

# FROM ACCESSION TO EXEMPTION: A BRIEF HISTORY OF THE DEVELOPMENT OF ALASKA PROPERTY EXEMPTION LAWS

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## ABSTRACT

*This Article examines the historical development of Alaska's debtor protections from their beginnings in the period of initial federal administration to the present. The current Alaska statutes protecting certain property of debtors from their creditors descended from policies first enacted by Congress. Although federal authority began in 1867 with the area's acquisition from Russia, Congress did not provide for governmental administration in Alaska until 1884, which act also provided Alaska its first debtor protection statutes. Extension of the federal Homestead Act to Alaska in 1898 brought the first protections for settlers' homesteads from their creditors. By 1912 and the creation of the territorial government, Congress had set the basic structure of debtor protection in Alaska. Unlike those states which insisted historically on placing certain debtor protections within their constitutions, public policy in Alaska has deemed statutory structures adequate to protect a debtor's interests.*

## INTRODUCTION

The law of homestead and personal property exemptions in Alaska developed from the nation's determination to encourage immigration to its sparsely-inhabited northern territory. Congress used elements from the Homestead Act of 1862 to grant land to settlers and to protect those

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grants from pre-existing creditors during the early settlement period. Because initial federal administration of Alaska emphasized economic and resource development, the protection of individual liberty became more of a legislative function, unlike the constitutional status accorded to debtor protection in states such as Texas and Florida. Consequently, developing protections for debtors' assets in Alaska reflected a basic policy of shielding people, through statute, from complete destitution rather than limiting the government's flexibility in this area by placing these protections in the state constitution.

In applying its homestead and personal property exemption laws, Alaska follows public policy principles similar to those exercised in most states—again, such as Texas and Florida.<sup>1</sup> Exemption laws are “liberally construed” to provide the broadest protection to debtors;<sup>2</sup> property that is not exempt may be sold and the proceeds distributed towards the claims of judgment creditors.<sup>3</sup> Exemptions of property from execution by creditors, such as that protecting the family home, prevent the debtor and debtor's family from being made so impecunious that they become public dependents.<sup>4</sup> Yet, despite its application of current principles, Alaska began its tenure under federal authority with neither laws for nor a tradition of protecting a debtor's basic assets.

### I. 1867–1884: ACCESSION AND EARLY FEDERAL CONTROL

The roots of Alaska's contemporary protections for a debtor's property are intertwined with the extension of federal jurisdiction to the region. In the forty-five years between acquiring Alaska from Russia to organizing it as an official territory, the United States governed the area in what is best characterized as an incremental manner. Until 1884, limited authority was exercised in turn by the federal customs service, the U.S. Army, and the U.S. Navy.

At the beginning of the nineteenth century, Russia occupied the northwestern area of the North American continent. In light of increasing exploration and activity in the region both by the United

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1. *Gutterman v. First Nat'l Bank of Anchorage*, 597 P.2d 969, 971 (Alaska 1979).

2. *Iardi v. Parker*, 914 P.2d 888, 890 (Alaska 1996).

3. “A debtor's property which is not exempted from execution in satisfaction of debt by applicable state or federal laws is subject to the rights of creditors.” *Gutterman*, 597 P.2d at 970.

4. The purpose of homestead is to ensure a debtor has a place to reside and does not require public assistance. *In re Shell*, 295 B.R. 129 (Bankr. D. Alaska 2003). In *Shell*, the bankruptcy debtor was permitted to exempt as homestead a six-unit apartment building, which he owned and where he resided. *Id.* at 131.

States and Great Britain, uncertainty about the extent of Russia's possessions led the Imperial Government to initiate negotiations with both nations. President James Monroe described these discussions and articulated the policy that would be known as the "Monroe Doctrine" in his 1823 annual report to Congress.<sup>5</sup> Russia and Great Britain concluded a convention in February 1825, establishing the demarcation between their respective North American possessions.<sup>6</sup>

Under the treaty, ratified and proclaimed on June 20, 1867, the United States acquired "all the territory and dominion now possessed by his said Majesty [the Tsar of Russia] on the continent of America and in the adjacent islands. . . ."<sup>7</sup> This included all Russian-occupied territory west of the established boundary with Great Britain's possessions, described the western extent of the Aleutian Islands and the demarcation between the ceded area and Russian eastern possessions, and extended into the Arctic Ocean.<sup>8</sup>

Existing private ownership of property was not disturbed by the treaty. Included in the transfer was the Russian government's interest in all property other than private individual property or churches built on land previously ceded by the government to the Orthodox Church.<sup>9</sup> Russians living in the territory could retain their citizenship by returning to Russia within three years, otherwise they were entitled to all rights of a U.S. citizen, including "the free enjoyment of their liberty, property, and religion."<sup>10</sup>

Federal control over the ceded area was limited initially. The Customs Act of 1868 created the District of Alaska and extended U.S. customs laws to make a single collections district for the purpose of

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5. President Monroe announced the initiation of these discussions by Russia with the United States "to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent." James Monroe, U.S. President, The Monroe Doctrine, Commencement Address at the First Session of the 18th Congress (Dec. 2, 1823), [http://avalon.law.yale.edu/19th\\_century/monroe.asp](http://avalon.law.yale.edu/19th_century/monroe.asp). Regarding further European attempts to expand colonization in the Western Hemisphere, the President stated: "In the discussions to which this interest has given rise and in the arrangements by which they may terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers . . ." *Id.*

6. Treaty With Russia, Russia-U.S., art. I, Mar. 30, 1867, 15 Stat. 539, 540, <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=015/llsl015.db&recNum=572>.

7. *Id.* at 539.

8. *Id.* at 541.

9. *Id.* art. II, at 541.

10. *Id.* art. III, at 542.

customs, commerce, and navigation.<sup>11</sup> Section 4 of the Act authorized the President to “restrict and regulate or to prohibit the importation and use of . . . distilled spirits into and within the said territory.”<sup>12</sup> Attempts to control the liquor traffic attained limited success, but purportedly led to the production of rum (or some semblance thereof) by some Alaska Natives. The appointed Governor of Alaska, in his annual report of 1898, recorded one such account: “A tribe on Admiralty Island, known as the ‘Hoochinoos,’ used to smuggle [locally made liquor] to the soldiers at Sitka, and the compound which they sold became known as ‘hoochinoo’ and ‘hooch.’”<sup>13</sup>

The U.S. Army stationed troops at Sitka and their commander functioned as the primary federal authority in the area, but the Army withdrew the troops in 1875.<sup>14</sup> After the residents of Sitka appealed to British officials for protection from presumed native attacks, in response to which a British warship was dispatched to the community, the U.S. Navy stationed a vessel in the vicinity.<sup>15</sup> This remained the primary federal presence in the region until 1884.

## II. 1884–1912: TERRITORIAL ORGANIZATION AND ADOPTION OF EXEMPTIONS

### A. The First Organic Act

In 1884, Congress enacted broader civil authority for the District of Alaska (not yet officially organized as a federal territory) by passing the “First Organic Act.”<sup>16</sup> The Act designated all of Alaska as a federal

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11. Customs Act of 1868, ch. 273, 15 Stat. 240. Section 2 of the Act officially named the region the District of Alaska. *Id.* § 2.

12. *Id.* § 4.

13. UNITED STATES DEP’T OF THE INTERIOR, 1899 DEP’T INTERIOR ANN. REP. PT. 3 181–82 (1900), <http://books.google.com/books?id=zcGU4kouuu8C&dq=Alaska%20organic%20law%201884%20oregon&pg=PA200#v=onepage&q=Alaska%20organic%20law%201884%20oregon&f=false>. Whether factual or apocryphal, the account provides a momentary etymological diversion in an otherwise typical government report of the late nineteenth century.

14. *To Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Powers Thereon, and for Other Purposes: Hearing on H.R. 38 Before the H. Comm. on the Territories*, 62d Cong. 477–79 (1911) (statement of Hon. James Wickersham, Delegate from Alaska).

15. Ernest Gruening, *Opening Address*, 122 BULL. NAT’L RES. COUNCIL 1, 4 (1951), <https://books.google.com/books?id=EUUrAAAAYAAJ&printsec=frontcover#v=onepage&q&f=false>.

16. An Act Providing a Civil Government for Alaska, ch. 53, 23 Stat. 24 (1884) [hereinafter First Organic Act]. An “organic law” is a constitution or other foundational instrument that establishes the basis and framework of civil government. *State v. Atl. Coast Line R. Co.*, 47 So. 969, 974, (Fla. 1908) (“Whether

judicial district, provided a temporary seat of government at the town of Sitka, and authorized a governor as the primary executive officer for the area.<sup>17</sup> Congress retained all legislative power.<sup>18</sup> Provision also was made for a district judge, clerk of court, district attorney, and marshal.<sup>19</sup> The judicial power of the new court was exercised by the federal district judge at Sitka and four additional presidential appointees, or “commissioners,” who were to reside at specific locations in the district.<sup>20</sup> Section 8 of the Act created a formal land district and land office, primarily to supervise mining claims and rights under the application of federal law to the district.<sup>21</sup> Through the same section, Congress applied in the district all federal laws pertaining to mining claims and permitted those who previously located mines or mineral claims under U.S. law to perfect their claims under the mining laws.<sup>22</sup> However, Congress chose a conservative approach to managing the public lands and expressly declined to extend the general federal land laws, including the existing Homestead Act, to Alaska.<sup>23</sup>

Section 7 of the First Organic Act incorporated and applied the then-existing general laws of Oregon to the District of Alaska, including civil and criminal matters.<sup>24</sup> Rather than enact a comprehensive civil code or set of statutes specially created for Alaska, Congress turned to a familiar practice of incorporating by reference a specific body of law and applying it to the district.<sup>25</sup> Throughout the westward expansion of the United States, Congress tended to apply the laws extant in a geographically-proximate state or existing territory to newly-organized territories. For example, in the 1836 Act organizing the Territory of Wisconsin, Congress applied the existing laws of the Territory of Michigan.<sup>26</sup> Similarly, the 1838 Act organizing the Iowa Territory applied the existing laws of Wisconsin Territory,<sup>27</sup> and the 1849 Act organizing the Minnesota Territory applied the existing laws of the State

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the statute or the rule violates the organic provisions separating the powers of government into departments should be determined by reference to the Constitution of the state.”).

17. First Organic Act, *supra* note 16, at 24.

18. *Id.* at 27.

19. *Id.* at 24–27.

20. *Id.* at 25.

21. *Id.* at 26.

22. *Id.*

23. *Id.*

24. *Id.* at 25–26.

