



Homestead Declaration Research Guide

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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>

Declaring the Homestead

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.

Amount of Homestead Exemption

The amount of the homestead exemption varies, depending on the situation, can be \$75,000, 100,000 or \$175,000. For more information see California Code of Civil Procedure 704.720 - 704.730.

How Do I Record a Homestead?

If you are declaring the homestead, a Homestead Declaration must be notarized and filed in the County Recorder's Office of where the property is located.

For Declaration of Homestead forms for individuals and spouses please go to

<http://www.saclaw.lib.ca.us/pages/forms-page.aspx>

San Diego County Assessor/Recorder/Clerk

<http://arcc.co.san-diego.ca.us/default.aspx>

Research at the Law Library:

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)

Consult a Reference Librarian for Additional Assistance