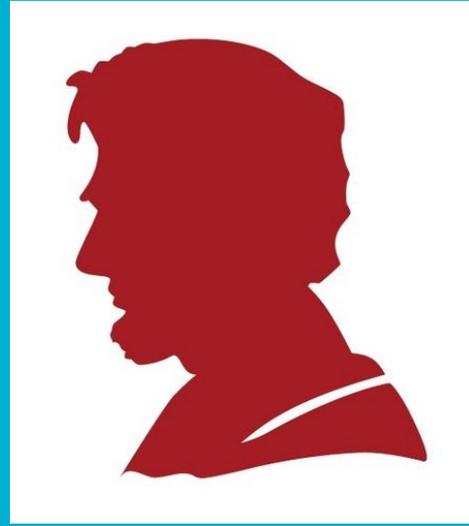


Lincoln Law



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The New California Homestead Exemption



Existing law provides that a specified portion of equity in a homestead, as defined, is exempt from execution to satisfy a judgment debt and prescribes that the amount of the homestead exemption is either \$75,000, \$100,000, or \$175,000, depending on certain characteristics of the homestead's residents.

This bill ... instead make[s] the homestead exemption the greater of \$300,000 or the countywide median sale price of a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed \$600,000. These amounts would adjust annually for inflation.

-AB 1885 Legislative Counsel's Digest

Who Can Claim the Property Exemption?



(a) The exemptions ... apply only to property of a natural person.

(b) The exemptions ... may be claimed ...:

(1)... by the judgment debtor or a person acting on behalf of the judgment debtor.

(2) In the case of community property, by the spouse of the judgment debtor, whether or not the spouse is also a judgment debtor under the judgment.

(3) In the case of community property, by the domestic partner of the judgment debtor, as defined in Section 297 of the Family Code, whether or not the domestic partner is also a judgment debtor under the judgment.

CCP 703.020.

The Homestead Exemption Through 2020



2020

\$75,000, or;

\$100,000 if a couple or dependent is in the house (see code for complications)

\$175,000 if:

(A) A person is 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. ...

(C) A person is 55 years of age or older with [substantially low income].

See CCP 704.730 sunsets Jan. 1, 2021

The New Homestead Exemption

2021

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000) or

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP 704.730 eff. Jan. 1, 2021

When Does the New Homestead Apply?

The new law takes effect January 1, 2021

But:

(a) The determination whether property is exempt or the amount of an exemption shall be made by application of the exemption statutes in effect (1) at the time the judgment creditor's lien on the property was created or (2) if the judgment creditor's lien on the property is the latest in a series of overlapping liens created when an earlier lien on the property in favor of the judgment creditor was in effect, at the time the earliest lien in the series of overlapping liens was created.

CCP 703.050

The Homestead Outside of Bankruptcy

Real property can be protected from the reach of judgment creditors by executing and recording a homestead declaration in the county where the real property is located. The Declaration must be executed at a time that the homestead is the owner's principal dwelling. No person may have more than one declared homestead.

To be effective outside of bankruptcy, the homestead declaration must be filed prior to the recordation of the encumbrance in question.

Without bankruptcy, there is no mechanism to eliminate debt, but the homestead declaration will prevent forced sale in appropriate cases.

The Homestead Within Bankruptcy



Upon the filing of a bankruptcy a debtor is entitled to an “automatic” homestead. No declaration of homestead needs be filed.

With few exceptions, a bankruptcy will operate to discharge the debt.

Pairing the exemption with the discharge means permanent protection of a homestead.

California's Unique Bankruptcy Exemptions

California opted out of the federal exemptions and requires debtors to choose one of two alternate sets of bankruptcy exemptions: §704 exemptions (“the big Homestead”) or §703 exemptions (“Wildcard”).

Debtors CANNOT use the protection of both the 703 and 704 schemes in the same case. There are also prohibitions against one spouse choosing one scheme, and the other spouse choosing the other scheme to double up.



703

The CCCP 703 exemptions allows a generous wildcard provision that allows debtors to protect any assets they choose up to about \$30,000. Other exemptions are categorized.

Critically, there is no generous homestead exemption.

In order to use 703, a married debtor filing alone must file a declaration of the spouse that waives the right to use 704 exemptions in any concurrent spouse's case.

704



The CCCP 704 exemptions allow the generous homestead we have been discussing. It lacks a wildcard, so other personal property may not be protected from sale.

Qualifying for the Homestead Exemption

To qualify for the exemption, a debtor must:

1. Use the property as a domicile or residence
2. Be eligible to use California state exemptions
3. Not be barred by the federal “OJ Simpson Rule”
4. Not have engaged in certain bad acts



Residence or Domicile



Residence is not a defined term in the bankruptcy code,

“Residence” means a fixed and permanent abode or dwelling-place for the time being, as contradistinguished from a mere temporary locality of existence.

