Manitoba* (Manitoba Department of Culture, Heritage and Citizenship, Historic Resources Branch, 1986). Dalnavert, a large brick home in what was then an affluent neighbourhood of Winnipeg, was designed by a well-known architect and built for Sir Hugh John Macdonald (then a Member of Parliament and, five years later, Premier of Manitoba) for \$10,000 in 1895: S. Grover, *61 Carlton Street, "Dalnavert"* (City of Winnipeg, Historical Buildings Advisory Committee, #174 of a series, 1980).

attractive to prospective settlers who were in debt elsewhere or who anticipated incurring debts in Manitoba because it provided an assurance that money invested in a home in Manitoba would at least be partially protected from creditors.

It seems to us that this historic rationale can no longer sustain the continued existence of a residential exemption from execution. The settlement of Manitoba is an accomplished fact. If the government wishes to encourage new settlement, it is certainly entitled to use this exemption to achieve its goal. However, we believe that it would be inappropriate for us to suggest such a policy choice to our elected representatives.

Nor is the historical significance of the residential equity exemption sufficient to justify retaining it, in our view. This Commission was instituted, in part, to rid the law of anachronistic provisions. Therefore, we believe that, if a form of residential equity exemption is to survive, some other rationale for it must be found.

Potential rationales present themselves in reports of law reform bodies in Ontario and Alberta. The Ontario Law Reform Commission's Report suggests that a residential exemption is necessary for two reasons. First, the lack of an exemption raises the possibility that a judgment debtor (and his or her family) could be deprived of adequate accommodation. If a judgment debt were equal to or greater than the debtor's equity in his or her residence, it is entirely possible that he or she would be left with nothing with which to secure basic housing. Second, the lack of an exemption could result in a judgment debtor who owns a home being placed in a worse position than one who lives in rental housing. A renter's damage deposit is secure from seizure and he or she would not have to pay moving expenses as a result of an execution while a homeowner whose residence was seized and sold would be forced to pay both.¹³

For these reasons, the Ontario Law Reform Commission recommended that judgment debtors who owned their own residences should be allowed to retain sufficient funds from the sale of their residences to provide a deposit on rented premises and to pay for moving expenses. Although the Commission recommended that execution against a debtor's residence should be permitted in all cases, it proposed that a debtor should be able to retain \$2000 from the sale proceeds with which to secure alternative accommodations.¹⁴

We have great sympathy with the position of the Ontario Commission. In particular, we agree with the proposition that, at the least, the law should protect the right of judgment debtors to adequate accommodations, which must be viewed as a necessity of life.¹⁵ Justice may demand that a judgment creditor obtain the sum to which he or she is entitled but, in this case at least, we believe that justice must be tempered with mercy for the judgment debtor. In our view, such a minimal concession to judgment debtors would not significantly reduce the likelihood that a judgment creditor would be able to enforce the judgment and therefore implies no disrespect to the courts. Nor do we foresee that it would have any significant impact on the willingness of individuals or institutions to extend credit.

Having conceded that some form of a residential equity exemption is legitimate, however, we must consider whether grounds exist to expand that exemption beyond that which is

¹³Ontario Law Reform Commission, *supra* n. 3, at 39-40. This assumes that a judgment debtor whose home has been seized would be moving to rental accommodations.

¹⁴Ontario Law Reform Commission, *supra* n. 3, at 39.

¹⁵Ontario Law Reform Commission, *supra* n. 3, at 32.

necessary for basic shelter. The Alberta Law Reform Institute has argued that such an expansion is warranted. Alberta's legislation currently provides a residential equity exemption of \$40,000.¹⁶ The Law Reform Institute endorsed this exemption in a recent Report (and suggested that it might be inadequate) on the grounds that home ownership itself is a value worthy of preservation. The Report took issue with the Ontario Commission's position which it described as amounting to a determination "that debtors should be required to be renters; and that home ownership is inappropriate for those who cannot satisfy judgment debts." Noting that "Albertans attach substantial importance to home ownership", the Law Reform Institute concluded:

... We think that the Alberta attitude is that - as a matter of relative values - this highly important interest should be protected, even at the expense of the creditor's interest.¹⁷

It should be noted that Alberta's legislation does not protect the whole of the judgment debtor's equity in a residence. In this respect, it differs from some jurisdictions in the United States which prohibit execution against any home in which a judgment debtor resides.¹⁸ We have grave doubts about the wisdom of an exemption for the whole of a debtor's residence. As we noted in our 1980 Report:

... The problem with this type of legislation is that not only does it ensure provision of a modest shelter to a distressed debtor but, because it applies identically to all homes irrespective of their value, it permits some debtors to maintain luxurious dwellings and thus high standards of living as well.