25. *Id.*

26. An Act establishing the Territorial Government of Wisconsin, ch. 54, §12, 5 Stat. 10, 15 (1836).

27. An Act to divide the Territory of Wisconsin and to establish the Territorial Government of Iowa, ch. 96, §12, 5 Stat. 235, 239 (1838).

of Wisconsin.<sup>28</sup> In contrast, Oregon Territory was organized in 1848 with “all rights as accorded under the Northwest Ordinance of 1787 and the existing laws then in force under the authority of the provisional government of Oregon.”<sup>29</sup> The Act organizing Washington Territory in 1853 applied the existing laws of Oregon Territory.<sup>30</sup>

One likely explanation for this practice is found in the same section 7 of the First Organic Act, providing for certain appeals from criminal proceedings in the Alaska District to be referred to the federal circuit court in Oregon.<sup>31</sup> Applying the same laws in Alaska that were available and familiar within the District of Oregon would facilitate this review process.<sup>32</sup>

Included through this incorporation by reference were the Oregon laws exempting some items of personal property from levy and execution. By statute, debtors were entitled to protect the following from seizure and sale by their creditors:

- Books, pictures, and musical instruments with an aggregate value of \$75.
- Necessary wearing apparel for a debtor with an aggregate maximum value of \$100. If the debtor was a “householder,”<sup>33</sup> this provision allowed each family

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28. An Act to establish the Territorial Government of Minnesota, ch. 121, §12, 9 Stat. 403, 407 (1849).

29. An Act to establish the Territorial Government of Oregon, ch. 177, §14, 9 Stat. 323, 329 (1848).

30. An Act to establish the Territorial Government of Washington, ch. 90, §12, 9 Stat. 172, 177 (1853). See generally BENJAMIN PERLEY POORE, THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS OF THE UNITED STATES, pt. I (1877), (summarizing federal and state constitutions, colonial charters, and other organic laws of the United States towards the end of the nineteenth century).

31. First Organic Act, *supra* note 16.

32. Alaska was not the last application of Oregon law to a U.S. territory. In 2011, the U.S. District Court for the U.S. Virgin Islands found persuasive an Oregon case decision on a statute identical to that in the law for the Virgin Islands, in part based on the historical derivation of the earliest code for the islands. See *Soley v. Warlick*, 2011 U.S. Dist. LEXIS 92583, at \*4 n.4 (D.V.I. 2011) (explaining that “[t]he Court finds these Oregon cases persuasive authority” based on the fact that the U.S. Virgin Island municipal codes at issue in that case were developed by two young lawyers who had come to the Virgin Islands from the Territory of Alaska soon after 1917, after the Alaska Code had been formulated based on the Oregon code). This decision in turn applied the controlling appellate doctrine that the text of a Virgin Islands statute drawn from the statutes of another jurisdiction “. . . is to be construed to mean what the highest court of the jurisdiction from which it was taken had, prior to its enactment in the Virgin Islands, construed it to mean.” *Berkeley v. W. Indies Enters., Inc.*, 480 F.2d 1088, 1092, 10 V.I. 619 (3d Cir. 1973).

33. The accepted meaning of the term apparently was to be the head of a family. The Codes and General Laws of Oregon, ch. III, title I, § 282 (Hill 2d ed. 1892).

member of the debtor separately to exempt wearing apparel to a maximum value of \$50.<sup>34</sup>

- Tools, implements, apparatus, team of animals, vehicle, harness, or library—when necessary for the trade, profession, or occupation of the debtor—to a maximum value of \$400. The law also exempted the value of food sufficient to support the team, if any, for sixty days. The statute defined “team” as not more than one yoke of oxen or a pair of horses or mules.
- If the debtor was a “householder,” the law exempted the following property owned and in actual use: ten sheep with one year’s fleece, or the yarn or cloth manufactured therefrom; two cows; five swine; household goods, furniture, and utensils, all to an aggregate value of \$300. Once again, the law exempted food sufficient to support such animals for three months but additionally exempted provisions actually intended for family use and necessary for the support of the householder and family for six months.
- The seat or pew occupied by the householder, or family, in a place of public worship.
- All property of the state or any county, city, town, village, or other such public or municipal corporation.<sup>35</sup>

The statute expressly excluded from its exemptions any property subject to execution on a debt for its own purchase price. In other words, if the debtor still owed money for the purchase of the item, whoever was entitled to collect payment for the purchase was allowed to seize and sell that article in payment of the debt. A separate exemption protected the earnings of a judgment debtor accrued within the thirty days immediately prior to entry of the judgment, provided the earnings were necessary to support the debtor’s family.<sup>36</sup>

Incorporating matters into law merely by reference creates at least two uncertainties, both of which impacted debtor relief in Alaska under the First Organic Act. The first issue, particularly in a statute

34. In relative purchasing power calculated as a change in the consumer price index, that figure would be equivalent to approximately \$1,220 today. See Samuel H. Williamson, *Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to Present*, MEASURING WORTH, [www.measuringworth.com/uscompare/](http://www.measuringworth.com/uscompare/) (allowing you to compare relative purchasing powers across time).

35. Act To Provide a Code of Civil Procedure, ch. III, tit. I, § 279, 1862 Ore. Laws 69 (1862), <https://books.google.com/books?id=uc5NAQAIAAJ&printsec=frontcover&dq=Oregon+statutes+and+code+1862&hl=en&sa=X&ei=Nvt6T4H1BpSltwefqK2sCA#v=onepage&q=exempt&f=false>. See also J.H. JELLETT, PACIFIC COAST COLLECTION LAWS 197 (1880), [http://books.google.com/books?id=imksAAAIAAJ&printsec=frontcover&dq=Pacific+Coast+Collection+Laws&source=bl&ots=IIHHXZgaNi&sig=DMRheLaGIEK\\_cIi9tcnbc4gnbfc&hl=en&sa=X&ei=9CxSUIbmOYog9QSN8ICYBg&ved=0CDYQ6AEwAA#v=onepage&q&f=false](http://books.google.com/books?id=imksAAAIAAJ&printsec=frontcover&dq=Pacific+Coast+Collection+Laws&source=bl&ots=IIHHXZgaNi&sig=DMRheLaGIEK_cIi9tcnbc4gnbfc&hl=en&sa=X&ei=9CxSUIbmOYog9QSN8ICYBg&ved=0CDYQ6AEwAA#v=onepage&q&f=false).

36. Act To Provide a Code of Civil Procedure, *supra* note 35, ch. III, tit. II, §310.

incorporating a law of economic relief, is the longstanding constitutional prohibition against states adopting laws impairing the obligation of contracts.<sup>37</sup> This means a new law could not alter the rights of parties under their existing contracts,<sup>38</sup> including the present rights and remedies of a creditor to collect if the debtor failed to pay. The second problem is the effect of future amendments or alterations to the provision previously incorporated by reference in a statute; if the incorporating law did not include future amendments to the provision incorporated, the people affected by the receiving law would not reasonably expect to be bound by the future actions of another jurisdiction. Unless the law expressly states otherwise (within the bounds of the federal and state constitutions), the general legal rules are that material incorporated into a law will affect only future rights of parties (prospective effect of incorporated material) and the incorporated law will be that existing on the exact date of incorporation, as the legislature did not choose to incorporate future amendments.<sup>39</sup> As the language incorporating Oregon law did not apply expressly to prior contracts, it only affected contracts (and resulting legal actions) entered after the date of its adoption. Since the First Organic Act went into effect on May 17, 1884, and did not incorporate future amendments to the incorporated Oregon laws, only such laws in effect on the date of passage were controlling in Alaska. When incorporating law from another jurisdiction, the better practice is to write out the full text to be included, thus precluding any question about the intent of the adopting legislature.

Because Oregon in 1884<sup>40</sup> did not protect residential homesteads

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37. U.S. CONST. art. I, § 10, cl. 1.

38. *Id.*

39. An example of the latter issue occurred in Florida condominium law after 1973. In Florida, as in most jurisdictions, the laws extant at the time a contract is executed are interpreted as forming part of the contract. The original Condominium Act, FLA. STAT. chapter 711 (1973), thus automatically became part of the official documents subsequently creating a number of condominiums in the state. However, because the documents did not also incorporate *future amendments* to the Condominium Act, when the law was changed a few years later by the repeal of Chapter 711 and enactment of the wholly-new Chapter 718 in 1978, these condominiums continued to be controlled only by the former Act. As an attorney with the former Florida Department of Business Regulation from 1986-92, I had to retain an old copy of Chapter 711 for periodic reference in condominium enforcement matters.

40. The First Organic Act incorporated only the Oregon laws existing as of May 17, 1884, not any future amendments. FRANK OLDS LOVELAND, A TREATISE ON THE LAW AND PROCEEDINGS IN BANKRUPTCY 352 n.6 (1899), <https://books.google.com/books?id=HKE9AAAIAAJ&printsec=frontcover&dq=Loveland+bankruptcy+1899&hl=en&sa=X&ved=0CDAQ6AEwAGoVChMLe232cafyQIVSzsmCh1fiw71#v=onepage&q=Loveland%20bankruptcy%201899&f>

from levy and execution,<sup>41</sup> emigrants to Alaska continued to lack any such protection for their own homes, if they acquired title to real property at all. The incorporation of Oregon law provided general laws for conveying title to real estate between private parties, but did not control the transfer of land held by the federal government to individuals. The First Organic Act created a federal land office, but no one was entitled to acquire title to the land they occupied through the settlement donation or pre-emption processes available in other western states.

## B. Expansion of the Federal Homestead Laws to Alaska

As federal governance increased in Alaska, so too did awareness of the region's economic resources. Within two years of adopting the First Organic Act, a bill was filed in the U.S. House of Representatives to extend the provisions of the Homestead Act<sup>42</sup> to part of Alaska in order to encourage migration needed to support economic development.<sup>43</sup> The congressional report accompanying the bill summarized the findings of the House Committee on the Territories about Alaska's resources: "Alaska possesses very rich mineral deposits of gold, silver, iron, and other valuable minerals, a large quantity of timber, and an enormous supply of food-fishes. . . . The climate along the coast and in Southeastern Alaska is mild and healthful."<sup>44</sup>

As there was no official survey or exploration of the Alaskan interior by the federal government at this time, the committee's findings apparently were anecdotal. Finding no need to expand the civil government established by the First Organic Act, the committee nevertheless recommended extending the Homestead Act to an undefined portion of Alaska to be determined by Secretary of the Interior, as approved by the President.<sup>45</sup> The primary reason was

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=false.

41. Oregon adopted a homestead exemption by statute in 1893 that applied only to debts incurred prospectively. *Walker v. Harold*, 74 P. 705, 708 (Or. 1903); *The Codes and Statutes of Oregon*, title III, ch. II, §§ 221-224 (Bellinger & Cotton 1901).

42. An Act to secure Homesteads to actual Settlers on the Public Domain (Homestead Act of 1862), ch. 75, 12 Stat. 392 (1862) (codified at 43 U.S.C. §§ 161-164) (repealed 1976).

