

Memorandum 95-22

Homestead Exemption: Basic Issues

At the September 1994 meeting, the Commission briefly considered several homestead exemption issues in connection with the decennial review of money judgment exemptions (now the subject of SB 832, pending consideration in the Assembly) and decided to consider fundamental homestead exemption issues as a separate matter.

The basic issue for Commission consideration is whether the procedure for recording a homestead declaration under Code of Civil Procedure Section 704.910 *et seq.* should be repealed as surplus. This memorandum presents an overview of the homestead exemption, analyzes the differences between the declared homestead provisions and the “automatic” homestead procedure under Section 704.710 *et seq.*, and discusses several other issues. The text of the homestead statutes, with Commission comments, is set out in the Exhibit.

It would be possible to make some technical improvements in the operation of the declared homestead and better coordinate it with the automatic exemption, but this level of reform should only be considered if the declared homestead statute cannot be repealed. The homestead exemption statutes were exhaustively studied when the Commission prepared the recommendation proposing the Enforcement of Judgments Law. The statute that emerged from the legislative process varied in several significant respects from what the Commission had originally recommended. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001 (1980). Most importantly, the Commission had recommended the abolition of the declared homestead in favor of the automatic homestead.

The staff believes that the existing homestead statute is seriously in need of reform and would recommend the Commission’s 1980 recommendation as a starting point. The remnants of the declared homestead that survive in the Enforcement of Judgments law have been a continuing source of confusion to many who encounter them, including homeowners, the bench, and the bar.

Background

The California Constitution requires the Legislature to “protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families” Art. XX, § 1.5. The procedure is determined by the Legislature. See, e.g., *Noble v. Hook*, 24 Cal. 638 (1864).

A claimed homestead exemption existed from 1851 until it was superseded by the declared homestead in the early 1860’s. (For detailed background on the history of the exemption, see *Taylor v. Madigan*, 53 Cal. App. 3d 943, 126 Cal. Rptr. 376 (1975); Adams, *Homestead Legislation in California*, 9 Pac. L.J. 723 (1978) (prepared by Commission consultant).) For over a century, the homestead was protected against money judgment liens only if the homestead declaration was recorded before the judgment lien. Here the principle of first in time, first in right was applied with drastic consequences to the tardy debtor. To protect families of debtors who failed to record the exemption before death, the probate homestead procedure was developed permitting the court to declare the exemption.

In 1974, a new procedure was added enabling debtors who had not recorded a homestead declaration to claim an exemption when the dwelling was levied on under a writ of execution. (See 1974 Cal. Stat. ch. 1251, superseded by a revised but similar procedure, 1976 Cal. Stat. ch. 1000.) The judgment creditor was required to petition for issuance of a writ of execution directed against a dwelling and give notice to the debtor who could then assert the exemption. This procedure was substantially revised in the Commission’s Enforcement of Judgment Law enacted in 1982, resulting in the homestead exemption procedure in Sections 704.710-704.850 (Exhibit pp. 1-12). The probate homestead has been put on an independent footing. See Prob. Code §§ 60, 6520-6528; *Recommendation Relating to Probate Homestead*, 15 Cal. L. Revision Comm’n Reports 401 (1980).

Automatic Homestead Exemption (Sections 704.710-704.850)

The “automatic” homestead exemption — or dwelling house exemption, as it is also known — requires the judgment creditor to initiate court proceedings to determine whether the property is exempt and the amount of the exemption. Generally where property is levied on to enforce a money judgment, the debtor is given notice of levy and must make an exemption claim within 10 days (Section 703.520). A creditor who levies on a “dwelling” (defined in Section 704.710), which may be an exempt homestead, may not have it sold to enforce a money judgment without first obtaining a court order for sale. The creditor must apply

for the order for sale within 20 days after notice of levy is served on the judgment debtor. Sections 704.740-704.750. The judgment creditor's application is not simple: the creditor must determine whether the county tax assessor's records show a current homeowner's exemption or disabled veteran's exemption, must state on information and belief whether the dwelling is a homestead, the amount of the exemption, and whether there is a homestead declaration recorded, and must state the amount of liens and encumbrances and the address of other lien creditors and encumbrancers as shown in the recorder's files. Section 704.760. The creditor must give notice of the application, including personal service on any occupant, at least 30 days before the hearing. Section 704.770. At the hearing, the creditor has the burden of showing the dwelling is not exempt if there is a tax exemption on file in the tax assessor's office; otherwise, the burden is on the debtor to prove the exempt status. Section 704.780(a). The property is appraised, and if it is of sufficient value, it is ordered to be sold. Notice of the sale cannot be given until at least 120 days after the notice of levy. Section 701.545. Ultimately, the homestead cannot be sold unless the bid exceeds the amount of the applicable homestead exemption plus the amount necessary to satisfy all liens and encumbrances on the property, and the price must be 90 percent of the appraised value, unless the court orders otherwise. Section 704.800. Proceeds of a sale are distributed first to pay off "all liens and encumbrances," second to the debtor in the amount of the exemption, third to the levying officer for costs, and finally to the judgment creditor to satisfy the judgment. Section 704.850.

It can be seen that this procedure is highly protective of debtors' homesteads. There are multiple notices, including personal service, built-in delays and a second chance proceeding, significant procedural burdens, appraisals with presumptive minimum bids, burden shifting, and the strange rule requiring satisfaction of "all liens and encumbrances" on the property — not just liens senior to the judgment creditor's lien. In light of these protections, how could there possibly be a need for a declared homestead procedure?

Modern Declared Homestead Exemption (Sections 704.910-704.995)

As already indicated, the Commission determined in 1980 that there was no need for any version of the ancient declared homestead procedure, once sufficient protections had been incorporated into the automatic homestead exemption. But the law still contains an anemic descendant of the once mighty declared homestead exemption.

A homeowner or spouse of a homeowner may record a homestead declaration describing the principal dwelling. The declaration must be acknowledged in the manner of a conveyance of real property. Sections 704.920-704.930. The homestead declaration has no affect on the right to convey or encumber the property. Section 704.940. Nor does it prevent a levy of execution and sale of the property pursuant to the procedure provided by Sections 704.710 *et seq.* It does not prevent attachment liens (Section 487.025) or state tax liens (Gov't Code § 7170(a)). It doesn't even prevent attachment of a judgment lien (discussed *infra*).