One can, for example, envisage that a shrewd businessman might pour all of his assets into and acquire clear title to some "Olympian" estate, all the while amassing an enormous financial debt. We can see no logical reason why, at the expense of the legitimate interests of his creditors, such a debtor should rightly be permitted to retain his home. A more modest dwelling would both easily satisfy the needs of the debtor and be more in accord with the purpose of the homestead legislation.¹⁹

Alberta's model is more limited in scope than that of these American jurisdictions and the Law Reform Institute's Report suggests that it is aimed at preserving for judgment debtors the ownership of nothing more than a modest home. Nevertheless, we have two concerns with this approach.

First, we believe that protecting ownership of even a modest home may go too far in protecting judgment debtors from the consequences of their actions. We have indicated our reasons for concluding that preventing a judgment creditor from enforcing a judgment is undesirable. Second, the Alberta approach places judgment debtors who happen to own their residences in an enormously advantaged position compared to those who rent their residences. The Law Reform Institute was sanguine about this difference in treatment, noting that exemptions are discriminatory by their very nature:

... Every exemption provision that protects specified property from enforcement benefits the debtor who owns property of the specified description but does not benefit the debtor who does not.²⁰

¹⁶*Exemptions Act*, R.S.A. 1980, c. E-15, s. 1(1)(k) as am. by S.A. 1984, c. 51, s. 2.

¹⁷Alberta Law Reform Institute, *Enforcement of Money Judgments*, vol. 1 (Report #61, 1991) 269.

¹⁸*Corpus Juris Secundum*, vol. 40 (1991) 207, §35; J.M. Zitter, "Lien of Judgment on Excess Value of Homestead", 41 A.L.R. 4th 292 at 294 (1985). Homestead protection, including an exemption from execution, is contained in the constitutions of some American states: *Corpus Juris Secundum*, vol. 40 (1991) 178, §5.

¹⁹Manitoba Law Reform Commission, *Enforcement of Judgments, Part II: Exemptions Under "The Judgments Act"* (Report #40, 1980) 8.

²⁰Alberta Law Reform Institute, *supra* n. 17, at 267.

Nevertheless, we remain uncomfortable with a large disparity between the treatment of renters and home owners.

On the other hand, we agree with the argument that home ownership is highly valued in our society. We believe that home ownership both symbolizes and provides security and independence for the vast majority of Manitobans. In addition, we believe that some protection of home ownership can be justified on the basis of our view that one of the purposes of other exemptions from execution is to provide judgment debtors with the possibility of regaining their previous level of economic well-being at some point in the future. We fear that, by allowing judgment debtors only enough to secure rental accommodations, as the Ontario Commission proposes, the law may prevent them from again amassing sufficient funds for a down payment on their own residences. If so, the law would preclude them from regaining their earlier status as home owners.

Because of our concerns about the Alberta's model, we are not prepared to go as far as that province in protecting home ownership. Nevertheless, we are willing to go beyond the guarantee of basic shelter to some protection of home ownership. We believe that this balance can best be achieved by exempting from execution a sum which will not be sufficient to purchase a modest home outright but which will serve as a down payment on a modest residence. While this approach will not preserve for the judgment debtor outright ownership of a home, it will allow him or her to retain the status of home owner and permit him or her to begin rebuilding equity in a residence.²¹ At the same time, it will allow judgment creditors far greater access to the equity of a judgment debtor than the Alberta model permits.

Our approach places us somewhere between Ontario and Alberta practically as well as philosophically. The sum which will be necessary to obtain a mortgage on a modest home will usually be greater than the amount needed to obtain rented accommodations but will be considerably less than the \$40,000 which Alberta exempts from execution.

RECOMMENDATION 1

A residential equity exemption from execution should be permitted which is equal to the amount necessary for a down payment on a modest residence in the province.

C. LEVEL OF EQUITY EXEMPTION

After concluding that the purpose of a residential exemption should be to allow judgment debtors a sum sufficient for a down payment on a modest residence in Manitoba, we were forced to consider what would constitute a "modest residence". We determined that, for our purposes, a single-family, detached house of average price would meet this description.²² The Manitoba Real Estate Association advises that, in 1994, the average price of a single-family, detached house sold in Winnipeg was \$84,811, the average price of such a house in Brandon was \$69,509, in Portage la Prairie \$65,562 and in Thompson \$86,826. Province-wide, the average price for a single-family, detached house was \$83,804 in 1994.²³

²¹We expect that, in most cases, a judgment debtor with a significant level of equity in a home would borrow against that equity to the point where the equity would fall below the exempt amount. This borrowed money could then be used to pay off some or all of the judgment debt.

²²According to Winnipeg Real Estate Board, *MLS Fourth Quarter Report 1994* (1995) 3, single-family detached homes accounted for 77% of the properties sold during that quarter in Winnipeg and surrounding areas by multiple listing service (excluding private sales and exclusive listings).

²³Telephone conversation with representative of the Manitoba Real Estate Association (July 5, 1995).

