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Research Guide

Homestead Declaration

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Scope

This Research Guide will assist in understanding Homestead Declarations. It is not intended as a substitute for legal advice. Please consult with an attorney if you need legal advice.

What is a Homestead Declaration?

A homestead declaration is a written statement, made under penalty of perjury that claims a particular "dwelling" (for example, a house, condominium, boat, mobilehome, etc.) as the owner's principal place of residence. This guide uses the word "home" to signify a person's principal residence.

When a homestead declaration is (1) signed by a homeowner, (2) notarized, and (3) "recorded," it helps to protect the home against loss to creditors. "Recorded" means that the original signed and notarized homestead declaration is filed in the clerk's or recorder's office for the county in which the home is located. A properly prepared and recorded homestead declaration immunizes the home (and the land on which it is situated) from many (but not all) legal enforcement measures. For example, if a homeowner files a petition in bankruptcy, it may be possible, because of a homestead declaration, to retain the home, or at least a portion of the equity in the property, instead of losing it to creditors.

A judgment debtor and his or her spouse may claim a homestead exemption regardless of whether the dwelling was declared a homestead. However, the declared homestead provides greater rights than the automatic homestead.

Where Can You Find the Law on Homesteads?

Homestead law (covering both automatic homesteads and declared homesteads) can be found at California Code of Civil Procedure §§ 704.710-704.995. You can access California codes online at <http://www.leginfo.ca.gov/calaw.html>

Why Should You Record a Homestead Declaration?

A homeowner would file a declared homestead and not rely on the automatic homestead for the following reasons:

- The owner who files a declared homestead can choose which of several different dwellings will be protected as the person's home.
- The protection that is provided by a *declared* homestead will continue to apply to that homestead even if the owner *moves*. If a declared homestead has not been recorded, the automatic homestead protection may be lost if the owner moves.
- The protection that is provided by a *declared* homestead will apply to the *proceeds of a voluntary sale*. If no declared homestead has been recorded, the protection of the owner's equity in a home may be lost in the event of a voluntary sale of the home. (This means that the proceeds of the voluntary sale of the home will go to the judgment creditor or creditors rather than the owner.)
- If a *declared* homestead *has* been recorded, the law is clear that the proceeds of sale (up to the dollar limits of the homestead law) can be used to purchase another home.
- Only if a *declared* homestead has been recorded will the proceeds of a voluntary sale assuredly be protected after they are used to purchase another home; only then will the protection given to the first home be carried over to the second home.

However, neither the automatic homestead nor the declared homestead will protect a homeowner against the loss of his or her home to a secured creditor -- such as the lender who has financed the original purchase, or a lender who extended a second mortgage loan, or to a contractor, subcontractor or laborer who has filed a valid claim of mechanic's lien. The protections of both the declared and automatic homesteads, however, extend to most other kinds of creditors.

A homeowner who is in financial trouble, or one who expects to encounter financial trouble, should consult an attorney for advice on how to protect their home.

What is the Amount of Homestead Exemption?

The amount of the homestead exemption, depending on the situation, can be \$50,000, \$75,000, or \$150,000. For more information see California Code of Civil Procedure §§ 704.730.

How Do I Record a Homestead?

To record a homestead fill out a homestead declaration form, have your signature notarized, and have the form recorded by the county recorder in the county where the dwelling is located.

- For Declaration of Homestead forms for individuals and spouses please go to http://arcc.co.san-diego.ca.us/services/all_forms.aspx#recording

Other Useful Resources:

California Forms of Pleading and Practice, volume 25, chapter 294. (Matthew Bender) (KFC 1010 .A65)

California Real Estate Law and Practice, chapter 344 (Matthew Bender) (KFC 140 .B45)