43. COMM. ON THE TERRITORIES, HOMESTEAD LAWS IN ALASKA, H.R. REP. NO. 49-9861, at 1 (1886).

44. COMM. ON THE TERRITORIES, HOMESTEAD LAWS IN ALASKA, H.R. REP. NO. 49-3232, at 1 (1886). The final sentence may have been rhetorically hopeful if not entirely factual.

45. *Id.*

pragmatic: emigration to Alaska would be discouraged if settlers could not acquire title to a home they built or land they improved over time. While the committee speculated that opening the partially-settled areas of the region would greatly increase the volume of emigration, settlement, and land purchases, a second, even more pragmatic intent was stated: further settlement presumably would spur exploration of the interior without much further government expense.<sup>46</sup>

The bill did not pass, and Congress continued to wrestle not only with the desirability of extending the Homestead Act to Alaska, but also with the form of government best suited to the district. An 1888 report by the House Committee on the Territories<sup>47</sup> advocated for the formal organization of Alaska as a federal territory for three reasons. First, the 1867 Treaty provided that those choosing to remain in Alaska should receive “all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion.”<sup>48</sup> Unfortunately, from 1867 to 1884 Alaska was without any form of civil government and thus the residents choosing to remain had no means to secure and enforce their rights as citizens, in apparent contradiction to the provisions of the Treaty.

Passed in part to alleviate this condition, the First Organic Act had proven cumbersome in execution, leading to the second reason for a territorial organization: the need for a system of laws fitting physical, political, and economic conditions in Alaska, rather than the markedly different concerns of a state with established communities. The committee noted the First Organic Act created powers and duties—such as the Governor’s authority to compel service in the militia when necessary and the requirement for the clerk of the district court to record deeds and other instruments of transactions in real estate—without additional, necessary legislation providing the means by which the powers and duties would be implemented.<sup>49</sup> Finally, the committee once again reflected on Alaska’s wealth of natural resources and the need for laws sufficient to encourage the investment and development needed for economic growth.<sup>50</sup>

The possibility of extending the Homestead Act to Alaska was

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46. *Id.*

47. *See generally* COMM. ON THE TERRITORIES, ORGANIZATION OF THE TERRITORY OF ALASKA, H.R. REP. NO. 50-1318, at 1-5 (1888) (advising that Alaska be made a federal territory).

48. Treaty With Russia, Russia-U.S., *supra* note 6.

49. COMM. ON THE TERRITORIES, ORGANIZATION OF THE TERRITORY OF ALASKA, H.R. REP. NO. 50-1318, at 1-5 (1888).

50. *Id.*

raised again in 1890. This time, the House Committee on the Public Lands considered Senate bill 1859, providing for the acquisition of land for town sites and commercial purposes in the district. In its report, the committee concluded the Senate bill would assist desired economic development but was deficient in that it failed to provide for settlers to acquire agricultural and residential property.<sup>51</sup> The committee advocated not only extending the right to acquire land through settlement pre-emption and donation, but also creating a full system of laws.<sup>52</sup> This included a form of local representation by organizing Alaska formally as a full territory in the federal system.<sup>53</sup> As with prior congressional studies, this report dwelt at length on the apparent mineral resources of the region and particularly noted the mining and recovery of gold both in the region around Juneau as well as the Yukon River valley.<sup>54</sup>

Gold, while chemically not very reactive, was a catalyst for legislation by Congress that furthered development of economic infrastructure and finally extended the Homestead Act to Alaska. By 1898, the influx of gold prospectors and miners to the Klondike region caused Congress to address the need for transportation in Alaska by providing for the development of railroads, as well as extending the homesteading laws to the region.<sup>55</sup> The House originally proposed a homestead allotment of 160 acres while the Senate proposal reduced the size of a parcel to forty acres; the bill passed by Congress on March 14, 1898 split the difference at eighty acres.<sup>56</sup> Part of the continuing extension of federal law and judicial authority into Alaska, this legislation responded to the increasing exploitation of fishery resources and mining in widely separated areas of Alaska's interior by improving incentives for workers to settle permanently in the region. Developing public policy in Congress resulted not only in encouraging settlement by extension of the Homestead Act, but also in creative approaches to expanding the impact of the federal court system.<sup>57</sup>

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51. COMM. ON THE PUB. LANDS, TOWN SITES IN ALASKA, S. REP. NO. 51-2450, at 1 (1890).

52. *Id.*

53. *Id.*

54. The provisions supporting creation of town sites and allowing the purchase of land for trade or manufacturing activities in Alaska discussed in the report were passed and became law on March 3, 1891. Act of Mar. 3, 1891, ch. 561, §§ 11-15, 26 Stat. 1095.

55. COMM. ON THE PUB. LANDS, HOMESTEADS, ETC., IN ALASKA, H.R. REP. NO. 55-137, at 1-2 (1898).

56. Act of May 14, 1898, ch. 299, 30 Stat. 409; HOMESTEADS IN ALASKA, H.R. REP. NO. 57-778 (1902).

57. See generally Michael Schwaiger, *Salmon, Sage-Brush, and Safaris: Alaska's*

For the first time, Congress protected some residential real property from creditors' claims. The protection was limited to property conveyed and patented under the Homestead Act,<sup>58</sup> which shielded the land from execution only as to debts incurred prior to the issuing of the patent.<sup>59</sup> The courts, notably those in Oregon, consistently applied the scope of this statutory exemption.<sup>60</sup>

As stated in the statute, the exemption which precluded levy for prior debts attached to the property as of the date the patent for the homestead was actually issued by the government, rather than on the date the homesteader completed all requirements for the patent.<sup>61</sup> As with rural homesteads in Texas<sup>62</sup> and all homesteads in Florida,<sup>63</sup> there was no limitation on the value of the property protected.<sup>64</sup> While the land comprising the claim subject to federal patent could not be levied upon to satisfy prior debts, growing crops (which could be severed from the land) were subject to levy. Crops, when harvested, were legally

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*Territorial Judicial System and the Adventures of the Floating Court, 1901-1915*, 26 ALASKA L. REV. 97 (2009) (discussing the history of federal judges in Alaska that rode circuit aboard United States Revenue Service ships).

58. "And be it further enacted, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor." Homestead Act of 1862, ch. 75, § 4, 12 Stat. 392, 393. The Oregon Supreme Court observed that Congress' purpose in adopting § 4 as part of the Homestead Act was thus:

In pursuance of this power, and with a view to encourage the settlement of the public domain, congress has invited heads of families to settle upon small parcels thereof, and make for themselves homes, with the assurance that in no event shall the land become liable to the satisfaction of any debt contracted prior to the issuing of the patent, although in the meantime the settler may become the owner of the equitable title.

*Wallowa Nat'l Bank v. Riley*, 45 P. 766, 767 (Or. 1896). This statutory prohibition against creditors (who were levying against homesteaded property for debts incurred by the owner prior to the homestead patent being issued) continued while the statute was in force. *Mealey v. Martin*, 468 P.2d 965 (Alaska 1970).

59. *Faull v. Cooke*, 26 P. 662, 663 (Or. 1890) ("In [an earlier case decided at this term of the Oregon Supreme Court], it was held, in effect, that a settlement made by a homestead claimant upon the public lands of the United States, and compliance with act [sic] of congress on the subject, segregated the same from the public lands, and cut off intervening claims, and such is the ruling of the land department of the United States.")

60. Homestead Act of 1862, ch. 75, § 4, 12 Stat. 392; *Faull*, 26 P. at 663 ("In such case, the homestead is exempt from liability for debts contracted prior to the issuing of the patent.")

61. *Wallowa Nat'l Bank*, 45 P. at 767.

62. TX CONST. art. XVI, § 51 (1876).

63. FL CONST. art. X, § 1 (1885).

64. Homestead Act of 1862, ch. 75, § 4, 12 Stat. at 393.

considered personal property, not part of the land; for this reason a farmer could borrow money using a future crop, not the land, as collateral, risking only the produce of one year and not the source of one's livelihood. Thus, the Homestead Act protected the land, not its products.<sup>65</sup> This type of federal statutory provision, exempting lands from liability for debts incurred prior to the issuance of the patent, was repeated in other federal acts adopted to encourage development of western lands during the nineteenth century, such as the "Act to encourage the growth of timber on the western prairies."<sup>66</sup>

In an early and interesting application of the 1898 Bankruptcy Act to Oregon's statutory exemption for residential homesteads, a state court found the federal Bankruptcy Court had jurisdiction to determine the applicability of the state statute to the debtor's property.<sup>67</sup> If the state homestead exemption applied, the property was set aside as exempt from administration in the bankruptcy estate and court's jurisdiction over it was at an end.<sup>68</sup>

Soon after its passage, the efficacy of the 1898 law extending the Homestead Act to Alaska was questioned. The Governor of Alaska's

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65. *In re Daubner*, 96 F. 805 (D. Or. 1899). In that case, an Oregon debtor filed under the then-new Bankruptcy Act of 1898 and claimed protection for a homestead of 160 acres and growing crops under the Oregon homestead exemption from debts incurred after the date of the 1893 law. Because two notes were executed prior to the state enactment of homestead exemption, the debtor argued these remaining debts could not be charged against the homestead due to the fact the federal patent for the land was issued after the dates the debts were incurred. Comparing and interpreting the texts of both the Homestead and Bankruptcy Acts, the district judge found that the terms of the Bankruptcy Act specifically acknowledged the exempt status of certain property and therefore the debtor's 160 acre homestead was exempt from administration by the trustee. The crops growing on the land, however, enjoyed no such protection and could be sold for the benefit of creditors in the bankruptcy case.

66. An Act to Encourage the Growth of Timber on the Western Prairies, ch. 55, 18 Stat. 21 (1874). In resolving a dispute over title to lands acquired for the purpose of introducing timber growing, the Supreme Court of Oregon, interpreting an amended version of the timber-growing act, ruled:

The act of congress under which it was acquired provides as follows: 'Sec. 4. That no land acquired under the provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor.' 20 Stat. 114. This is a valid provision, and a condition annexed to the grant which congress was authorized to make, and absolutely prohibits the seizure and sale of the land, against the will of the owner, for the satisfaction of a debt contracted by the donee prior to the issuing of the final certificate . . . .

*Adams v. Church*, 70 P. 1037, 1037 (Or. 1902).

67. *Groves v. Osburn*, 79 P. 500, 501 (Or. 1905).