The Canada Mortgage and Housing Corporation advises that it will insure a mortgage with a down payment of 10% of the lesser of the purchase price or appraised value of a home.²⁴ Therefore, a judgment debtor could, if he or she wished, begin the process of purchasing a home with an initial investment of roughly \$9000. This is therefore the amount which we believe should be exempt from execution. That is, if the judgment debtor's equity in a residence were less than \$9000, the home would be absolutely exempt from execution. If his or her equity exceeded that sum, execution could take place but the judgment debtor would be entitled to retain \$9000 from the proceeds of sale with which to secure alternative accommodations, including the purchase of another residence.

Of course, we expect that the cost of housing in Manitoba will rise and fall over time. The amount of the exemption should respond to these changes in the actual cost of housing. Therefore, we suggest that the exemption be reviewed periodically and adjusted to correspond to the sum which is necessary in order to obtain a mortgage on an average house in the province. Unless housing prices change rapidly, we suggest that a review at five year intervals should be sufficient.

RECOMMENDATION 2

The residence of a judgment debtor should be exempt from execution where his or her equity in the residence does not exceed \$9000. If his or her equity exceeds \$9000, he or she should be entitled to retain \$9000 from the proceeds of the sale of the residence.

RECOMMENDATION 3

The amount of this exemption should be reviewed periodically and adjusted to correspond to the sum necessary to secure a mortgage on an average single-family, detached house in the Province of Manitoba.

RECOMMENDATION 4

The amount of the exemption should be set out in regulations rather than in legislation.

D. CO-OWNERSHIP

Currently, Manitoba law draws a distinction between a judgment debtor who is the sole owner of his or her own residence and one who owns it as a joint tenant or tenant in common. The sole owner is entitled to an exemption of \$2500; the exemption falls to \$1500 for a co-owner.²⁵ It has been suggested that this differential ensures that a co-owner does not receive greater protection than a sole owner.²⁶ However, if this is indeed a problem, it might be argued that the exemption for each owner should be dependent on the extent of his or her investment; a single owner would be entitled to the full exemption, two equal co-owners would each be entitled to half, three equal co-owners would each be entitled to one-third, and so on.²⁷

²⁴Telephone conversation with Diane Moist, Canada Mortgage and Housing Corporation (July 5, 1995).

²⁵*The Judgments Act*, C.C.S.M. c. J10, s. 13(1)(c) and (d).

²⁶Alberta Law Reform Institute, *supra* n. 17, at 271.

²⁷This was the approach recommended by the Alberta Law Reform Institute: Alberta Law Reform Institute, *supra* n. 17, at 271-272, 274.

We prefer the approach taken by the other western provinces which have not drawn a distinction between sole ownership and co-ownership.²⁸ In those provinces, the full exemption is available to the judgment debtor whether he or she is a sole owner of a home or owns it together with one or more other people. This makes more sense to us than attempting to limit the amount of the exemption available for a particular residence. The debt owed to the judgment creditor is the responsibility of the judgment debtor as an individual. Logically, therefore, any exemption granted by the law should also be personal in nature and should not be connected to the ownership arrangement of the home in which the debtor resides.

It might be seen as unfair that, in cases where two or more people own and reside in a residence together, our approach would allow each of them to claim the exemption with the result that the total equity exemption of the co-owners in the home would exceed \$9000. However, we view the total exemption which applies to a particular residence as irrelevant; it is the equity exemption of the particular judgment debtor which is pertinent, not the potential exemption of other co-owners. Indeed, we see our approach as being more equitable because it results in judgment debtors being treated identically whether they own their homes solely or as partners with others.

It might be argued that, in cases where two or more people own and reside in a residence together, our approach would exempt a residence from judgment even though the total equity of the co-owners in the home exceeds \$9000. However, we view this as immaterial; it is the equity of the particular judgment debtor which is relevant, not the equity of other co-owners who are not judgment debtors. If the equity of the judgment debtor exceeds the exempt amount, execution against his or her interest in the property can still take place.

RECOMMENDATION 5

The residential equity exemption we have recommended should be allowed for every individual who has an interest in a residence and who actually resides in the residence.

E. EXEMPT PROCEEDS OF SALE

In our 1980 Report, we noted that, although legislation permitted judgment debtors to retain the exempt sum from the proceeds of sale, nothing prevented a judgment creditor from seizing this amount immediately thereafter if the debt had not yet been satisfied. We commented:

... The conduct of a judgment creditor, not satisfied at sale, who would proceed against his debtor's exemption may seem reprehensible. Nevertheless the law is clear and there is nothing which prevents a creditor from employing its full force and effect. Fault clearly lies with the legislation.²⁹

Unfortunately, nothing has been done in the intervening fifteen years to rectify this flaw in the legislation.³⁰

²⁸*Homestead Act*, R.S.B.C. 1979, c. 173, s. 4; *Exemptions Act*, R.S.A. 1980, c. E-15, s. 1(1) as am. by S.A. 1984, c. 51, s. 2; *The Exemptions Act*, R.S.S. 1978, c. E-14, s. 2(1); *Exemptions Act*, R.S.N.W.T. 1988, c. E-9, s. 2(1); *Exemptions Act*, R.S.Y. 1986, c. 59, s. 2.