Nevertheless, the modern declared homestead still has some arguable benefits:

1. *Judgment lien attaches only to surplus value.* Section 704.950 provides in subdivision (a) that judgment liens do not attach to property subject to a prior homestead declaration. However, under subdivision (c), a judgment lien does attach to the surplus value of the property over all senior liens and encumbrances plus the homestead exemption amount. The exemption amount does not include any increase in the exemption occurring after the judgment lien attaches. Section 704.965. Subdivision (c) was added to Section 704.950 at the last opportunity when the bill was before the Legislature, as can be seen from the Comment which was not revised to reflect the final statutory language. This section presents a conceptual conundrum. How can you tell whether the judgment lien has attached? The amount of the homestead exemption can change, as well as the amount of senior liens. A judgment lien attaches to any property owned or acquired by a debtor in the county where the abstract of judgment is recorded; it is not directed at particular property, but is a “dragnet” lien. See Section 697.340. How can anyone determine when the lien attaches since the value of the property is unknown? Section 704.950(a) says the lien does not attach except as provided in subdivision (c). Subdivision (c) says the lien attaches to the surplus value, but does not say when the lien attaches. Arguably it attaches only when the surplus value exists. Section 704.965 locks the exemption amount in when the lien attaches, but when is that? Theoretically, it might be easier to sell real property free of the judgment lien if there were a prior homestead declaration recorded, assuming that the debtor's equity in the property was agreed by all parties to be less than the homestead exemption amount at the time of transfer.

2. *Exemption of proceeds of voluntary sale.* Section 704.960(a) provides the one meaningful advantage of the modern declared homestead. It protects the proceeds of a voluntary sale of the homestead for six months after the date of sale. The automatic homestead exemption protects proceeds of sale, but only where the homestead is sold at an execution sale, is damaged or destroyed, or is acquired for public use — in other words, not in the case of a voluntary sale. See Section 704.720(b) (Exhibit p. 3). A sufficiently sophisticated debtor would record a homestead declaration before selling his or her home and protect the proceeds for six months. The staff can envision no public policy that is served by this technicality. The creditor cannot prevent the declaration. It follows mechanically from the act of recording a piece of paper at a particular time. The recording has no relation to any other act. It is not reviewed and notice is not given. It is not subject to contest at that stage. The protection of voluntary sale proceeds depends solely on the arbitrary factor of whether the debtor has remembered to record a paper, a paper which will then clutter up the public records for years, since describes as a homestead property that the debtor sold shortly after the declaration was recorded! This type of provision violates the spirit of Civil Code Section 3532 (“The law neither does nor requires idle acts.”).

3. *Relation-back of declared homestead.* Section 704.960(b) provides a portability feature, permitting the debtor to record a homestead declaration on property acquired with proceeds from a sale of a declared homestead and continue the original recording priority in the new homestead. This applies to any exempt proceeds, whether from voluntary or forced sale, or reimbursement from insurance, so long as the new declaration is recorded within six-month period during which proceeds are protected. Of course, relation back is of little or no importance in this area. The debtor may get the benefit of any increased homestead exemption as applied to proceeds from later home sales, but the outcome depends on the interpretation given Section 704.965. If having a larger homestead through legislative increases follows from having a declared homestead in place, and if the creditor “obtains” a lien only at the instant that the theoretical value of the homestead exceeds the value of liens senior to the judgment lien at the time it was recorded plus the value of the homestead exemption — then the increased exemption, by relation back, would have the effect of forestalling the time when the judgment lien attached to the surplus value. The significance of the lien attaching to the surplus value is lost on the

staff, since the exemption in any proceedings to enforce a money judgment is governed by the automatic homestead exemption procedure, not the declared homestead provisions.

4. *Continuation of homestead after death.* Section 704.995 provides that the protection of the declared homestead from a creditor having an attachment lien, execution lien, or judgment lien continues after the death of the declared homestead owner if the dwelling was the principal dwelling of the surviving spouse or a member of the decedent's family to whom an interest in the dwelling passes. But subdivision (c) says that the amount of the exemption is determined under Section 704.730 in the general procedure depending on the circumstances of the case at the time the amount is required to be determined. (This is in conflict with the rule in Section 704.965.) The effect of this provision must be measured by the value of the declared homestead to the decedent before death. As noted above, the only real protection is for proceeds of voluntary sale. Where special protection of the family home is appropriate, the probate homestead is the better procedure. The declared homestead now provides no meaningful, additional protection in the case of enforcement proceedings. Section 704.995 harkens back to a time when the declared homestead created important rights in homestead property that could descend to the survivors even contrary to a testamentary disposition.

5. *Prima facie evidence.* Section 704.940 provides that the declaration is prima facie evidence of the matters stated, which would include the statement that the property is the dwelling of the persons listed. This is an extremely minor point, but would appear to put some burden on the judgment creditor in proceedings to sell a dwelling. Note, however, that the relevant procedural provisions do not shift the burden to the creditor as in the case of a current homeowner's tax exemption or disabled veteran's tax exemption under Section 704.780. While the creditor is required to determine and report whether there is homestead declaration (Section 704.760(b)) as part of the procedure for obtaining an order for sale of a dwelling, nothing is done with factor in the procedure.

Staff Proposal

The declared homestead provisions present a number of problems:

1. *Uncertainty.* If there is one feature a declared homestead should have it is certainty, and yet no one can rely on the validity of the declaration. It sits of

record, but has little meaning unless it is tested in execution proceedings or after death. A later declaration as to different property acts as an abandonment pro tanto of the interest of the declarant. Section 704.990(b). Thus, if spouses choose to live apart, and a second (or second and third) declaration is recorded, what can be made of the first declaration?

2. *Illusory protection.* The declared homestead provides little real protection. As discussed above, the most important protections (other than for voluntary sale proceeds) are embodied in the automatic homestead, which is followed in any event on the rare occasion when there is a sale of a homestead. The homestead declaration can only give a false sense of security. In any event, most homeowners have no need for the protection, because most homeowners are not judgment debtors.

3. *Opportunity for misleading homestead declaration operations.* If you have bought a house in recent years, you probably got one or more solicitations from the slick homestead declaration mills. (See newspaper article, Exhibit pp. 19-21, and sample solicitation from Morse & Associates, Exhibit pp. 22-24.) Experience with these shady operations impelled the Legislature to enact a consumer protection statute. See Bus. & Prof. Code § 17537.6; see also *People v Morse*, 21 Cal. App. 4th 259, 25 Cal. Rptr. 2d 816 (1993) (approximately 4 million solicitations mailed in 4-year period following enactment of regulatory statute). Repeal of the declared homestead would put an end to the opportunity to profit from confusing a homeowner and causing undue alarm.