68. *Id.*

annual report of 1898 observed that extending the federal settlement donation laws to Alaska, while seeming to provide greater incentive for settlement and development, were difficult to implement.<sup>69</sup> The laws also prevented people of limited means from obtaining a claim because the region lacked reliable land surveys and no system to perform accurate surveys had been provided.<sup>70</sup> Incorporating details of the Governor's reports, the U.S. Secretary of the Interior in 1899 noted the lack of surveys and that individuals still could not obtain clear title to the property they occupied.<sup>71</sup>

### C. 1900: The Alaska Homestead Exemption

Following an 1899 revision and adoption of a comprehensive criminal code for Alaska, in 1900 Congress extensively reorganized and restated the civil code applicable to the district and created a more comprehensive civil government.<sup>72</sup> One reason for the improvement was the increasing need to strengthen the regulation of economic activity and protection of rights due to the expansion of the gold mining industry.<sup>73</sup> For the first time, a general exemption to levy for residential homesteads was made available to Alaska residents.<sup>74</sup>

The act exempted the "homestead" of a family or the proceeds from the sale of such property from judicial sale to satisfy any debt, other than a mortgage on the property. "Homestead" in this context was a statutory designation for the family home to be protected from

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69. DEP'T INTERIOR ANN. REP., *supra* note 13, at 199-200.

70. *Id.*

71. UNITED STATES DEP'T OF THE INTERIOR, 1899 REP. OF THE SEC'Y OF THE INTERIOR LXXI-LXXVI (1900), [http://books.google.com/books?id=J\\_vwAAAAAAAJ&pg=PR9&dq=Annual+report+of+the+Secretary+of+the+Interior+1899&hl=en&sa=X&ei=REh8T\\_XwF9CUtwfU6sH0DA&ved=0CGoQ6AEwCQ#v=onepage&q=Alaska&f=false](http://books.google.com/books?id=J_vwAAAAAAAJ&pg=PR9&dq=Annual+report+of+the+Secretary+of+the+Interior+1899&hl=en&sa=X&ei=REh8T_XwF9CUtwfU6sH0DA&ved=0CGoQ6AEwCQ#v=onepage&q=Alaska&f=false).

72. Act of June 6, 1900, ch. 786, 31 Stat. 321. One of the most popular compilations of these laws was privately prepared by Thomas Carter and known as the "Carter Code." THOMAS HENRY CARTER, THE LAWS OF ALASKA (1900), <http://books.google.com/books?id=aCNEAAAAYAAJ&dq=Alaska%20civil%20code%201900&pg=PR8#v=onepage&q&f=false>. The "Carter Code" was not an official government publication but an individual compilation that was regularly referenced in Alaska. Taken as similar authority was the compilation authorized by Congress entitled "Compilation of Acts of Congress and treaties relating to Alaska from Mar. 30, 1867, to Mar. 3, 1905," prepared by the Bureau of Insular Affairs in the War Department under the direction of Paul Charlton, law officer; this version of the laws was known as the "Charlton Code." MONTHLY CATALOGUE, UNITED STATES PUBLIC DOCUMENTS 540 (1913), <http://books.google.com/books?id=1s4fqNKZyg0C&dq=Charlton%20code&pg=PA540#v=onepage&q=Charlton%20code&f=false>.

73. Schwaiger, *supra* note 57, at 104.

74. Act of June 6, 1900, ch. 786, § 272, 31 Stat. 375.

creditors.<sup>75</sup> Interestingly, the section expressly required the property to “be the actual abode of and owned by” the family or some family members.<sup>76</sup> The exempt property was limited to a maximum value, \$2,500, and to one of two maximum extents of land depending on the location of the property.<sup>77</sup> Outside of a town or city “laid off into blocks or lots,” the exempt homestead could equal 160 acres. If within such a town or city, the maximum extent was one-fourth of an acre.<sup>78</sup>

The same statutory section also provided the process to assert the claim of exemption and a procedure to determine whether the value of the claimed property exceeded the exemption amount.<sup>79</sup> There was no public filing requirement; the debtor or a specified representative claimed the exemption by informing the official attempting to levy an execution against the homestead.<sup>80</sup> Additionally, the debtor had to provide a legal description of the claimed property.<sup>81</sup> The officer would inform the judgment creditor of the claim and make an initial determination whether the property likely exceeded the exemption amounts.<sup>82</sup> If so, the U.S. Marshal could be requested to appoint three disinterested people to value the property and sell all in excess of the allowed value or area.<sup>83</sup> The exemption also applied after the death of the owner as to any debts that could not be enforced against the homestead during the owner’s life.<sup>84</sup>

Unlike the structure used in the First Organic Act of 1884, the new homestead exemption provision did not merely incorporate the law existing in Oregon but expressly stated the terms of the exemption and its implementation. From the wording and structure of the new exemption adopted for Alaska, Congress apparently was influenced by the existing Oregon homestead statute.<sup>85</sup> For example, the Oregon

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75. *Id.*

76. *Id.* Oregon defined homestead as “‘the home place,’ or ‘the house and adjoining grounds where the head of the family dwells . . . .’” *Mansfield v. Hill*, 108 P. 1007, 1008 (Or. 1910).

77. Act of June 6, 1900, ch. 786, § 272, 31 Stat. 375.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. The Codes and Statutes of Oregon, tit. III, ch. II, §§ 221–224 (Bellinger & Cotton 1901), [https://books.google.com/books?id=gZw4AAAAIAAJ&pg=PA175&dq=Oregon+homestead+exempt+1893&hl=en&ei=EXubTpzSCcW3twfJztICBw&sa=X&oi=book\\_result&ct=result&resnum=2&ved=0CEEQ6AEwAQ#v=onepage&q&f=false](https://books.google.com/books?id=gZw4AAAAIAAJ&pg=PA175&dq=Oregon+homestead+exempt+1893&hl=en&ei=EXubTpzSCcW3twfJztICBw&sa=X&oi=book_result&ct=result&resnum=2&ved=0CEEQ6AEwAQ#v=onepage&q&f=false). Oregon limited the value of the exempt homestead to a maximum of \$1,500. *Id.* §222.

exemption adopted in 1893 read: "The homestead of any family shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted, or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of, and owned by, such family, or some member thereof."<sup>86</sup> Except for an addition extending the protection to the proceeds from the sale of a homestead, the 1900 federal act was virtually identical to the first two sentences of the 1893 Oregon exemption:

The homestead of any family, or the proceeds thereof, shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of and owned by such family or some members thereof.<sup>87</sup>

Both laws also used very similar text to exclude mortgages on the homestead from the exemption and to extend the protection to homesteads after death of the owner. The 1893 Oregon law provided: "This act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife."<sup>88</sup> Further, it stated that "[t]he homestead aforesaid shall be exempt from sale on any judicial process after the death of the person entitled thereto for the collection of any debts for which the same could not have been sold during his lifetime, but such homestead shall descend as if death did not exist."<sup>89</sup> Parallel provisions from the Alaska Civil Code of 1900 were similarly worded. The law provided that "[t]his Act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife" and that "[t]he homestead aforesaid shall be exempt from sale or any legal process after the death of the person entitled thereto for the collection of any debts for which the same could not have been sold during his lifetime."<sup>90</sup>

The 1900 act also restructured the personal property exemptions imported into the district through the First Organic Act by including the wage and property exemptions in one section, changing certain definitions and applicable time periods, and increasing certain amounts.

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86. *Id.* § 221.

87. Act of June 6, 1900, ch. 786, § 272, 31 Stat. 375.

88. The Codes and Statutes of Oregon, *supra* note 85, tit. III, ch. II, § 223 (Bellinger & Cotton 1901).

89. *Id.* § 226.

90. Act of June 6, 1900, ch. 786, § 272, 31 Stat. 375.

- The term “householder” was replaced by the phrase “head of household.”
- The time period for which wages would be exempt was increased from thirty to sixty days prior to levy.
- The “necessary wearing apparel” exemption was modified to remove the value limitation and to allow the exemption for the debtor and the debtor’s family members. Watches or jewelry with a value exceeding \$100 were excluded from exemption under this clause.
- The exemption for tools, implements, teams, etc., was revised to increase the maximum exempt value to \$500 and to provide for a six-month supply of food to support the team. The definition of “team” was expanded to include two reindeer or six dogs.
- The exemption for other livestock and household items was modified to exempt food sufficient to support the exempt livestock for six months.
- The exemption for local public property was simplified to reference all property of any public or municipal corporation.

The exclusion from the exemption afforded to judgments and levies for debts incurred to purchase an otherwise-exempt item was revised to include the proceeds from selling such an item.<sup>91</sup>

The homestead exemption created in 1900 was applicable to any qualifying residential property in Alaska and was not dependent on whether the land was obtained under the separate Homestead Act. This resulted in an interesting dichotomy: claimants under the Homestead Act were only entitled to obtain eighty acres from the government<sup>92</sup> but could protect up to 160 acres under the separate homestead exemption created by the 1900 law.<sup>93</sup> A settler could receive the benefits of each separate exemption but only up to eighty acres would be exempt from debts incurred prior to the debtor receiving the federal patent for the land.<sup>94</sup>

#### **D. Expansion of Settlement Donation Grants in Alaska**

Congress remained engaged on the subjects of Alaskan economic development and settlement after passing the 1900 Act. By this time the legislators realized the error of a number of presumptions: Alaska was

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91. *Id.* § 273, 31 Stat. at 375–76.

92. *See supra* note 56 and accompanying text (noting that the Act of May 14, 1898 applied the Homestead Act of 1862 to Alaska but limited claims to eighty acres).

93. Act of June 6, 1900, ch. 786, § 272, 31 Stat. 375.

94. *See supra* note 65 and accompanying text (explaining that settlers could receive the benefits of separate exemptions but only subject to their specific restrictions).

not barren wasteland but a region endowed with natural and mineral resources; while there was significant movement of people from the contiguous states and territories to Alaska, many came not as permanent settlers but in pursuit of gold or copper in the major mining areas; the climate made much more difficult the entry and improvement of property necessary under the law to obtain a settlement donation patent. In 1900 a bill introduced in the House proposed to increase the size of Alaskan settlement donation grants to 160 acres, due to the climate and the need for sufficient land for support in that environment.<sup>95</sup> This recommendation was renewed in 1902, only this time the Senate countered by proposing to increase the grant to 320 acres,<sup>96</sup> as ultimately provided in the law that passed.<sup>97</sup>

### E. Territorial Organization: The Second Organic Act

In 1912, the passage of the "Second Organic Act" formally organized the Territory of Alaska.<sup>98</sup> The act extended the U.S. Constitution and laws to the Territory of Alaska, placed the Territorial capital at Juneau, and organized the Territorial Legislature. Additionally, the powers of the legislature were limited in that all legislation was submitted to the President, who was responsible for transmitting these acts to Congress for final review.<sup>99</sup> Still, after forty-five years Alaskans finally had a greater stake in their government. The Second Organic Act did not alter either the extension of the Homestead Act to Alaska or the homestead and personal property exemptions provided by the 1900 reform of the civil code.