²⁹Manitoba Law Reform Commission, *supra* n. 19, at 7.

³⁰Section 13(4) of *The Judgments Act*, C.C.S.M. c. J10, specifies that the amount which is to be retained by the judgment debtor from the proceeds of sale is to be exempt from "seizure under execution, garnishment, attachment for debt, or any other legal process" until it is paid over to the judgment debtor but it provides no exemption after that point. Indeed, by expressly exempting it prior to it being paid over, it suggests that it is available to judgment creditors immediately thereafter.

One possible solution to this problem is to exempt the funds retained by the judgment debtor indefinitely. However, we are concerned that this approach is too generous to the judgment debtor and treats the judgment creditor unfairly. We prefer the approach recommended by law reform bodies in Ontario and Alberta. Their scheme would protect from seizure the exempt funds for a limited period of time so long as it is clear that the source of these funds was the seizure and sale of a residence.³¹ After the statutory period has expired, however, the judgment creditor would be free to proceed against any non-exempt asset owned by the judgment debtor, including the exempt funds.

Although the Ontario Law Reform Commission recommended that the funds be exempt for a period of only one month after execution,³² we prefer the suggestion of the Alberta Law Reform Institute that the judgment debtor should be given six months after the execution to spend the exempt sum.³³ One month may be sufficient to obtain rental accommodations, as the Ontario Commission anticipated, but would not be sufficient to purchase another home, in our view.

While we expect that most judgment debtors will use the exempt funds to purchase or otherwise secure alternative accommodations, we are not prepared to dictate the use to which this sum is put. The judgment debtor should be free to spend these funds in any way he or she sees fit. However, if the judgment debtor chooses to purchase non-exempt assets with these funds, the assets may be subject to seizure. In addition, after six months, the judgment creditor would be free to proceed against the remainder of the exempt funds.

RECOMMENDATION 6

The exempt proceeds of the sale of the judgment debtor's residence should be exempt from seizure or other proceedings for a period of six months after the execution has taken place.

F. PERSONAL PROPERTY RESIDENCES

The issue which initiated this project was the differential treatment which is currently afforded residences which are classified as real property and those which are classified as personal property. The latter category includes mobile homes, houseboats and residential leases. Currently, no exemption is provided for these homes.

We have noted that an earlier recommendation of this Commission resulted in legislative changes so that the one year postponement of sale for residences now applies to both real property and to mobile homes. We see no reason for a different approach to the residential equity exemption. The purpose of the exemption, in our view, should be to preserve for judgment debtors adequate accommodation and the possibility of retaining their status as home owners. If so, the relevant question is whether the property is used as a residence, not whether it is legally classified as realty or personalty. We believe that the residential equity exemption we have proposed should apply equally to any property which the judgment debtor owns and in which he or she actually resides, whether real or personal property.

³¹Alberta Law Reform Institute, *supra* n. 17, at 273-274; Ontario Law Reform Commission, *supra* n. 3, at 39.

³²Ontario Law Reform Commission, *supra* n. 3, at 39.

³³Alberta Law Reform Institute, *supra* n. 17, at 273-274.

If, as we propose, the residential equity exemption is to be applied to personal property residences as well as to real property, a minor inconsistency emerges. Currently, legislation grants a one year postponement of execution for mobile homes but not for other personal property residences.³⁴ We believe that this inconsistency can be best resolved by altering the current legislative provision to apply to all personal property residences.

RECOMMENDATION 7

The residential exemption from execution we have recommended should apply to any accommodation in which the judgment debtor actually resides, whether classified as real or personal property.

RECOMMENDATION 8

The current one year postponement of sale for mobile homes should be expanded to include any personal property accommodation in which the judgment debtor actually resides.

G. TRANSITION

In our view, the changes we propose to the current statutory exemption from execution should not bind any properties concerning which the execution process has already begun; such a course of action would be unfair to judgment creditors who have already initiated steps to enforce the judgment to which they are entitled. We consider the execution process to have begun, for personal property, once the writ of execution has been delivered to the Sheriff and, for real property, once the judgment has been registered in the Land Titles Office.

Moreover, we believe that both judgment creditors and judgment creditors should be given an opportunity to consider the effect of the new exemptions we propose and to order their affairs accordingly before the new system comes into effect. We therefore recommend that the legislation should take effect not upon passage but on a specific future date set out in the legislation itself.

RECOMMENDATION 9

Our recommended changes to residential exemptions from execution should apply only to executions which begin after the coming into force of our recommendations.

RECOMMENDATION 10

Legislation incorporating our recommendations should come into force on a specific date set out in the implementing legislation.

³⁴The Executions Act, C.C.S.M. c. E160, s. 36. Although the majority of personal property residences are likely to be mobile homes, it is possible that a judgment debtor may reside in a home, such as a houseboat or a house built on land which is subject to a lease, which would not qualify either as real property or a mobile home. If so, this legislative inconsistency would result in such a judgment debtor being granted the exemption but not the postponement of sale.