Position of State Bar Legal Services Section

The State Bar Legal Services Section has recently proposed that the homestead statutes be amended to eliminate the distinction between the automatic homestead protection and the declared homestead. (See letter from Robin Leonard on behalf of the Section, attached to Memorandum 94-25, Exhibit p. 65, considered at the May 1994 meeting.) Specifically, the Legal Services Section writes:

The distinction serves little purpose. Implicit in the creation of the automatic exemption was the recognition that a homeowner should not have to file a piece of paper to safeguard a homestead from a forced sale. There is no reason to restrict the benefit of a declared homestead (an exemption on the proceeds of a voluntary sale and no judgment lien on the house) to those who file a piece of paper.

Clearly, borrowers/homeowners can obtain the additional protection by filing a homestead declaration, but many (perhaps most) borrowers/homeowners are not sophisticated and/or do not know about the additional protection that comes from filing a homestead declaration. Because few borrowers/homeowners gain any benefit from declared homesteads, there is no legal or logical justification for preserving them.

Staff Proposal

As indicated, the staff suggests repealing the declared homestead exemption and amending the automatic homestead exemption to protect proceeds of a voluntary sale on the same basis as other proceeds are protected under Section 704.720. As in the case of other proceeds exemptions, dwelling proceeds would be exempt to the extent traceable in deposit accounts and cash or its equivalent, with the burden on the exemption claimant to prove the exemption. See Section 703.080.

Other Issues

Satisfaction of “all liens and encumbrances.” If the declared homestead procedure were eliminated, the “all liens and encumbrances” language would remain to confound lawyers, judges, and the parties. As a result of a political compromise in the final stages of legislative consideration of the enforcement of judgments bill in 1982, the language was retained. However, the “all liens and encumbrances” language is a misunderstood and now inappropriate historical artifact. Recall that once the homestead question was determined in a titanic race between the debtor seeking to record a homestead declaration, on the one side, and any of several creditors seeking to record their liens, on the other. The most important lien in money judgment enforcement has always been the judgment lien, but it did not attach if the homestead declaration was recorded first. If the property was sold on execution without a pre-existing judgment lien in favor of that creditor, there would be no junior liens practically speaking, and *all* the other liens on the property, whether mortgage liens, tax liens, other judgment liens, would be superior to the lien of the executing creditor. If the creditor had won the race to the recorder’s office and the judgment lien had attached first, then there would be no application of the “all liens and encumbrances” language since the homestead exemption would not apply. Instead, the various lienors would have been invited to play the redemptioner game, with junior lienholders redeeming from their seniors and the debtor redeeming where possible, until

they all became exhausted. (This amusing spectacle, with the inevitable round of litigation to sort it all out, no longer occurs; the redemption procedure applicable to real property sales on execution was repealed in the Commission's Enforcement of Judgments recommendation.)

The "all liens and encumbrances" language benefits the profligate or severely unlucky debtor. In other words, if a debtor has enough liens on the property, no creditor can reach it because any creditor would have to pay off all other liens, junior and senior, under the terms of the statute. This is obviously an invitation for a marginal debtor to get more liens. It is a situation where having too much is better than not enough. The law should not foster this type of situation. However, since this language applied literally can prevent the sale of a debtor's home in cases where the homestead exemption by itself would not, legislative representatives of debtors have argued in favor of the language.

Does the Commission wish to consider recommending a revision that would require satisfaction of *senior* liens and encumbrances, rather than *all* liens and encumbrances on the property?

Residence as qualification for declared homestead. Bankruptcy Judge Alan M. Ahart suggests that "the statute should be amended to clearly state that a debtor cannot utilize the declared homestead exemption if the debtor no longer resides at the property named in the Declaration of Homestead. See *In re Anderson*, 824 F.2d 754 (9th Cir. 1987); and *In re Yau*, 115 BR 245 (BC CD Cal. 1990); but see *In re Figy*, 102 BR 785 (BC SD Cal. 1989)." (See letter attached to Memorandum 94-25, Exhibit pp. 53-54, considered at the May 1994 meeting.)

The staff has not analyzed this issue since it is moot if the declared homestead provisions are to be repealed.

Respectfully submitted,

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Assistant Executive Secretary

Exhibit

**Homestead Exemption:
Enforcement of Judgments Law**

(Code Civ. Proc. §§ 704.710-704.995)

Article 4. Homestead Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) “Dwelling” means a place where a person resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) “Family unit” means any of the following:

(1) The judgment debtor and the judgment debtor’s spouse if the spouses reside together in the homestead.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor’s spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor’s spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor’s spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

1 (D) An unmarried relative described in this paragraph who has attained the age
2 of majority and is unable to take care of or support himself or herself.

3 (3) The judgment debtor's spouse and at least one of the persons listed in
4 paragraph (2) who the judgment debtor's spouse cares for or maintains in the
5 homestead.

6 (c) "Homestead" means the principal dwelling (1) in which the judgment
7 debtor or the judgment debtor's spouse resided on the date the judgment
8 creditor's lien attached to the dwelling, and (2) in which the judgment debtor or
9 the judgment debtor's spouse resided continuously thereafter until the date of
10 the court determination that the dwelling is a homestead. Where exempt proceeds
11 from the sale or damage or destruction of a homestead are used toward the
12 acquisition of a dwelling within the six-month period provided by Section
13 704.720, "homestead" also means the dwelling so acquired if it is the principal
14 dwelling in which the judgment debtor or the judgment debtor's spouse resided
15 continuously from the date of acquisition until the date of the court determination
16 that the dwelling is a homestead, whether or not an abstract or certified copy of a
17 judgment was recorded to create a judgment lien before the dwelling was
18 acquired.

19 (d) "Spouse" does not include a married person following entry of a judgment
20 decreeing legal separation of the parties, unless such married persons reside
21 together in the same dwelling.

22 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1983 Cal. Stat. ch.*
23 *155, § 17 effective June 30, 1983, operative July 1, 1983, Cal. Stat. ch. 1159, § 11,*
24 *operative July 1, 1984.*

25 **Comment (1982).** Subdivision (a) of Section 704.710 supersedes the provisions of former
26 law pertaining to the property that could be exempt as a homestead or dwelling. See former
27 Civil Code § 1237 (declared homestead); former Code Civ. Proc. § § 690.3 (housetrailer,
28 mobilehome, houseboat, boat, or other waterborne vessel), 690.31(a) (dwelling house).
29 Subdivision (a) is intended to include all forms of property for which an exemption could be
30 claimed under former law and any other property in which the judgment debtor or the
31 judgment debtor's spouse actually resides.