## III. THE TERRITORIAL PERIOD: 1912-1959

By the time the Territory of Alaska was organized formally in 1912, the general templates for its laws protecting homestead and basic personal property were in place. These were provided by statute and subject to the final control of Congress. Similar to the laws in Texas and Florida,<sup>100</sup> the types of property and amounts protected would change

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95. COMM. ON THE PUB. LANDS, HOMESTEADS IN ALASKA, H.R. REP. NO. 56-569, at 1 (1900).

96. COMM. ON PUB. LANDS, EXTENDING HOMESTEAD LAWS TO THE DISTRICT OF ALASKA, ETC., H.R. REP. NO. 57-2755, at 2 (1903).

97. Act of Mar. 3, 1903, ch. 1002, 32 Stat. 1028; COMM. ON PUB. LANDS, HOMESTEAD CLAIMS IN ALASKA, S. REP. NO. 60-1029, at 1 (1909).

98. Act of Aug. 24, 1912, ch. 387, 37 Stat. 512.

99. *Id.*

100. TX CONST. art. XVI, § 51 (1876); FL CONST. art. X, § 1 (1885).

little over the next forty-seven years. In Alaska this reflected the priority given to economic development and progress toward statehood.

### A. Changes to the Settlement Donation Laws Affecting Alaska

The U.S. Department of the Interior, General Land Office, continued to control the entry, processing of applications, and grants of patent for settlement land donations in Alaska, but there was occasional overlap with the authority of the Forest Service of the Department of Agriculture on some uses and sale of settlement claims.<sup>101</sup> Despite the efforts of Congress to extend and modify the Homestead Act for the conditions in Alaska, filing a notice for a settlement donation claim remained an involved, lengthy process even if there was no dispute to the claim or patent.<sup>102</sup>

By 1916, Congress discerned that the statutory requirement of clearing and settling a claim of 320 acres within the time required under the Homestead Act was sufficiently difficult to warrant another change applicable in Alaska. James Wickersham, previously one of the district judges added in 1900 and now serving as the Alaska Territorial representative in Congress, filed H.R. 228, proposing two changes to settlement donation grants in Alaska. First, the total size of an allowed claim would be reduced to 160 acres.<sup>103</sup> Second, to encourage migration to the territory the bill would permit any U.S. citizen (or one who expressly committed to become a naturalized citizen) to claim an additional grant of one quarter of a legal section<sup>104</sup> even if the claimant previously received a federal homestead patent in any federal jurisdiction.<sup>105</sup>

Congress subsequently amended the Homestead Act as applicable to claims in Alaska, easing stringent requirements for buffer spaces between claims and waterfronts.<sup>106</sup> Prior amendments limited the extent of claims along navigable waters and mandated minimum space between settlement donation claims with such waterfronts.<sup>107</sup> Under the

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101. Franklin K. Lane, *Freeing Alaska From Red-Tape*, 201 N. AM. REV. 841, 843-45 (1915).

102. *Id.* at 844-46.

103. AMENDED HOMESTEAD LAWS IN ALASKA, H. REP. NO. 64-287, at 2 (1916).

104. *Id.* Under the township and range method of land description, a section is one square mile and contains 640 acres. A quarter section is thus 160 acres.

105. *Id.*

106. Act of June 5, 1920, ch. 265, 41 Stat. 1059; COMM. ON THE PUB. LANDS, AMENDMENT TO HOMESTEAD LAWS AS EXTENDED TO ALASKA, H.R. Rep. No. 66-868, at 3 (1920).

107. Act of May 1898, ch. 299, 30 Stat. 409. This Act limited each claim fronting a navigable body of water to no more than eighty rods and required a

1920 revision, the Secretary of the Interior was authorized to waive the limitation on the length of waterfront in an applicant's claim.<sup>108</sup>

### B. Changes in Property Exemption Laws

The structure of exemption laws for Alaska, including the property and values protected, was established in 1900 and remained generally unchanged throughout the organized territorial period. In 1919, the exemption statute was amended to allow a debtor to file an affidavit and exempt the first \$100 of income for personal services or wages earned within the thirty days prior to levy or execution of judgment on the debtor's assets, when necessary to support the family.<sup>109</sup> This wage exemption was increased to \$150 in 1949.<sup>110</sup> In 1953, the exemption was increased again to \$200, but this time the territorial legislature included language restricting the debtor to receiving and retaining no more than the exempt amount every thirty days.<sup>111</sup> The homestead exemption was changed in 1957, shortly before statehood.<sup>112</sup> The maximum value of property the exemption protected was increased to \$8,000, but the allowed extent of the protected property remained the same: 160 acres outside of a town or city, one quarter of an acre within a municipality.<sup>113</sup> The statute retained a valuation process to determine if claimed homestead exemptions exceeded the allowed values.<sup>114</sup> Once again, the debtor was required to declare and describe the property claimed as protected homestead at time of levy.<sup>115</sup> Insofar as affording property exemptions to debtors, during the territorial period the concept established in Alaskan law was to increase the maximum values but not expand exemptions to additional property.

### C. Constitution and Statehood

On March 30, 1916, James Wickersham introduced into Congress a

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space of at least eighty rods between such claims. See *U.S. customary units*, ONLINECONVERSION.COM, [http://www.onlineconversion.com/article\\_US\\_units.htm](http://www.onlineconversion.com/article_US_units.htm) (explaining that one rod = 16.5 feet = 5.0292 meters). This requirement was revised by Act of Mar. 3, 1903 32 Stat. 1028 (1902), to limit frontage to 160 rods following the shoreline of the navigable water, retaining the requirement of an eighty rod space between claims.

108. Act of June 5, 1920, ch. 265, 41 Stat. 1059.

109. Act of Apr. 18, 1919, sec. 1, § 1105(1), 1919 Alaska Sess. Laws ch. 8, 10.

110. Act of Mar. 19, 1949, sec. 1, § 55-9-78, 1949 Alaska Sess. Laws ch. 45, 143.

111. Act of Mar. 26, 1953, sec. 1, § 55-9-78, 1953 Alaska Sess. Laws ch. 74, 176.

112. Act of Mar. 18, 1957, sec. 1, § 55-9-79, 1957 Alaska Sess. Laws ch. 61, 59.

113. *Id.*

114. *Id.*

115. *Id.*

bill for Alaskan statehood that did not receive a committee hearing,<sup>116</sup> but support for statehood grew for the next thirty years. In 1949 the Territorial Legislature created the Alaska Statehood Committee,<sup>117</sup> though it was not until 1955 that legislation was passed calling a convention to draft a proposed state constitution.<sup>118</sup>

Prior to the 1955 session of the Territorial Legislature, then-Representative Thomas B. Stewart<sup>119</sup> participated in consulting with constitutional experts such as the Public Administration Service in Chicago<sup>120</sup> and contributors to other recent state constitutional conventions as well as obtaining relevant materials. The goal of this research was to develop the best structure and terms for the proposed state constitution, as well as ensure an orderly convention providing the best representation for the people of the Territory.<sup>121</sup> The convention met in November 1955 and produced a constitution that was approved by a more than two-to-one margin of the voters on April 21, 1956.<sup>122</sup> Alaska was admitted to the Union as the forty-ninth state on January 3, 1959.<sup>123</sup>

Although the Alaska Constitution was characterized as an excellent and modern document,<sup>124</sup> no provision was made for exempting homesteads or personal property from the reach of creditors. The new state continued to implement such protections solely through statute.<sup>125</sup>

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116. CLAUS M. NASKE, 49 AT LAST!: THE FIGHT FOR ALASKA STATEHOOD, 50 (2009).

117. Act of Mar. 25, 1949, 1949 Alaska Sess. Laws ch. 108, 269; Thomas B. Stewart, *Recollections on the Writing of the Alaska State Constitution* (1972) (unpublished manuscript) (on file with the Ostrom Workshop, Indiana University Bloomington), [http://ostromworkshop.indiana.edu/colloquia/materials/papers/stewart\\_paper.pdf](http://ostromworkshop.indiana.edu/colloquia/materials/papers/stewart_paper.pdf).

118. NASKE, *supra* note 116, at 220.

119. Judge Stewart (d. 2008) was a former member of the Territorial House of Representatives, Secretary of the Alaska Constitutional Convention in 1955, a state senator, and a Superior Court Judge.

120. See generally PUB. ADMIN. SERV., CONST. STUDIES PREPARED ON BEHALF OF THE ALASKA STATEHOOD COMM. FOR THE ALASKA CONST. CONVENTION CONVENED NOV. 8, 1955 (1955) (containing constitutional studies regarding Alaska).

121. Stewart, *supra* note 117, at 6-7.

122. John S. Hellenthal, *Alaska's Heralded Constitution: The Forty-Ninth State Sets An Example*, 44 A.B.A. J. 1147, 1147 (1958).

123. An Act to Provide for the Admission of the State of Alaska to the Union, Pub. L. No. 89-508, 72 Stat. 339 (1958). The law was signed by President Eisenhower on July 7, 1958 and Alaska was admitted on January 3, 1959.

124. Hellenthal, *supra* note 122, at 1147.

125. Alaska is not alone in limiting debtor exemptions to statutory provisions. Twenty-seven other states provide debtor exemptions only by statute, if at all: Arizona, Connecticut, Delaware, Hawai'i, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, and Virginia. Mark Cappel, *Collection Laws & Exemptions*, BILLS.COM,

#### IV. ALASKA PROPERTY EXEMPTIONS: 1959–PRESENT

From statehood to the present, Alaska expanded and increased both the homestead and personal property exemptions only in statute, never elevating these protections into the state constitution. The exemption laws were first changed to increase the wage exemption for the head of a family to \$350; a separate provision was added limiting the wage exemption to only \$200 for single persons.<sup>126</sup> However, 1962 saw the enactment of entirely new exemption laws.

##### A. Property Exemptions: 1962–1982

As part of the 1962 complete revision of the Code of Civil Procedure,<sup>127</sup> the Alaska Legislature revised and re-codified the exemptions both for personal and homestead property. The statutes expressly provided a comprehensive statement of all real and personal property subject to execution.<sup>128</sup> Procedurally, to assert an exemption the debtor or debtor's representative still declared exemptions in personal property or a homestead either at the time of attempted levy against the property, or after a levy but before sale as soon as the debtor became aware of the levy.<sup>129</sup> The specific exemptions for personal property were reminiscent of those first incorporated from Oregon law in 1884:

- (1) Wage exemption: \$350 for head of household, \$200 for single person, for the 30 day period immediately preceding levy.
- (2) Books, pictures, musical instruments of debtor up to total value of \$300.
- (3) Clothing necessary for debtor & family. Watches & jewelry up to total value of \$200.
- (4) Tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary for trade, occupation, or profession, to a maximum value of \$1,800. This included sufficient food to support the exempt animals for six months.
- (5) Property of debtor actually used or kept for use by family: animals, household goods, furniture, and utensils to a maximum value of \$1,200. This exemption also included

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<http://www.bills.com/collection-laws/>.