H. IMPLEMENTATION

Implementation of our recommendations would require relatively minor changes to *The Judgments Act* and *The Executions Act*. In order to illustrate our proposals, we have prepared an amending statute in Appendix A.

RECOMMENDATION 11

The recommendations contained in this Report should be implemented by enactment of amendments to The Judgments Act and The Executions Act similar to those set out in the draft Act in Appendix A.

We have also brought together the various provisions of *The Executions Act* and *The Judgments Act* which we recommend should be amended as they would appear after enactment of our draft legislation. This is set out in Appendix B, together with an explanatory annotation.

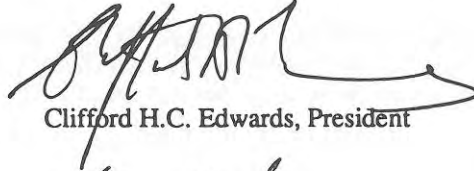
I. LIST OF RECOMMENDATIONS

In this Report, we have made the following recommendations:

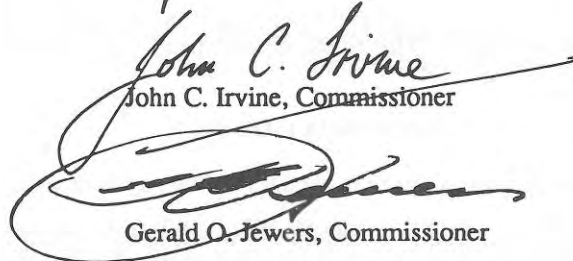
1. A residential equity exemption from execution should be permitted which is equal to the amount necessary for a down payment on a modest residence in the province.
2. The residence of a judgment debtor should be exempt from execution where his or her equity in the residence does not exceed \$9000. If his or her equity exceeds \$9000, he or she should be entitled to retain \$9000 from the proceeds of the sale of the residence.
3. The amount of this exemption should be reviewed periodically and adjusted to correspond to the sum necessary to secure a mortgage on an average single-family, detached house in the Province of Manitoba.
4. The amount of the exemption should be set out in regulations rather than in legislation.
5. The residential equity exemption we have recommended should be allowed for every individual who has an interest in a residence and who actually resides in the residence.
6. The exempt proceeds of the sale of the judgment debtor's residence should be exempt from seizure or other proceedings for a period of six months after the execution has taken place.
7. The residential exemption from execution we have recommended should apply to any accommodation in which the judgment debtor actually resides, whether classified as real or personal property.
8. The current one year postponement of sale for mobile homes should be expanded to include any personal property accommodation in which the judgment debtor actually resides.
9. Our recommended changes to residential exemptions from execution should apply only to executions which begin after the coming into force of our recommendations.
10. Legislation incorporating our recommendations should come into force on a specific date set out in the implementing legislation.

11. The recommendations contained in this Report should be implemented by enactment of amendments to *The Judgments Act* and *The Executions Act* similar to those set out in the draft Act in Appendix A.

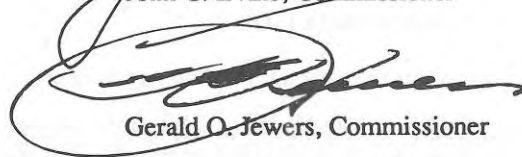
This is a Report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 17th day of October 1995.



Clifford H.C. Edwards, President




John C. Irvine, Commissioner



Gerald O. Jewers, Commissioner



Eleanor R. Dawson, Commissioner



Pearl K. McGonigal, Commissioner

APPENDIX A

THE STATUTE LAW AMENDMENT (EXEMPTIONS) ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

C.C.S.M. c. E160 amended

1(1) The Executions Act is amended by this section.

1(2) Subsection 23(1) is amended by striking out "and" at the end of clause (i), by adding "and" at the end of clause (j) and by adding the following after clause (j):

(k) the interest of the judgment debtor, subject to a maximum amount prescribed by regulation, in any personal property ordinarily used by the judgment debtor as his or her actual residence.

1(3) The following is added after subsection 23(1):

Regulations

23(1.1) The Lieutenant Governor in Council may prescribe by regulation the maximum amount of the exemption in clause (1)(k).

Equivalency of exemptions

23(1.2) The exemption in clause (1)(k) shall be equal in amount to the exemption under clause 13(1)(c) of The Judgments Act.

1(4) The following is added after subsection 23(2):

Extension of exemption

23(3) Where a chattel which is exempt under clause (1)(k) is sold under subsection (2), the exempted amount of money paid to the judgment debtor under clause (2)(a) and any deposit account into which it is paid are, unless that money is intermingled with other funds of the judgment debtor, exempt from seizure under execution, garnishment, attachment for debt or any other legal process for six months after the date of execution against that chattel.

1(5) Subsection 31(1) is amended by striking out "(i) and (j)," and by substituting "(i), (j) and (k),".

1(6) Section 36 is amended

(a) by striking out "a mobile home" and substituting "personal property";

(b) by striking out "permanent" and substituting "or her actual"; and

(c) by striking out "the mobile home" and substituting "that personal property".