32 Subdivision (b) continues the substance of former Civil Code Section 1261(2) except that
33 the minor grandchild of a deceased spouse and a child or grandchild of a former spouse are
34 included in the listing.

35 Subdivision (c) is intended to preclude a judgment debtor from moving into a dwelling
36 after creation of a judgment lien or after levy in order to create an exemption. Subdivision (c)
37 also makes clear that, even though an abstract of judgment has been recorded to create a
38 judgment lien, the existence of such lien does not prevent a homestead exemption on after-
39 acquired property which is acquired as the principal dwelling using exempt proceeds.
40 Subdivision (c) is an exception to the rule of Section 703.100 (time for determination of
41 exemption). See also Section 704.960 (homestead declaration relating to dwelling acquired
42 using exempt proceeds.)

43 Subdivision (d) preserves the effect of former Civil Code Sections 1300-1304 (married
44 person's separate homestead). The effect of subdivision (d) is to permit each spouse to claim
45 a separate homestead after entry of a judgment decreeing legal separation or of an
46 interlocutory judgment of dissolution of the marriage, because subdivision (c) of Section
47 704.720 is not applicable.

48 **Comment (1983).** Sections 704.710 and 704.930 are amended to delete "actually" which
49 appeared before "resides" or "resided" in various provisions of the sections. The word

1 “actually” is deleted to avoid a possible construction that a person temporarily absent (such
2 as a person on vacation or in the hospital) could not claim a dwelling exemption for his or
3 her principal dwelling, or file a homestead declaration on his or her principal dwelling,
4 merely because the person is temporarily absent, even though the dwelling is the person’s
5 principal dwelling and residence.

6 **§ 704.720. Homestead exemption**

7 704.720. (a) A homestead is exempt from sale under this division to the extent
8 provided in Section 704.800.

9 (b) If a homestead is sold under this division or is damaged or destroyed or is
10 acquired for public use, the proceeds of sale or of insurance or other
11 indemnification for damage or destruction of the homestead or the proceeds
12 received as compensation for a homestead acquired for public use are exempt in
13 the amount of the homestead exemption provided in Section 704.730. The
14 proceeds are exempt for a period of six months after the time the proceeds are
15 actually received by the judgment debtor, except that, if a homestead exemption
16 is applied to other property of the judgment debtor or the judgment debtor’s
17 spouse during that period, the proceeds thereafter are not exempt.

18 (c) If the judgment debtor and spouse of the judgment debtor reside in separate
19 homesteads, only the homestead of one of the spouses is exempt and only the
20 proceeds of the exempt homestead are exempt.

21 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

22 **Comment.** Subdivision (a) of Section 704.720 supersedes former Civil Code Section 1240
23 (providing for a declared homestead) and former Code of Civil Procedure Sections 690.3 and
24 690.31(a) (providing for a claimed dwelling exemption). As to the effect of a declaration of
25 homestead made under prior law, see Section 694.090. See also Section 704.970 (effect of
26 declared homestead). Unlike the former provisions, Section 704.720 does not specify the
27 interest that is protected and does not limit the homestead in a leasehold to a long-term lease;
28 any interest sought to be reached by the judgment creditor in the homestead is subject to the
29 exemption. The homestead exemption does not apply where a lien on the property other than
30 an enforcement lien is being foreclosed. See Section 703.010.

31 Subdivision (b) provides an exemption for proceeds of an execution sale of a homestead,
32 for proceeds from insurance or indemnifications for the damage or destruction of a
33 homestead, and for an eminent domain award or proceeds of a sale of the homestead for
34 public use. Subdivision (b) supersedes portions of former Civil Code Sections 1256 and 1265
35 and of former Code of Civil Procedure Sections 690.8 and 690.31(k). The exemption for
36 insurance proceeds was not found in former law. But see *Houghton v. Lee*, 50 Cal. 101, 103
37 (insurance proceeds for destruction of declared homestead exempt). See also Section
38 704.960 (proceeds of declared homestead). As under former law, proceeds of a voluntary
39 sale of the homestead are not exempt under the proceeds exemption provided by subdivision
40 (b). Compare Section 704.960 (exemption for proceeds of voluntary sale of declared
41 homestead).

42 Subdivision (c) is new. The spouses may select which of the homesteads is exempt; if the
43 spouses are unable to agree, the court determines which homestead is exempt. See Section
44 703.110 (application of exemptions to marital property). Note that a married person may,
45 after a decree of legal separation or an interlocutory judgment of dissolution of marriage, be
46 entitled to a homestead in his or her own right, and this right is not affected by subdivision
47 (c). See Section 704.710(d) (“spouse” defined) and the Comment thereto. See also Section
48 704.930 (person entitled to execute homestead declaration).

1 **§ 704.730. Amount of homestead exemption**

2 704.730. (a) The amount of the homestead exemption is one of the following:

3 (1) Fifty thousand dollars (\$50,000) unless the judgment debtor or spouse of
4 the judgment debtor who resides in the homestead is a person described in
5 paragraph (2) or (3).

6 (2) Seventy-five thousand dollars (\$75,000) if the judgment debtor or spouse of
7 the judgment debtor who resides in the homestead is at the time of the attempted
8 sale of the homestead a member of a family unit, and there is at least one member
9 of the family unit who owns no interest in the homestead or whose only interest
10 in the homestead is a community property interest with the judgment debtor.

11 (3) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse
12 of the judgment debtor who resides in the homestead is at the time of the
13 attempted sale of the homestead any one of the following:

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

15 (B) A person physically or mentally disabled and as a result of that disability is
16 unable to engage in substantial gainful employment. There is a rebuttable
17 presumption affecting the burden of proof that a person receiving disability
18 insurance benefit payments under Title II or supplemental security income
19 payments under Title XVI of the federal Social Security Act satisfies the
20 requirements of this paragraph as to his or her inability to engage in substantial
21 gainful employment.

22 (C) A person 55 years of age or older with a gross annual income of not more
23 than fifteen thousand dollars (\$15,000) or, if the judgment debtor is married, a
24 gross annual income, including the gross annual income of the judgment debtor's
25 spouse, of not more than twenty thousand dollars (\$20,000) and the sale is an
26 involuntary sale.