126. An Act Relating to Exemptions from Execution, § 1, 1961 Alaska Sess. Laws ch. 87, 99.

127. ALASKA CODE CIV. P. titl. I, art. XV (1962), 1962 Alaska Sess. Laws ch. 101.

128. *Id.* titl. I, art. XV, § 15.07.

129. *Id.* titl. I, art. XV, § 15.08.

food to support the animals and provisions to support the family, both for six months.

- (6) All property of a public or municipal corporation.
- (7) As with all prior versions of the statute, the exemptions did not apply to judgments and executions brought to recover the price of the object levied upon.<sup>130</sup>

The homestead exemption similarly changed little from the prior statute. The homestead was still required to be the actual abode of and owned by the family or some family member of the debtor.<sup>131</sup> The maximum value of the exemption remained at \$8,000, applicable to a maximum of 160 acres outside a town or city or a quarter of an acre within a city.<sup>132</sup> The exemption excluded judgments and levies resulting from the foreclosure of a mortgage on the property.<sup>133</sup> Still, the statute provided a revised process to determine whether the value of the claimed property exceeded the allowed amount of the exemption and, if this were the case, established the method of sale and dividing the proceeds of the property. Once again, the homestead remained exempt after the death of the person entitled to the exemption.<sup>134</sup>

Incremental changes were made to the exemption statutes over the next twenty years. For example, the wage exemption was modified in 1969 to ensure the debtor received the applicable statutory amount during each month the levy was in effect: \$350 for the head of a household and \$200 for an individual.<sup>135</sup> The aggregate maximum value of the exemption for tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary for trade, occupation, or profession was increased to \$2,500 in 1971.<sup>136</sup> In 1972, two changes were made to the homestead exemption. The maximum value of the exempt homestead was

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130. *Id.* titl. I, art. XV, § 15.08(1)-(7).

131. *Id.* titl. I, art. XV, § 15.09.

132. *Id.* Some courts in Alaska have used the "character," or actual use, of the land to determine the extent of the homestead exemption. Regardless of location, if the use of the land is urban in nature, the court would apply the exemption for "town" land (no more than a quarter acre could be exempt). If the use of the land was rural in nature, the court would apply the "rural" exemption (maximum size up to 160 acres) even if the land was presently located within a municipal boundary. *See, e.g., Dalton v. Interior Credit Bureau, Inc.*, 615 P.2d 631, 633 (Alaska 1980) (holding that the character of the property determines exemption status rather than the situs relative to municipal limits).

133. ALASKA CODE CIV. P. titl. I, art. XV, § 15.09.

134. *Id.*

135. An Act Relating to Property Exempt from Execution, 1969 Alaska Sess. Laws ch. 96 (amending ALASKA STAT. § 09.35.080(1)).

136. An Act Increasing the Exemption for Tools of Trade, 1971 Alaska Sess. Laws ch. 24 (amending ALASKA STAT. § 09.35.080(4)).

increased to \$12,000.<sup>137</sup> Additionally, a new subsection was added to allow the same homestead exemption for a mobile home, trailer, or similar dwelling if used by a family as their actual abode, limiting the exempt value to \$8,000.<sup>138</sup> A significant revision was made to the income exemption in 1974 by restricting a levy to no more than 25% of the debtor's weekly disposable income, or \$114, whichever was less.<sup>139</sup> Orders of support, orders of a bankruptcy court, and levies for state or federal taxes were not subject to this limitation.<sup>140</sup> In 1976, the maximum exempt value of a homestead was increased to \$19,000 for a fixed house, and to \$12,000 for a mobile home.<sup>141</sup>

## B. The 1982 Exemption Revisions

Federal bankruptcy law had provided a permanent national standard for orderly reorganization or liquidation of a debtor's financial affairs since 1898, but by the mid-1970s Congress heeded increasing calls for a revised, modernized bankruptcy code.<sup>142</sup> The Bankruptcy Act of 1898 relied upon the disparate state laws exempting a debtor's property from seizure by creditors to determine what property was subject to administration in a bankruptcy proceeding.<sup>143</sup> For example, while Alaska increased the value of the allowed homestead exemption to \$12,000 in 1972, Florida continued to define its homestead exemption by the area of land allowed to the debtor regardless of value.<sup>144</sup> Part of the reform discussion was the type and extent of property debtors would be able to protect, or "exempt," from inclusion in the bankruptcy estate, including whether property held by a married couple in a tenancy by the entirety<sup>145</sup> should continue to be protected from the creditors of one

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137. An Act Relating to the Residence Exemption from Execution, 1972 Alaska Sess. Laws ch. 129 (amending ALASKA STAT. § 09.35.090).

138. *Id.*

139. An Act Relating to the Execution Exemption for Income, 1974 Alaska Sess. Laws ch. 45 (creating ALASKA STAT. § 09.35.080(b)).

140. *Id.*

141. An Act Relating to the Residential Homestead Exemption, 1976 Alaska Sess. Laws ch. 231 (amending ALASKA STAT. § 09.35.090).

142. Marjorie Girth, *Prospects for Structural Reform of the Bankruptcy System*, 63 CAL. L. REV. 1546, 1546 (1975). Congress is granted the authority to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4.

143. Bankruptcy Act of 1898 (Nelson Act), ch. 541, 30 Stat. 544, ch. III, § 6 (repealed in 1978).

144. FL. CONST. art. X, § 4 (1968).

145. Tenancy by the entirety is a unique form of ownership that may be created only when a couple acquires property while they are legally married. Both legally and historically, such ownership is created only if the property is acquired when six facts, or "unities," exist simultaneously: "(1) unity of

spouse, as was and remains the practice in jurisdictions including Alaska<sup>146</sup> and Florida.<sup>147</sup> With promulgation of a “Uniform Exemptions Act”<sup>148</sup> in 1976, the National Conference of Commissioners on Uniform State Laws<sup>149</sup> entered this discussion, proposing a structure for debtor’s exemptions that states could adopt and coordinate with the standardized exemptions proposed for the revised bankruptcy laws.<sup>150</sup> The Uniform Act proposed to reduce the efficacy of tenancy by the entireties by allowing creditors of one spouse to levy on that spouse’s interest in the jointly-held property while preserving the other spouse’s interest.<sup>151</sup>

The Bankruptcy Code<sup>152</sup> was adopted in 1978 to replace the prior Bankruptcy Act. Unlike its predecessor, the Code provided standardized exemptions describing the type and extent of property which debtors could protect from administration by the Bankruptcy Court, patterned in part on the Uniform Exemptions Act.<sup>153</sup> States had the option to “opt out” and, with certain exceptions, limit debtors to the property exemptions provided by state law if they filed bankruptcy in a federal

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possession (joint ownership and control); (2) unity of interest (the interests must be identical); (3) unity of title (the interests must have originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names).” *Beal Bank, SSB v. Almand & Assocs.*, 780 So.2d 45, 52 (Fla. 2001).

146. Alaska still recognizes tenancies by the entirety. ALASKA STAT. § 34.15.140 (2014).

147. FLA. STAT. § 689.11 (2015).

148. This act is now known as the Model Exemptions Act. Alaska currently is the only state to enact a form of this model act. *See* Uniform Law Commission, Legislative Enactment Status: Exemptions Act, Model, <http://www.uniformlaws.org/Act.aspx?title=Exemptions%20Act,%20Model>. *See also infra* note 158 and accompanying text.

149. The National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, is a nationwide organization composed of members commissioned from each state to consider and propose model uniform legislation for the several states to consider and adopt, sometimes with modifications to reflect local legal doctrine.

*About the ULC, UNIF. LAW COMM’N*, <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Sept. 30, 2015). For example, this group prepared the “Uniform Electronic Transactions Act” that has been adopted in all but three states. *Electronic Transactions Act, UNIF. LAW COMM’N*, <http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act>.

150. UNIF. EXEMPTIONS ACT prefatory note (1976) (amended 1979).

151. *Id.* § 18.

152. 11 U.S.C. §§ 101–1532.

153. *Compare* 11 U.S.C. § 522(d)(1)–(9) (2014) (listing property exemptions), *with* UNIF. EXEMPTIONS ACT §§ 4, 7, 8 (listing property exemptions).

district within the territory of the state.<sup>154</sup> The Code further continued to allow exemption of property held in a tenancy by the entirety from an individual's bankruptcy estate.<sup>155</sup>

The Alaska Code Revision Commission<sup>156</sup> subsequently recommended amending the exemption statutes to better align with the modern needs of creditors and debtors:

The commission has determined that the exemption laws of the state are out of date and do not provide adequate protection for property in possession of an individual which is necessary to provide the basic necessities of life for the individual and his family. . . . The Alaska Code Revision Commission has attempted to present suggested legislation which balances the often-competing interests of both debtors and creditors. Creditors need simple and inexpensive procedures for collecting unsecured debts while debtors must have protection for their property so that they are not deprived of property which supplies the basic necessities of life or be required to seek public assistance benefits. . . .<sup>157</sup>

The recommendations of the Commission led to the enactment of major revisions to the exemption statutes in 1982 which implemented the current numbering structure and substantially revised the scope of the exemptions.<sup>158</sup> In creating the Alaska Exemptions Act, the legislature stated its intent to modernize the process for executing on judgments while adequately protecting a debtor's property and income necessary to support both the debtor and his or her family. A key consideration was to prevent the debtor or the debtor's family from becoming dependent on public assistance.<sup>159</sup>

Under the 1982 revisions to the homestead exemption, an individual was entitled to a homestead exemption for property located in Alaska, used as the principal residence of claimant or claimant's

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154. 11 U.S.C. § 522(b)(2).

155. *Id.* § 522(b)(3)(B).

156. *See* ALASKA STAT. § 24.20.075 (1994) (authorizing the creation of the statutory commission) (repealed by § 33, 1995 Alaska Sess. Laws ch. 23).

157. Memorandum Regarding Objections to Debtor's Claim of Exempt Property at 4-5, In re Henrickson, No. A03-00955-DMD (Bankr. D. Alaska Mar. 5, 2007).

158. The comprehensive revision of the Alaska exemptions statutes was patterned on the Uniform Exemptions Act. *Anderson v. Anderson*, 736 P.2d 320, 323 (Alaska 1987); *Ilardi v. Parker*, 914 P.2d 888, 891 n.5 (Alaska 1996). *See also supra* notes 148-151 and accompanying text.