C.C.S.M. c. J10 amended

2(1) **The Judgments Act** is amended by this section.

2(2) Subsection 13(1) is amended by striking out "Subject to subsections (2), (3) and (4)," and substituting "Subject to this section,".

2(3) Clauses 13(1)(c) and (d) are repealed and the following is substituted:

(c) the actual residence of any judgment debtor who can not otherwise claim an exemption under this section where the value of the interest of the judgment debtor does not exceed a maximum amount prescribed by regulation.

2(4) The following is added after subsection 13(2):

Regulations

13(2.1) The Lieutenant Governor in Council may prescribe by regulation the maximum amount of the exemption in clause (1)(c).

Equivalency of exemptions

13(2.2) The exemption in clause (1)(c) shall be equal in amount to the exemption under clause 23(1)(k) of The Executions Act.

2(5) Subsection 13(3) is repealed and the following is substituted:

Sale of residence

13(3) Where the value of a judgment debtor's interest in a residence to which clause (1)(c) applies exceeds the maximum amount prescribed by regulation, the residence may be offered for sale.

2(6) Subsection 13(4) is repealed and the following is substituted:

Minimum price

13(4) A residence to which clause (1)(c) applies shall not be sold unless the amount offered, after deducting all costs and expenses, exceeds the maximum amount prescribed by regulation in respect of the interest of each judgment debtor in the residence.

No sale until exemption paid

13(5) No sale under subsection (3) shall be carried out or possession given to any person thereunder until the amount of the exemption is paid over to each judgment debtor entitled to an exemption in respect of the residence.

Extension of exemption

13(6) Where a residence is sold under subsection (3), the exempted amount of money payable or paid to the judgment debtor and any deposit account into which it is paid are, unless that money is intermingled with other funds of the judgment debtor, exempt from seizure under execution, garnishment, attachment for debt or any other legal process for six months after the date of the sale.

Coming into force

3 This Act comes into force on [specified date].

APPENDIX B

ANNOTATION TO AMENDED SECTIONS OF THE EXECUTIONS ACT AND THE JUDGMENTS ACT

THE EXECUTIONS ACT

Exempt property.

23(1) Except as otherwise by any Act provided, the following personal estate is hereby declared free from seizure by virtue of all writs of execution issued by any court in the province, namely:

(a) the furniture and household furnishings and appliances of the judgment debtor reasonably necessary for one household but not exceeding in value the aggregate sum of \$4,500;

...

(i) the health aids, including but without limiting the generality of the foregoing a wheelchair, an air-conditioner, an elevator, a hearing aid, eye glasses and prosthetic or orthopedic equipment, that are reasonably necessary for the health or mobility of the judgment debtor or a member of his family;

(j) the chattel property of The City of Winnipeg or of any municipality, local government district, school district, school division or school area in the province; and

(k) the interest of the judgment debtor, subject to a maximum amount prescribed by regulation, in any personal property ordinarily used by the judgment debtor as his or her actual residence.

COMMENTARY

Clause (k) incorporates the key element of our Report. An exemption will be granted for the interest of a judgment debtor in his or her actual residence even if that residence is classified as personal property (The Executions Act deals exclusively with the enforcement of judgments on personal property).

The phrases "ordinarily used" and "actual residence" are employed in order to provide consistency with the equivalent provision in The Judgments Act which grants this exemption for homes classified as real property. It could be argued that the term "principal residence" would provide greater guidance in cases where individuals reside in more than one home. (For example, they may live for part of the year in one residence and another part of the year in another residence.) However, cases which have interpreted the term "actual residence" have held that one must clearly abandon one's actual residence in one home in order to acquire this status with respect to another. We believe that this principle will inspire a "common sense" application of this term to these situations.

Regulations

23(1.1) The Lieutenant Governor in Council may prescribe by regulation the maximum amount of the exemption in clause (1)(k).

The amount of the exemption available to a judgment debtor will be set out in regulation and amended as necessary by the Lieutenant Governor in Council (ie. the provincial cabinet).

Equivalency of exemptions

23(1.2) The exemption in clause (1)(k) shall be equal in amount to the exemption under clause 13(1)(c) of The Judgments Act.

This provision ensures that judgment debtors will receive an identical exemption whether they reside in a home classified as personal or real property.

Sale price of chattel in excess of value exemption.

23(2) Where under subsection (1) a chattel is exempt from seizure up to a specified amount in value but in the opinion of the sheriff, bailiff or other officer making the seizure exceeds in value that amount together with all relevant costs, the sheriff, bailiff or officer may, in the absence of other available chattels, seize and sell the chattel to all intents and purposes as if it were not exempt, but any amount realized on the sale of the chattel shall be paid and applied as follows:

- (a) firstly to the judgment debtor in an amount not exceeding the amount of the exemption;
- (b) secondly to the judgment creditor in satisfaction of the amount of the judgment plus costs; and
- (c) thirdly, if there is any surplus remaining, to the judgment debtor.