27 (b) Notwithstanding any other provision of this section, the combined
28 homestead exemptions of spouses on the same judgment shall not exceed the
29 amount specified in paragraph (2) or (3), whichever is applicable, of subdivision
30 (a), regardless of whether the spouses are jointly obligated on the judgment and
31 regardless of whether the homestead consists of community or separate property
32 or both. Notwithstanding any other provision of this article, if both spouses are
33 entitled to a homestead exemption, the exemption of proceeds of the homestead
34 shall be apportioned between the spouses on the basis of their proportionate
35 interests in the homestead.

36 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1984 Cal. Stat. ch.*
37 *454, § 1. 1986 Cal. Stat. ch. 1000, § 1, Cal. Stat. ch. 1001, § 1. Amended 1988 Cal. Stat.*
38 *ch. 1168 sec 1; 1990 Cal. Stat. ch. 155, § 1 (AB 2562).*

39 **Comment.** Subdivision (a) of Section 704.730 continues the substance of portions of
40 former Civil Code Section 1260(a) (amount of homestead exemption). Subdivision (a)(2)(B)
41 replaces the phrase "head of a family" with the phrase "family unit" and makes clear there
42 is no increased exemption if the members of the family unit also own interests in the
43 homestead (except a community property interest).

44 Subdivision (b) is new. It is intended to preclude the exemption of unduly large amounts
45 and the inequitable application of exemptions that might otherwise occur under subdivision

1 (a) because of the variety of ways that spouses can hold property and attempt to qualify for
2 increased exemptions.

3 **§ 704.740. Court order for sale; Exemption claim where court order for sale not required**

4 704.740. (a) Except as provided in subdivision (b), the interest of a natural
5 person in a dwelling may not be sold under this division to enforce a money
6 judgment except pursuant to a court order for sale obtained under this article and
7 the dwelling exemption shall be determined under this article.

8 (b) If the dwelling is personal property or is real property in which the judgment
9 debtor has a leasehold estate with an unexpired term of less than two years at the
10 time of levy:

11 (1) A court order for sale is not required and the procedures provided in this
12 article relating to the court order for sale do not apply.

13 (2) An exemption claim shall be made and determined as provided in Article 2
14 (commencing with Section 703.510).

15 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1984 Cal. Stat. ch.*
16 *538, § 26.*

17 **Comment (1982).** Subdivision (a) of Section 704.740 supersedes portions of former Civil
18 Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c)
19 and (f).

20 Subdivision (b) incorporates the general procedures for claiming an exemption where the
21 dwelling levied upon is not subject to the delay of sale provision of Section 701.545 (120-
22 day delay of notice of sale of an interest in real property other than a leasehold estate with an
23 unexpired term of less than two years). Under former law, a house trailer, mobilehome,
24 houseboat, boat, or other waterborne vessel in which the judgment debtor or the judgment
25 debtor's family actually resided could be claimed as exempt in a similar manner. See former
26 Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain
27 mobilehomes that under former law would have been determined as provided in former
28 Section 690.31 (judgment creditor's application for writ of execution on dwelling, including
29 a mobilehome as defined by Health & Safety Code § 18008). See also Health & Saf. Code §
30 18551(c) (mobilehome installed on foundation system deemed a fixture and a real property
31 improvement). The judgment creditor's instructions to the levying officer must indicate
32 whether property to be levied on is a dwelling. See Section 687.010.

33 **Comment (1984).** Subdivision (a) of Section 704.740 is amended to make clear that the
34 requirements of this article do not apply to the sale of an interest in a dwelling owned by a
35 corporation or other artificial person. This is a nonsubstantive amendment that recognizes
36 what was implicit under former law — that the procedure of this article is not relevant in cases
37 where the debtor is not entitled to exemptions. See Section 703.020 (only natural person
38 entitled to exemptions). Subdivision (a) is also amended to make clear that this article
39 provides the exclusive procedure for determining real property dwelling exemptions (other
40 than leaseholds of less than two years). Accordingly, the general procedures for claiming
41 exemptions from execution are not applicable, except as otherwise provided.

42 **§ 704.750. Application for order for sale**

43 704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling
44 described in subdivision (b) of Section 704.740), the levying officer shall serve
45 notice on the judgment creditor that the levy has been made and that the
46 property will be released unless the judgment creditor complies with the
47 requirements of this section. Service shall be made personally or by mail. Within

1 20 days after service of the notice, the judgment creditor shall apply to the court
2 for an order for sale of the dwelling and shall file a copy of the application with
3 the levying officer. If the judgment creditor does not file the copy of the
4 application for an order for sale of the dwelling within the allowed time, the
5 levying officer shall release the dwelling.

6 (b) If the dwelling is located in a county other than the county where the
7 judgment was entered:

8 (1) The judgment creditor shall apply to a court of similar jurisdiction in the
9 county where the dwelling is located or, if there is no court of similar jurisdiction,
10 to a court of higher jurisdiction in that county.

11 (2) The judgment creditor shall file with the application an abstract of judgment
12 in the form prescribed by Section 674 or, in the case of a judgment described in
13 Section 697.320, a certified copy of the judgment.

14 (3) The judgment creditor shall pay a filing fee of twelve dollars (\$12). No law
15 library fee shall be charged.

16 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

17 **Comment.** Section 704.750 supersedes the introductory portion and the last two
18 paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section
19 690.31(c). Unlike the former provisions which required the judgment creditor to apply for
20 issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for
21 an order for sale after the execution levy. This ensures that all writs will be issued out of the
22 court in which the judgment is entered. The 20-day period allowed to apply for the order and
23 to file the copy of the application is extended if the notice of levy is served by mail. See
24 Section 684.120. Notice of the application for an order for sale of the property must be given
25 the levying officer or the dwelling will be released. This requirement applies only to real
26 property dwellings and not to personal property dwellings or to dwellings with less than a
27 two-year leasehold. See Section 704.740(b).

28 **§ 704.760. Contents of application**

29 704.760. The judgment creditor's application shall be made under oath, shall
30 describe the dwelling, and shall contain all of the following:

31 (a) A statement whether or not the records of the county tax assessor indicate
32 that there is a current homeowner's exemption or disabled veteran's exemption
33 for the dwelling and the person or persons who claimed any such exemption.

34 (b) A statement, which may be based on information and belief, whether the
35 dwelling is a homestead and the amount of the homestead exemption, if any, and
36 a statement whether or not the records of the county recorder indicate that a
37 homestead declaration under Article 5 (commencing with Section 704.910) that
38 describes the dwelling has been recorded by the judgment debtor or the spouse
39 of the judgment debtor.