-Black’s Law Dictionary

However,

The term “debtor’s principal residence”—

- (A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and
- (B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

11 USC Sec. 101(13A)

Domicile

“For purposes of § 522(b), "domicile" means actual residence coupled with a present intention to stay there.[citation omitted].” *In re Urban*, 375 BR 882, fn. 14 (9th. Cir. BAP 2007).

Practice note: Don't let your client put a “For Sale” sign on the domicile house!



Eligibility to Use CA Exemptions

To use the California exemption laws, the debtor must have:

- been domiciled in California for the 2 years preceding the petition filing date.
- if domiciled in multiple states during the last 2 years, then ignore the last two years and instead determine where the debtor was domiciled in California for longer than any other state during the ½ year between 2 and 2 ½ years before filing.

If the Debtor is ineligible for CA exemptions, another state or federal exemption scheme will apply, but Debtor won't be able to use CA exemptions.

Avoiding the Federal Limit (OJ Simpson Rule)

A debtor may not exempt more than \$170,350 in a residence acquired by the debtor within 1215 days before filing unless the debtor

is a family farmer, or;

transferred the equity from a prior principal residence within the same state that debtor acquired more than 1215 days ago.

- See 11 USC 522(p).

But even then, debtor still can't exempt an amount in excess of \$170,350 if debtor committed securities fraud, or a felony that shows debtor is abusing the bankruptcy code, or a really bad tort, like, killing his wife.

Unless! debtor can show the homestead is reasonably necessary for his family's support.

Phew!

- See 11 USC Sec. 522(q)

When is 1215 days from now?

Sunday, April 7, 2014

Roughly 3 years and 4 months.

Open Questions re: Federal Cap

Does the 1215 day cap apply to the value of new equity or only the acquisition of title?

Uncertain. See: **In re Nestlen, 441 BR 135 - Bankr. Appellate Panel, 10th Circuit 2010**

Does the federal cap apply to the state homestead exemption outside of bankruptcy?

Probably not. The limit is in the bankruptcy code so probably does not apply to civil defense outside of bankruptcy.

Proceeds of Bad Acts Within the Homestead

The homestead exemption

“shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.”

- 11 USC Sec. 522(o) *hanging paragraph after (4)*.

Cases on 11 USC 522(o)

In re Keck, 363 BR 193 - Bankr. Court, D. Kansas 2007

Dishonest gambler's homestead reduced in the amount she used on home improvements financed by recent borrowing.

In re Lacounte, 342 BR 809 - Bankr. Court, D. Montana 2005

Debtor's gambling debt was dischargeable, but homestead was reduced due to excessive sale of non-exempt assets to pay down homestead within months of filing.

In re Maronde, 332 BR 593 - Bankr. Court, Minnesota 2005

Debtor's sale of truck to pay HELOC, on the back of major CC cash advances led to reduction of homestead exemption.

Code limits authority to reduce exemptions

Law v. Siegel, 134 S. Ct. 1188 - Supreme Court 2014

“Siegel points out that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor's fraudulent concealment of the asset alleged to be exempt. (citations omitted) ...the Bankruptcy Code admits no such power.”

SCOTUS noted that the Court may use Sec. 522(o) and Rule 11, but may not use non-code bases for surcharging a Debtor's exemptions.

Objecting to a Claim of Exemption

The trustee, or any creditor, may object to the debtor's claimed exemptions within 30 days after the Meeting of Creditors, or within 30 days after the debtor files an amendment to debtor's exemptions.

- Fed. Rule Bankr. Pro. 4003

After that, the exemption is fixed.

A white rectangular box containing the text "30 DAYS" in a bold, sans-serif font. The number "30" is colored orange, and the word "DAYS" is in black.

30 DAYS

Determining the Value of the Homestead Exemption

The new homestead exemption puts the value at

“The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption”

No official government index is indicated. Many websites purport to show this information.

The homestead value is bookended at no more than \$600K and no less than \$300K.

Avoiding Judgment Liens

Bankruptcy can discharge many judgments that are not secured by real property.

Bankruptcy also allows a Debtor to also strip off judgment liens that are already attached and that “impair the debtor’s homestead.”

Example:

\$1,000,000 FMV on home eligible for homestead

\$600,000 mortgage

\$300,000 judgment lien recorded pre-BK

A debtor in bankruptcy could avoid (remove) the judgment lien to the extent that it impairs his ability to claim the home exemption. So with an exemption of \$400,000 or more, he could avoid the whole lien.

Bankruptcy as a Lawsuit Backwards

Bankruptcy cuts to the chase.

1. It starts with a full disclosure of assets
2. Shortly thereafter the creditors get a chance to examine the Debtor under oath
3. Only certain limited causes of action are relevant to be heard by the bankruptcy court

If a Debtor can show there's nothing to get right at the outset, complicated litigation can be resolved simply.