Extension of exemption

23(3) Where a chattel which is exempt under clause (1)(k) is sold under subsection (2), the exempted amount of money paid to the judgment debtor under clause (2)(a) and any deposit account into which it is paid are, unless that money is intermingled with other funds of the judgment debtor, exempt from seizure under execution, garnishment, attachment for debt or any other legal process for six months after the date of execution against that chattel.

This section will prevent the judgment creditor from seizing immediately the sum which has been paid to a judgment debtor as his or her residential exemption. It grants an immunity from seizure for this sum for a period of six months. However, in order to take advantage of this immunity, a judgment debtor must not intermingle this sum with other funds and must not spend it on non-exempt assets. If it remains unspent after six months, this sum becomes eligible for seizure.

Exceptions in case of actions for purchase price.

31(1) Nothing herein exempts from seizure any personal property mentioned in clauses 23(1)(a), (c), (e), (f), (g), (h), (i), (j) and (k), the purchase price of which is the subject of the judgment proceeded upon either by way of execution or attachment.

Seizure and sale of mobile home.

36 Notwithstanding anything herein to the contrary, where personal property seized under a writ of execution is ordinarily used by the judgment debtor as his or her actual residence, no proceedings to sell that personal property under the writ shall be commenced until the expiration of one year from the date of seizure.

This provision grants all personal property residence a one year deferral before execution can take place. Previously, this deferral only applied to mobile homes.

THE JUDGMENTS ACT

Exemptions.

13(1) Subject to this section, unless otherwise provided, no proceedings shall be taken under a registered judgment or attachment against

- (a) the farm land upon which the judgment debtor or his family actually resides or which he cultivates, either wholly or in part, or which he actually uses for grazing or other purposes, where the area of the land is not more than 160 acres;
- (b) the house, stables, barns, and fences, on the judgment debtor's farm, subject, however, as aforesaid;
- (c) the actual residence of any judgment debtor who can not otherwise claim an exemption under this section where the value of the interest of the judgment debtor does not exceed a maximum amount prescribed by regulation.

COMMENTARY

As with s. 23(1)(k) of The Executions Act, this provision incorporates the key elements of our Report. It eliminates the previous distinction between judgment debtors who were the sole owners of their residences and those who owned them jointly; the equity of a judgment debtor (in the amount of the exemption) will now be protected whether he or she owns the residence jointly or solely. This provision also allows a judgment debtor to claim only one of the exemptions listed.

Sale of surplus farm land.

13(2) Where the area of land to which clause (1)(a) applies is more than 160 acres, the surplus may be sold, subject to any lien or encumbrance thereon.

Regulations

13(2.1) The Lieutenant Governor in Council may prescribe by regulation the maximum amount of the exemption in clause (1)(c).

The amount of the exemption available to a judgment debtor will be set out in regulation and amended as necessary by the Lieutenant Governor in Council (ie. the provincial cabinet).

Equivalency of exemptions

13(2.2) The exemption in clause (1)(c) shall be equal in amount to the exemption under clause 23(1)(k) of The Executions Act.

This provision ensures that judgment debtors will receive an identical exemption whether they reside in a home classified as personal or real property.

Sale of residence

13(3) Where the value of a judgment debtor's interest in a residence to which clause (1)(c) applies exceeds the maximum amount prescribed by regulation, the residence may be offered for sale.

Sections 13(3) and (4) have been altered to take into account our recommendation that the amount of the exemption should be set out in regulations by the Lieutenant Governor in Council. Section 13(4) in the existing Act has been split up into sections 13(4) and 13(5) to make it less unwieldy.

Minimum price

13(4) A residence to which clause (1)(c) applies shall not be sold unless the amount offered, after deducting all costs and expenses, exceeds the maximum amount prescribed by regulation in respect of the interest of each judgment debtor in the residence.

No sale until exemption paid

13(5) No sale under subsection (3) shall be carried out or possession given to any person thereunder until the amount of the exemption is paid over to each judgment debtor entitled to an exemption in respect of the residence.

Extension of exemption

13(6) Where a residence is sold under subsection (3), the exempted amount of money payable or paid to the judgment debtor and any deposit account into which it is paid are, unless that money is intermingled with other funds of the judgment debtor, exempt from seizure under execution, garnishment, attachment for debt or any other legal process for six months after the date of the sale.

This section will prevent the judgment creditor from seizing immediately the sum which has been paid to a judgment debtor as his or her residential exemption. It grants an immunity from seizure for this sum for a period of six months. However, in order to take advantage of this immunity, a judgment debtor must not intermingle this sum with other funds and must not spend it on non-exempt assets. If it remains unspent after six months, this sum becomes eligible for seizure.