40 (c) A statement of the amount of any liens or encumbrances on the dwelling, the
41 name of each person having a lien or encumbrance on the dwelling, and the
42 address of such person used by the county recorder for the return of the
43 instrument creating such person's lien or encumbrance after recording.

44 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

1 **Comment.** Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section
2 1245 and paragraphs (1)-(2) of former Code of Civil Procedure Section 690.31(c).

3 **§ 704.770. Notice of hearing**

4 704.770. (a) Upon the filing of the application by the judgment creditor, the
5 court shall set a time and place for hearing and order the judgment debtor to
6 show cause why an order for sale should not be made in accordance with the
7 application. The time set for hearing shall be not later than 45 days after the
8 application is filed or such later time as the court orders upon a showing of good
9 cause.

10 (b) Not later than 30 days before the time set for hearing, the judgment creditor
11 shall do both of the following:

12 (1) Serve on the judgment debtor a copy of the order to show cause, a copy of
13 the application of the judgment creditor, and a copy of the notice of the hearing
14 in the form prescribed by the Judicial Council. Service shall be made personally or
15 by mail.

16 (2) Personally serve a copy of each document listed in paragraph (1) on an
17 occupant of the dwelling or, if there is no occupant present at the time service is
18 attempted, post a copy of each document in a conspicuous place at the dwelling.

19 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1985 Cal. Stat. ch.*
20 *41, § 7.*

21 **Comment (1982).** Subdivision (a) of Section 704.770 supersedes the introductory portions
22 of former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d).
23 Subdivision (b) supersedes former Civil Code Section 1257 and former Code of Civil
24 Procedure Section 690.31(l). A longer period of notice is required under subdivision (b) if
25 the judgment debtor is served by mail. See Section 684.120.

26 **Comment (1985).** Subdivision (b)(1) of Section 704.770 is amended to delete the
27 reference to a repealed statutory form and substitute a reference to the form prepared by the
28 Judicial Council.

29 **§ 704.780. Hearing**

30 704.780. (a) The burden of proof at the hearing is determined in the following
31 manner:

32 (1) If the records of the county tax assessor indicate that there is a current
33 homeowner's exemption or disabled veteran's exemption for the dwelling
34 claimed by the judgment debtor or the judgment debtor's spouse, the judgment
35 creditor has the burden of proof that the dwelling is not a homestead. If the
36 records of the county tax assessor indicate that there is not a current
37 homeowner's exemption or disabled veteran's exemption for the dwelling
38 claimed by the judgment debtor or the judgment debtor's spouse, the burden of
39 proof that the dwelling is a homestead is on the person who claims that the
40 dwelling is a homestead.

41 (2) If the application states the amount of the homestead exemption, the person
42 claiming the homestead exemption has the burden of proof that the amount of the
43 exemption is other than the amount stated in the application.

(b) The court shall determine whether the dwelling is exempt. If the court determines that the dwelling is exempt, the court shall determine the amount of the homestead exemption and the fair market value of the dwelling and shall make an order for sale of the dwelling subject to the homestead exemption. The order for sale of the dwelling subject to the homestead exemption shall specify the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling and shall include the name and address of each such person. Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3. If the court determines that the dwelling is not exempt, the court shall make an order for sale of the property in the manner provided in Article 6 (commencing with Section 701.510) of Chapter 3.

(c) The court clerk shall transmit a certified copy of the court order (1) to the levying officer and (2) if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered.

(d) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling. If the court appoints an appraiser, the court shall fix the compensation of the appraiser in an amount determined by the court to be reasonable, not to exceed similar fees for similar services in the community where the dwelling is located.

Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1984 Cal. Stat. ch. 538, § 26.5.

Comment (1982). Section 704.780 supersedes former Civil Code Section 1247, a portion of former Civil Code Section 1250, and a portion of subdivision (c), subdivision (e), and a portion of subdivision (f) of former Code of Civil Procedure Section 690.31. Subject to the requirements of Section 704.790, if an order for sale is obtained, the dwelling may be sold as provided in Sections 701.510 *et seq.* Notice of sale provisions (Sections 701.540-701.560) apply to the sale as well as the general provisions governing the sale itself (subject to Sections 704.800-704.850).

Comment (1984). Subdivision (b) of Section 704.780 is amended to make clear that the court is not required to determine fair market value and the amount of liens to be satisfied where the dwelling is not an exempt homestead. These determinations are relevant only where the special minimum bid requirements provided by Section 704.800 apply — that is, where a dwelling has been found to qualify for a homestead exemption. The sale of a non-exempt dwelling is governed by the general procedures applicable to other types of property. It should be noted, however, that the special procedures of Section 704.790, applicable where the order for sale is obtained by default, continued to apply even though the property is found not to qualify for an exemption.

The amendment of subdivision (a)(1) is a technical correction that makes clear where the burden lies where there is neither a homeowner's nor a veteran's exemption.

§ 704.790. Procedure after order of sale upon default

704.790. (a) This section applies in any case where the court makes an order for sale of the dwelling upon a hearing at which none of the following appeared:

(1) The judgment debtor.

(2) The judgment debtor's spouse.

(3) The attorney for the judgment debtor.

(4) The attorney for the judgment debtor's spouse.

(b) Not later than 10 days after the date of the order for sale, the judgment creditor shall serve a copy of the order and a notice of the order in the form prescribed by the Judicial Council:

(1) Personally or by mail on the judgment debtor and the judgment debtor's spouse.

(2) Personally on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of the order and notice in a conspicuous place at the dwelling.

(c) Proof of service and of any posting shall be filed with the court and with the levying officer. If the judgment creditor fails to comply with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

(d) If, within 10 days after service of notice of the order, the judgment debtor or the judgment debtor's spouse files with the levying officer a declaration that the absence of the judgment debtor and the judgment debtor's spouse or the attorney for the judgment debtor or the judgment debtor's spouse from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor or spouse of the judgment debtor wishes to assert the homestead exemption, the levying officer shall transmit the declaration forthwith to the court. Upon receipt of the declaration, the court shall set a time and place for hearing to determine whether the determinations of the court should be modified. The time set for hearing shall be not later than 20 days after receipt of the declaration. The court clerk shall cause notice of the hearing promptly to be given to the parties.

Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1985 Cal. Stat. ch. 41, § 8.