159. An Act Relating to the Rights of Debtors and Creditors, § 1, 1982 Alaska Sess. Laws ch. 62.

dependents, for up to a maximum value of \$27,000.<sup>160</sup> If the property was owned either by a husband and wife (tenants by the entirety) or by two or more people other than as husband and wife (tenants in common), each owner was entitled to claim an exemption for his or her portion of the interest not exceeding a total value of \$27,000; multiple owners shared pro rata in the total allowed exemption amount.<sup>161</sup> This appears to be a compromise between retaining the traditional forms of property ownership and policy proposals to limit the effect of tenancy by the entirety ownership on property exempted from the reach of creditors and bankruptcy administration.<sup>162</sup> Reflecting in part the influence of the Uniform Exemptions Act, the 1982 revisions expressly protect the interest of one joint owner in the property if a creditor is able to levy against the interest of another joint owner.

The statute also was revised to allow real property otherwise claimed as exempt to be sold to satisfy a judgment, subject to the debtor's right to repurchase the property by paying either the difference between the highest bid and the amount exempt or the amount of the creditor's claim.<sup>163</sup> The time allowed for such repurchase (sometimes called right of redemption) was sixty days after the sale.<sup>164</sup> If the sale was confirmed and the property not repurchased, the Clerk of the Court was required first to pay the debtor the full amount of the exemption.<sup>165</sup> The statute expressly provided that the Clerk's deed after an execution sale was sufficient to convey full title to the buyer.<sup>166</sup>

Personal property exemptions were also significantly expanded and restructured. Unlike the prior law, the 1982 revision created a category of personal property an individual debtor could fully exempt regardless of value.<sup>167</sup> Some of these were property interests that would be of little utility to others, such as a burial plot for an individual or family.<sup>168</sup> Consequently, there was a substantial likelihood that levying

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160. *Id.* § 2 (adding ALASKA STAT. § 09.38.010(a)).

161. *Id.* (adding ALASKA STAT. § 09.38.010(b)).

162. Under Alaska law, a judgment creditor of one spouse who fails to attempt to execute on the home held in tenancy by the entirety before the debtor dies cannot seek to levy after that death, as the debtor's interest in the property was extinguished by death and the property became solely owned by the surviving spouse by operation of law. *Smith v. Kofsad*, 206 P.3d 441, 445 (Alaska 2009).

163. An Act Relating to the Rights of Debtors and Creditors, § 2, 1982 Alaska Sess. Laws ch. 62 (adding ALASKA STAT. § 09.38.010(c)).

164. *Id.*

165. *Id.*

166. *Id.* (adding ALASKA STAT. § 09.38.010(d)).

167. *Id.* (adding ALASKA STAT. § 09.38.015(a)).

168. *Id.*

upon or administering such property would incur costs greater than the value that could reasonably be recovered by creditors.<sup>169</sup> Other fully-exempt personal assets represented different entitlements to government payments.<sup>170</sup> Placing these beyond the reach of creditors was consistent both with the stated public policy of exemptions, generally to protect the debtor's interests in property *necessary* to provide for his or her needs,<sup>171</sup> and with the principle extending back into the days of the federal Homestead Act, that the government has a compelling interest to ensure public assets were distributed to those qualified for them and not third-party creditors.<sup>172</sup>

Other exemptions of personal property, many carrying over from previous versions of the statutes, remained subject to value limitations.<sup>173</sup> The revision streamlined the statute by creating specific maximum values for groupings of exemptions, which allowed debtors more flexibility in choosing the type and values of their exempt property.<sup>174</sup> The updated statute also recognized the increased use of various forms of insurance and annuities for family financial planning by expressly providing an exemption for all unmaturing life insurance and annuity policies owned by the debtor. However, if the total dividend and loan value of a policy exceeded \$5,000, a creditor could obtain a court order compelling payment of amounts exceeding the first \$5,000 in value.<sup>175</sup> Providing this limited form of levy in certain insurance policy values balanced the increased role of insurance in the long-term protection of a family's financial interests with the economic interests of the creditors. Following the legislative intent as influenced by the modernization of the Bankruptcy Code and bankruptcy asset exemptions, this provision for life insurance policies protected individual debtors (and their families) while not unduly restraining the

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169. See UNIF. EXEMPTIONS ACT § 5 CMT. (UNIF. LAW COMM'N 1976) (amended 1979) (explaining why such items would be of little value to creditors).

170. An Act Relating to the Rights of Debtors and Creditors, § 2, 1982 Alaska Sess. Laws ch. 62 (adding ALASKA STAT. § 09.38.015(a)-(b)). These diverse types of property included government awards to victims of violent crimes, benefits payable as a "longevity bonus" under Alaska statute, state liquor licenses, and public disability or retirement benefits. *Id.*

171. *Id.*

172. Homestead Act of 1862, ch. 75, § 4; *Wallowa Nat'l Bank v. Riley*, 45 P. 766, 767 (Or. 1896); *Faull v. Cooke*, 26 P. 662, 663 (Or. 1890).

173. An Act Relating to the Rights of Debtors and Creditors, § 2, 1982 Alaska Sess. Laws ch. 62 (adding ALASKA STAT. § 09.38.020).

174. See *id.* (grouping small exemptions for items such as books, pictures, musical instruments, apparel, and household goods under one maximum value of \$1,500).

175. *Id.* (adding ALASKA STAT. § 09.38.025(a)).

sources of recovery for creditors.<sup>176</sup>

The 1982 statutory revision followed the example of Alaskan legislation from the preceding twenty years and again updated the exemption for wages and earnings.<sup>177</sup> Not only was the amount of the exemption for weekly earnings increased to \$175, it also was expanded to include other liquid assets such as deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables (when the debtor had no regular periodic earnings).<sup>178</sup> This change followed the pattern of the 1982 revision to “modernize” Alaskan exemptions by taking into account the increased sophistication of personal income as opposed to the emphasis on agricultural employment or wage earners in earlier statutes.

Specific statutes now provided a process to have a regular amount withheld from the debtor’s wages and paid over by the employer,<sup>179</sup> a method for debtors to connect, or make “traceable,” proceeds to the sale or loss of the homestead or article protected by the exemption,<sup>180</sup> and limited the enforcement of certain liens.<sup>181</sup> Claims for child support, wages (up to one month) unpaid to an employee of the debtor, or for state or local taxes became enforceable by judicial levy against any exempt property.<sup>182</sup> An item of exempt property (but only that item) was subject to levy to enforce claims for its purchase, repair, improvement,<sup>183</sup> or special assessment for public work benefiting the property.<sup>184</sup> The exemption statutes benefited only Alaska residents; nonresidents were entitled to the exemptions provided under the law of their home jurisdictions.<sup>185</sup>

The 1982 Act also added an innovative feature affecting the various exemption sections—provision for adjustment of the fixed dollar

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176. *Gutterman v. First Nat’l Bank of Anchorage*, 597 P.2d 969, 971 (Alaska 1979).

177. An Act Relating to the Rights of Debtors and Creditors, § 2, 1982 Alaska Sess. Laws ch. 62 (adding ALASKA STAT. § 09.38.030(a)).

178. *Id.* (adding ALASKA STAT. § 09.38.030(b)).

179. *Id.* (adding ALASKA STAT. § 09.38.035).

180. *Id.* (adding ALASKA STAT. § 09.38.060).

181. *Id.* (adding ALASKA STAT. § 09.38.070).

182. *Id.* (adding ALASKA STAT. § 09.38.065(1)).

183. *Id.* (adding ALASKA STAT. § 09.38.065(2)(B)). See *Munn v. Thornton*, 956 P.2d 1213, 1221 (Alaska 1998) (holding that a contractor who provided “labor or materials furnished to make, repair, improve, preserve, store, or transport the property” could enforce a lien against the property when the owner later refused payment).

184. An Act Relating to the Rights of Debtors and Creditors, § 2, 1982 Alaska Sess. Laws ch. 62 (adding ALASKA STAT. § 09.38.065(2)(C)).

185. *Id.* (adding ALASKA STAT. § 09.38.120).

amounts applicable to a number of exemptions.<sup>186</sup> Value changes would be based on changes in the consumer price index (CPI) calculated for the Anchorage Metro Area by the Bureau of Labor Statistics, U.S. Department of Labor, using January 1982 as the reference base.<sup>187</sup> Changes to the values of affected exemptions would be made on October 1st of each even-numbered year but only if the change in the CPI was 10% or more between the index for the previous December and the base index.<sup>188</sup>

Consistent with the changes in the 1978 Bankruptcy Code for exempting certain property from bankruptcy administration, a separate statute limited the state law exemptions available to debtors in local bankruptcies.<sup>189</sup> These included the homestead, some of the personal property exempted without value limits (such as a burial plot or a statutory governmental payment to a crime victim), all personal property exempted by statute but within value limitations, annuities and unmaturing life insurance policies, and the wage exemptions.<sup>190</sup> Unlike states such as Florida, which exercised authority allowed under the Bankruptcy Code to enact an “opt-out” statute prohibiting state residents from using the federal property exemptions in their individual bankruptcy cases,<sup>191</sup> the Alaska statutes have been interpreted to allow residents a choice between either the federal or these limited state exemptions to determine what type of property will be subject to bankruptcy administration, whichever is more advantageous in a given case.<sup>192</sup> This flexibility represents a compromise between limiting the impact on commercial creditors of property exemptions by imposing maximum value limits and permitting debtors to retain assets sufficient for their support.

### C. Exemptions to the Present Day

After the extensive statutory revisions of 1982, some exemption laws underwent limited expansion while other laws created specific new exceptions. A number of exemptions limited by dollar amounts had their values increased, and additional technical changes were made.

Later amendments in 1988 primarily adjusted the base value of

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186. *Id.* (adding ALASKA STAT. § 09.38.115).

187. *Id.* (adding ALASKA STAT. § 09.38.115(a)).

188. *Id.* (adding ALASKA STAT. § 09.38.115(b)).

189. *Id.* (adding ALASKA STAT. § 09.38.055).

190. *Id.* (incorporating references).