**EXECUTIVE SUMMARY OF
REPORT ON RESIDENTIAL EXEMPTIONS FROM EXECUTION**

EXECUTIVE SUMMARY

The Report of the Manitoba Law Reform Commission on *Residential Exemptions from Execution* seeks to modernize a legislative provision which can be traced as far back as 1885. The exemption prevents a creditor from seizing a debtor's home to satisfy a debt so long as the debtor's equity in the home does not exceed a certain sum. If the debtor's equity exceeds the exemption limit, he or she is permitted by law to retain the exempt amount when the residence is seized and sold to pay the debt.

Residential exemptions are common in the United States and exist in all four Western Canadian provinces and were initially designed to encourage settlement. When first enacted in 1885, Manitoba's exemption was set at \$2500, although it was quickly lowered to \$1500 in 1886. Since then, this provision has only been altered once; in the mid-1960s, the exemption was raised to \$2500 for sole owners although it remained at \$1500 for co-owners of residences. The Report points out that, although the initial exemption would have been sufficient to purchase a modest home outright, it has long since failed to exempt average residences from seizure and sale.

Although the Report considers seriously the idea of abolishing the exemption completely, it eventually concludes that the exemption can still serve a useful purpose in providing security for those who own their own homes without unduly prejudicing the legitimate interests of creditors. The Commission recommends that the exemption should be set at a level which will permit debtors to retain sufficient funds to provide a down payment on a modest residence in the province. It concludes that an exemption of \$9000 is sufficient to provide a 10% down payment on an average single family dwelling in Manitoba and proposes that the exemption should be set at this level and up-dated periodically.

The Report suggests that there is no reason for a distinction to be drawn between sole owners and co-owners; if a debt is owed by a single individual, he or she should be entitled to take advantage of the full residential exemption whether he or she owns a residence solely or jointly. It also proposes to expand the exemption to residences which are not considered by the law to be real property; it recommends that mobile homes, houseboats and the like should qualify for the exemption if they serve as the residences of their owners, even though they are not real property. Finally, the Report notes that current legislation fails to protect the exempt proceeds from seizure after it has been paid over to the debtor. It proposes that the debtor should be granted six months to spend the exempt funds on a new home or other assets before the funds or the assets become subject to seizure.

**SOMMAIRE DU RAPPORT SUR
LES EXEMPTIONS RÉSIDENTIELLES**

SOMMAIRE

Le rapport de la Commission de réforme du droit du Manitoba sur les exemptions résidentielles vise à moderniser des mesures législatives adoptées en 1885. L'exemption empêche les créanciers de saisir la maison d'un débiteur pour régler une dette tant que l'équité de ce dernier ne dépasse pas une certaine somme; si son équité dépasse la somme fixée, la loi lui permet de garder le montant de l'exemption sur le produit de la vente de la maison saisie.

A l'origine, les exemptions résidentielles visaient à encourager le peuplement; elles se retrouvent encore fréquemment aux États-Unis ainsi que dans les quatre provinces de l'Ouest canadien. A son adoption en 1885, l'exemption manitobaine s'élevait à 2500\$, puis a été réduite à 1500\$ l'année suivante. Depuis, ces mesures n'ont été modifiées qu'une seule fois, vers le milieu des années 1960; l'exemption a alors été fixée à 2500\$ pour les propriétaires uniques, mais est demeurée à 1500\$ pour les copropriétaires. La Commission souligne, dans son rapport, que bien que l'exemption originale permettait probablement de couvrir le prix d'une maison modeste, elle a rapidement cessée de protéger les résidences moyennes de la saisie en vue de la revente.

La Commission précise, dans son rapport, qu'elle a sérieusement pensé à recommander l'abolition de l'exemption, mais elle en est venue à la conclusion que celle-ci peut tout de même offrir une certaine sécurité aux propriétaires de maisons sans pour autant porter un trop grand préjudice aux intérêts légitimes des créanciers. La Commission recommande que l'exemption soit fixée à un niveau qui permettra au débiteur de garder la somme nécessaire à un versement initial pour l'achat d'une maison modeste dans la province. Elle considère qu'une exemption de 9000\$ est suffisante pour faire un versement initial de 10% sur une maison unifamiliale moyenne au Manitoba; elle propose donc de la fixer à ce niveau et de la mettre à jour périodiquement.

Selon le rapport, il n'est pas nécessaire de différencier les propriétaires uniques des copropriétaires; tous les propriétaires qui ont des dettes devraient bénéficier des avantages que représente une pleine exemption résidentielle, peu importe que la propriété soit unique ou conjointe. Le rapport propose également d'élargir l'application de l'exemption pour englober les résidences qui, selon la loi, ne sont pas considérées comme des biens réels. La Commission recommande donc que les maisons mobiles, les bateaux d'habitation et les autres biens semblables soient couverts par l'exemption s'ils servent de résidence à leurs propriétaires. Elle souligne que les mesures législatives actuelles ne soustraient pas à la saisie la somme exemptée une fois qu'elle a été versée au débiteur. Elle propose d'accorder à ce dernier une période de grâce de six mois pour réinvestir la somme dans une nouvelle maison ou dans d'autres actifs avant de permettre la saisie de la somme ou des actifs.