Comment (1982). Subdivision (a) of Section 704.790 supersedes former Civil Code Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (l). Subdivision (d) supersedes former Civil Code Section 1252 and former Code of Civil Procedure Section 690.31(h).

Comment (1985). Procedure after order of sale of dwelling upon default Subdivision (b) of Section 704.790 is amended to delete the reference to a repealed statutory form and substitute a reference to the form prepared by the Judicial Council.

§ 704.800. Minimum bid

704.800. (a) If no bid is received at a sale of a homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including but not limited to any attachment or judgment lien, the homestead shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

(b) If no bid is received at the sale of a homestead pursuant to a court order for sale that is 90 percent or more of the fair market value determined pursuant to Section 704.780, the homestead shall not be sold unless the court, upon motion of the judgment creditor, does one of the following:

(1) Grants permission to accept the highest bid that exceeds the amount of the minimum bid required by subdivision (a).

(2) Makes a new order for sale of the homestead.

Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.

Comment. Section 704.800 supersedes former Civil Code Sections 1253 and 1254. If the property levied upon is not sold, the judgment creditor may not recover costs. See Section 704.840. See also Section 704.850 (distribution of proceeds).

§ 704.810. Acceleration clauses and prepayment penalties

704.810. Levy on a homestead that is subject to a lien or encumbrance is not by itself grounds for acceleration of the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance and if the homestead is sold pursuant to court order under this article the amount payable to satisfy a lien or encumbrance shall not include any penalty for prepayment.

Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.

Comment. Section 704.810 is new. The first portion of Section 704.810 is intended to preserve existing financing on a homestead when it is levied upon but not sold. The latter portion is drawn from Section 1265.240 (no prepayment penalty where property acquired by eminent domain).

§ 704.820. Procedure where judgment debtor is co-owner or owns less than a fee

704.820. If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At an execution sale of a dwelling, the interest of the judgment debtor in the dwelling and not the dwelling shall be sold. If there is more than one judgment debtor of the judgment creditor, the interests of the judgment debtors in the dwelling shall be sold together and each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own interest.

(b) For the purposes of this section, all references in this article to the “dwelling” or “homestead” are deemed to be references to the interest of the judgment debtor in the dwelling or homestead.

Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.

Comment. Section 704.820 implements the intent of this article not to restrict the interest of the judgment debtor for which a homestead exemption is available. A homestead exemption is available to a judgment debtor regardless of whether the judgment debtor’s interest is a fee, leasehold, or lesser interest. See Section 704.710(a) and Comment thereto. If the judgment debtor’s interest is an interest in community property, the whole community interest is subject to enforcement of the judgment. See Section 695.020 (liability of community property).

1 **§ 704.830. Extensions of time and appeals**

2 704.830. The provisions of Sections 703.590 and 703.600 apply to
3 proceedings under this article.

4 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

5 **Comment.** Section 704.830 continues the substance of former Civil Code Sections 1258
6 (portion incorporating Code of Civil Procedure Section 690.50(l)) and 1259.1, and former
7 Code of Civil Procedure Section 690.31(m) (portion incorporating Code of Civil Procedure
8 Section 690.50(l)) and (n). It incorporates the provisions in the general exemption procedure
9 pertaining to extensions of time and appeals.

10 **§ 704.840. Costs**

11 704.840. (a) Except as provided in subdivision (b), the judgment creditor is
12 entitled to recover reasonable costs incurred in a proceeding under this article.

13 (b) If no bid is received at a sale of a homestead pursuant to a court order for
14 sale that exceeds the amount of the homestead exemption plus any additional
15 amount necessary to satisfy all liens and encumbrances on the property, the
16 judgment creditor is not entitled to recover costs incurred in a proceeding under
17 this article or costs of sale.

18 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

19 **Comment.** Section 704.840 supersedes former Civil Code Section 1259.

20 **§ 704.850. Distribution of proceeds of sale of homestead**

21 704.850. (a) The levying officer shall distribute the proceeds of sale of a
22 homestead in the following order:

23 (1) To the discharge of all liens and encumbrances, if any, on the property.

24 (2) To the judgment debtor in the amount of any applicable exemption of
25 proceeds pursuant to Section 704.720.

26 (3) To the levying officer for the reimbursement of the levying officer's costs for
27 which an advance has not been made.

28 (4) To the judgment creditor to satisfy the following:

29 (A) First, costs and interest accruing after issuance of the writ pursuant to which
30 the sale is conducted.

31 (B) Second, the amount due on the judgment with costs and interest, as entered
32 on the writ.

33 (5) To the judgment debtor in the amount remaining.

34 (b) Sections 701.820 and 701.830 apply to distribution of proceeds under this
35 section.

36 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

37 **Comment.** Subdivision (a) of Section 704.850 continues the priority of distribution of
38 proceeds provided by subdivision (j) of former Section 690.31 and of former Civil Code
39 Section 1255. This section is an exception to the general rules on distribution of proceeds
40 provided by Section 701.810. Liens and encumbrances required to be satisfied under
41 subdivision (a)(1) include not only preferred labor claims to be satisfied pursuant to Section
42 1206 and the amount of any state tax lien (as defined in Government Code Section 7162) but
43 also any other liens and encumbrances.

1 Subdivision (b) makes clear that the general provisions governing the time for distributing
2 proceeds (Section 701.820) and the resolution of conflicting claims to proceeds (Section
3 701.830) apply to the distribution of proceeds from the sale of a homestead.

4 Article 5. Declared Homesteads

5 § 704.910. Definitions

6 704.910. As used in this article:

7 (a) “Declared homestead” means the dwelling described in a homestead
8 declaration.

9 (b) “Declared homestead owner” includes both of the following:

10 (1) The owner of an interest in the declared homestead who is named as a
11 declared homestead owner in a homestead declaration recorded pursuant to this
12 article.

13 (2) The declarant named in a declaration of homestead recorded prior to July 1,
14 1983, pursuant to former Title 5 (commencing with Section 1237) of Part 4 of
15 Division 2 of the Civil Code and the spouse of such declarant.

16 (c) “Dwelling” means any interest in real property (whether present or future,
17 vested or contingent, legal or equitable) that is a “dwelling” as defined in Section
18 704.710, but does not include a leasehold estate with an unexpired term of less
19 than two years or the interest of the beneficiary of a trust.

20 (d) “Homestead declaration” includes both of the following:

21 (1) A homestead declaration recorded pursuant to this article.

22 (2) A declaration of homestead recorded prior to July 1, 1983, pursuant to
23 former Title 5 (commencing with former Section 1237) of Part 4 of Division 2 of
24 the Civil Code.