191. FL. STAT. § 222.20 (2015).

192. *In re Tinkess*, No. K08-00153-DMD, 2008 WL 8652591, at \*4 (Bankr. D. Alaska Sept. 26, 2008).

several exemptions to their present amounts. The total value of the homestead exemption was increased to \$54,000.<sup>193</sup> The value limits for certain exempt personal property items were increased, as follows:

- Increased total value limitation on items such as household goods, books, and musical instruments, to an aggregate of \$3,000.<sup>194</sup>
- The value limit on exempt jewelry was increased to \$1,000.<sup>195</sup>
- The value limit for exemption on implements, professional books, tools of the trade, etc., was increased to \$2,800.<sup>196</sup>
- The value limit for exempt pets was increased to \$1,000.<sup>197</sup>
- The value limit for an exempt vehicle was increased to \$3,000, provided the value of the vehicle does not exceed \$20,000.<sup>198</sup>
- The value limit for exempt annuities and unmatured life insurance policies was increased to \$10,000.<sup>199</sup>
- The value for exempt wages was increased to \$350 per week.<sup>200</sup>
- The value for exempt cash, or liquid assets for a debtor who does not receive wages, was increased to \$1,400.<sup>201</sup>
- The allowance for a permitted increase to the wage exemption was increased to \$550, and that for liquid assets was increased to \$2,200. The law retained the requirement for the debtor to provide an affidavit attesting that the debtor's earnings are the sole support of the household.<sup>202</sup>

The 1988 laws also added a new provision exempting the debtor's interest in a retirement plan.<sup>203</sup> As an additional exemption of personal property, the new provision exempted both the debtor's interest in a retirement plan and payments made under such plans.<sup>204</sup> Contributions to a retirement plan made by an individual within 120 days before the bankruptcy filing would not be exempt as such transfers normally are recoverable by a bankruptcy trustee.<sup>205</sup> In contrast, the statutory language appears to continue the exempt status for an *employer's*

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193. An Act Relating to Property Exemptions for Homesteads, § 1, 1988 Alaska Sess. Laws ch. 135 (amending ALASKA STAT. § 09.38.010(a)).

194. *Id.* § 4 (amending ALASKA STAT. § 09.38.020(a)).

195. *Id.* (amending ALASKA STAT. § 09.38.020(b)).

196. *Id.* (amending ALASKA STAT. § 09.38.020(c)).

197. *Id.* (amending ALASKA STAT. § 09.38.020(d)).

198. *Id.* (amending ALASKA STAT. § 09.38.020(e)).

199. *Id.* § 5 (amending ALASKA STAT. § 09.38.025(a)).

200. *Id.* § 6 (amending ALASKA STAT. § 09.38.030(a)).

201. *Id.* § 7 (amending ALASKA STAT. § 09.38.030(b)).

202. *Id.* § 8 (amending ALASKA STAT. § 09.38.050(b)).

203. *Id.* § 3 (adding ALASKA STAT. § 09.38.017).

204. *Id.* (adding ALASKA STAT. § 09.38.017(a)).

205. *Id.* (adding ALASKA STAT. § 09.38.017(b)).

contributions made during such time, preventing deposits of funds benefiting employees from being taken to satisfy claims of creditors of the business.<sup>206</sup> The exemption does not prevent payment of benefits from a retirement plan under a domestic relations order.<sup>207</sup>

The current exemption statutes show additional changes. As of 2015, individuals are able to protect up to \$500,000 in accrued dividends and loan values in an unmatured life insurance contract.<sup>208</sup> This increase from the original section protecting up to \$5,000 in such values appears attributable more to changes in public policy. The significant increase in protected value acknowledges some consumer reliance on using forms of life insurance as a method not only to protect the family from an untimely loss of income but also to accrue cash value as savings toward retirement. The law has also been changed to authorize the state to enforce a judgment based on restitution to the victim of a crime or delinquent act by levying on the correctional facility account of an incarcerated debtor; the current statute also provides a priority of claims against such accounts to include the prisoner's child support obligations.<sup>209</sup> This appears to make the exemption laws more consistent with the statutory revisions, recognizing the consequences of crime for the victims as well as the generally increased nationwide emphasis on compelling victim restitution. In keeping with these changes, creditors may even levy on certain otherwise-exempt assets of the prisoner outside of the correctional facility to collect on court-ordered restitution.<sup>210</sup> This particular type of levy is limited by the debtor's ability to exempt certain specified property that does not exceed an aggregate value of \$3,000.<sup>211</sup>

#### D. Residual Settlement Donation Law in Alaska

The Homestead Act, applicable in Alaska after statehood, was repealed by Congress in 1976, though its effect was extended in Alaska until 1986.<sup>212</sup> In 1983, Alaska adopted a state settlement donation land act as part of a scheme to administer public state-owned lands.<sup>213</sup> Still in

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206. *See id.* (including only "contribution[s] made by an individual" within the scope of the provision).

207. *Id.* (adding ALASKA STAT. § 09.38.017(c)).

208. ALASKA STAT. § 09.38.025(a) (2014).

209. *Id.* § 09.38.030(f).

210. *Id.* § 09.38.030(g).

211. *Id.* § 09.38.065(a)(3)(A).

212. Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 702, 90 Stat. 2743, 2787.

213. An Act Relating to Homesteads, § 9, 1983 Alaska Sess. Laws ch. 103.

force, the state settlement donation act is primarily administered by the Commissioner of Natural Resources.<sup>214</sup> The Commissioner designates and makes available for entry by prospective claimants land throughout the state; the statute requires the land be properly surveyed before being made available to the public.<sup>215</sup> The Commissioner establishes and maintains the claim entry procedure, including the necessary boundary monumentation, and determines the shape and size of parcels available for entry.<sup>216</sup> The holder of a state settlement entry permit is restricted in transferring the permit, and its right of entry, to another. The statute allows a permit transfer only after death of the applicant (by will or intestate succession), by the applicant to the applicant's spouse during marriage, by court order as part of a divorce settlement,<sup>217</sup> or to a member of the applicant's immediate family or grantee in the event of an extreme emergency or illness which disables the applicant.<sup>218</sup> Once the applicant meets the statutory requirements, the Commissioner issues a state patent giving title to the land.<sup>219</sup>

## CONCLUSION

Whether factual, romantic, or *cause célèbre*, many images are associated with Alaska. As with any commonly-held belief, the conclusion that the federal government neglected the region until a few

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214. ALASKA STAT. §§ 38.09.010(a), 38.09.900(2) (2014).

215. *Id.* § 38.09.010(b). The statute requires the Commissioner to utilize cadastral surveys. A cadastre (also spelled "cadaster") is a public record, survey, or map of the value, extent, and ownership of land as a basis of taxation. *Cadastre*, BLACK'S LAW DICTIONARY (10th ed. 2014).

216. *Id.* § 38.09.010 (2014) (setting the maximum size for an agricultural claim at 160 acres and for non-agricultural use at 40 acres, giving the Commissioner discretion to establish claims smaller than these maximums).

217. *Id.* § 38.09.030(c)(3). This appears to be a modern refinement reflecting changes in the laws of divorce, recognizing the interests of both parties in rights to the property which would have vested to the benefit of the married couple upon completion of the homesteading requirements. The original Homestead Act of 1862 entitled anyone who was the head of a family or at least twenty-one years of age to meet the requirements and receive a patent to public lands they had successfully homesteaded, without regard to gender or marital status (including lawful divorce). *See* Homestead Act of 1862, ch. 75, § 2, 12 Stat. 392, 392 (1862) (codified at 43 U.S.C. §§ 161-164) (repealed 1976). The 1862 Act also provided that an individual's established right to homesteaded property would pass to the widow or other heirs, or if a widow was so entitled to the land but died before the patent was issued, to her heirs. *Id.* at 392-93. Thus, the original Homestead Act may have permitted a divorced woman to prove up a homestead claim but arguably prevented her heirs from inheriting her homestead rights if she died before the patent was issued.

218. *Id.* § 38.09.030(c) (2014).

219. *Id.* § 38.09.050.

determined individuals kick-started the drive for statehood has some support in the historical record, but does not tell the whole story.

Within the first year after accession of Alaska from Russia, Congress moved to establish what it considered to be necessary federal authority, first by extending federal customs and trade laws and following with a military presence for the few settlements. These initial steps might have been adequate if Congress also had taken steps to explore the entire Alaskan region and survey the type and extent of natural resources, particularly mineral deposits. No such organized government exploration was attempted. At best, this reflects the federal government's preoccupation with developing the western regions contiguous to the existing states, where the 1862 Homestead Act already provided opportunity and incentive for settlers to relocate and settle existing public lands. At worst, the lack of effort to develop comprehensive information about the northern territory may have represented early indifference to the region and the American émigrés who, though few at first, relocated to Alaska in increasing numbers.

Despite the relatively long delay in providing a local territorial government,<sup>220</sup> Congress increasingly turned its attention to Alaska, primarily noting the need for some organized local governance to encourage and regulate the region's growing economic and mining activities, if for no other purpose than taxation. After the initial Customs Act of 1868, the First Organic Act of 1884 was a step toward general government, but Congress realized economic growth in the north would lag until émigrés could obtain land on at least an equal footing as in other territories. The increasing frequency of Congressional enactments for the economic development and governance of Alaska—in 1891, 1898, 1900, and finally with the Territorial Act of 1912 (the "Second Organic Act")—demonstrates substantial, albeit not perfect, Congressional attention to Alaska. One commentator, comparing the development of Alaska by the U.S. with that of Yukon Territory by Canada, concluded the U.S. government structured territorial control to encourage development of Alaskan economic potential. In contrast, the Canadian government's enforcement of central federal policies precluded local control because the Yukon was presumed to be of little value, even after the Klondike gold strike.<sup>221</sup>

The extension of Oregon law in 1884 brought Alaska its first laws

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220. Florida, officially acquired in 1821, had an organized territorial government by 1822. Charlton W. Tebeau and William Marina, *A History of Florida*, 105, 108 (3d. 1999).

221. Ken Coates, *Controlling the Periphery: The Territorial Administration of the Yukon and Alaska, 1867-1959*, 78 *THE PAC. NORTHWEST Q.* 4, 145-51 (1987).

but provided limited protection to a debtor's property from levy and execution by a creditor. The extension of the Homestead Act in 1898 provided the first protection of a debtor's residence from creditors, though only if the homestead was obtained through federal patent and then only as to debts incurred before the patent issued. The 1893 Oregon law protecting Oregon homesteads from creditors, though never in force in Alaska, clearly influenced the drafting of the homestead exemption included in the 1900 reorganization of the Alaska Civil Code.

Alaska's exemption laws were developed and enacted during the period when Congress held all power to legislate for the region. Even after 1912, the Territorial Legislature was required to submit its enactments for consideration by Congress, which had final authority as to whether what the legislature passed would become law for the Territory.

The exemption laws were not a priority consideration for fifty years, as they were essentially unchanged except for the occasional increase in allowed values for certain property or wages. Even the thoroughly researched and considered Alaska Constitution did not include exemptions for homestead or personal property, reflecting a choice to leave exemption laws in the hands of the Alaska Legislature. However, significant statutory revisions were made in 1962 and 1982, with periodic updates reflecting changes in public policy, such as expressly excluding claims for child support or crime victim's compensation from the protection afforded to otherwise exempt property. The structure and specificity of the exemption laws, as well as the lack of a perceived need to place protections for homestead and some other property in the Constitution and out of the hands of the legislature, reflect Alaska's history of receiving and administering these debtor's exemptions through legislative action.