25 (e) “Spouse” means a “spouse” as defined in Section 704.710.

26 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

27 **Comment.** Section 704.910 defines various terms used in this article in light of the
28 purposes of the article.

29 A primary purpose of this article is to continue the rule under former law that a judgment
30 lien does not attach to a declared homestead. [*But see* subdivision (c) of Section 704.950
31 which permits the attachment of the judgment lien to the surplus value of the homestead over
32 liens and encumbrances and the homestead exemption.] See the Comment to Section
33 704.950. For this reason, the description in subdivision (c) of Section 704.910 of the interest
34 in real property that may constitute a declared homestead is drawn from Section 697.340
35 (property to which judgment liens on real property attaches). This continues former law
36 which restricted a declared homestead to a dwelling that was real property. See former Civil
37 Code § 1237. By restricting the dwellings that may become declared homesteads to interests
38 in real property, the definition of “dwelling” excludes a dwelling that is personal property.
39 Thus, a boat or other waterborne vessel (although included within the definition set out in
40 Section 704.710) is not a “dwelling” for the purposes of this article. Likewise, unless a
41 mobilehome is so affixed to the land as to be treated as real property, the mobilehome
42 (although included within the definition set out in Section 704.710) is not a “dwelling” for
43 the purposes of this article. See Health and Safety Code § 18551.

44 The definitions in Section 704.910 are also designed to give the same effect to a
45 declaration of homestead under former law as is given to a homestead declaration recorded
46 pursuant to this article. “Homestead declaration” is defined in subdivision (d) to include a

1 declaration of homestead recorded under former law. “Declared homestead owner” is
2 defined in subdivision (b) to include the declarant or the declarant’s spouse in the case of a
3 declaration of homestead recorded under former law. However, the effect of a declaration of
4 homestead recorded under former law is limited to the effect given the homestead declaration
5 by this article. See Sections 704.950 (judgment lien does not attach to declared homestead
6 [except to the extent provided in subdivisions (b) and (c) of Section 704.950]) and 704.960
7 (exemption for proceeds of voluntary sale of declared homestead; investment of proceeds in
8 new dwelling and effect of selection of new dwelling as a declared homestead). Other effects
9 of a declaration of homestead under former law are not continued. See Section 694.090.
10 Accordingly, the restrictions imposed by former law on the conveyance or encumbrance of a
11 homestead are not continued. See Section 704.940. A declaration of homestead recorded
12 under former law can be abandoned using the procedure provided in Section 704.980,
13 without regard to the restrictions on abandonment of the homestead under former law.
14 Likewise, Section 704.990 (abandonment of declared homestead by operation of law) applies
15 to a homestead created by recording a declaration of homestead under former law.

16 Under the revised declared homestead procedure provided by this article, a “declared
17 homestead owner” as defined in subdivision (b) must not only be named as such in a
18 homestead declaration but also must be the owner of an interest in the declared homestead.
19 However, the declared homestead owner need not reside in the declared homestead if the
20 spouse of the declared homestead owner resides in the declared homestead. See Sections
21 704.920 and 704.930(a)(3). If a husband and wife are both owners of an interest in a
22 homestead (as where the property is community property or where the spouses hold the
23 property in joint tenancy or as tenants in common), they both may be named as declared
24 homestead owners in the same homestead declaration. See Section 704.930(a)(1). In addition,
25 a married person who is not the owner of an interest in the dwelling may execute,
26 acknowledge, and record a homestead declaration naming the other spouse who is an owner
27 of an interest in the dwelling as the declared homestead owner (see subdivisions (a)(3) and
28 (b)(2) of Section 704.930), but at least one of the spouses must reside in the dwelling as his
29 or her principal dwelling (see Section 704.920 and subdivision (a)(3) of Section 740.930).
30 Where unmarried persons hold interests in the same dwelling in which they both reside, they
31 must record separate homestead declarations if each desires to have a declared homestead.
32 Since former law did not provide for the naming of a “declared homestead owner” in a
33 declaration of homestead, subdivision (b) gives the declarant under a declaration of
34 homestead under former law and the spouse of such declarant the status of a “declared
35 homestead owner” for the purposes of this article.

36 **§ 704.920. Manner of selection of homestead**

37 704.920. A dwelling in which an owner or spouse of an owner resides may be
38 selected as a declared homestead pursuant to this article by recording a
39 homestead declaration in the office of the county recorder of the county where
40 the dwelling is located. From and after the time of recording, the dwelling is a
41 declared homestead for the purposes of this article.

42 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

43 **Comment.** Section 704.020 continues portions of former Civil Code Sections 1262, 1264,
44 1265, 1268, 1269, and 1303.

45 **§ 704.930. Execution and contents of homestead declaration**

46 704.930. (a) A homestead declaration recorded pursuant to this article shall
47 contain all of the following:

1 (1) The name of the declared homestead owner. A husband and wife both may
2 be named as declared homestead owners in the same homestead declaration if
3 each owns an interest in the dwelling selected as the declared homestead.

4 (2) A description of the declared homestead.

5 (3) A statement that the declared homestead is the principal dwelling of the
6 declared homestead owner or such person's spouse, and that the declared
7 homestead owner or such person's spouse resides in the declared homestead on
8 the date the homestead declaration is recorded.

9 (b) The homestead declaration shall be executed and acknowledged in the
10 manner of an acknowledgment of a conveyance of real property by at least one
11 of the following persons:

12 (1) The declared homestead owner.

13 (2) The spouse of the declared homestead owner.

14 (3) The guardian or conservator of the person or estate of either of the persons
15 listed in paragraph (1) or (2). The guardian or conservator may execute,
16 acknowledge, and record a homestead declaration without the need to obtain
17 court authorization.

18 (4) A person acting under a power of attorney or otherwise authorized to act
19 on behalf of a person listed in paragraph (1) or (2).

20 (c) The homestead declaration shall include a statement that the facts stated in
21 the homestead declaration are known to be true as of the personal knowledge of
22 the person executing and acknowledging the homestead declaration. If the
23 homestead declaration is executed and acknowledged by a person listed in
24 paragraph (3) or (4) of subdivision (b), it shall also contain a statement that the
25 person has authority to so act on behalf of the declared homestead owner or the
26 spouse of the declared homestead owner and the source of the person's
27 authority.

28 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1983 Cal. Stat. ch.*
29 *155, § 18, effective June 30, 1983, operative July 1, 1983.*

30 **Comment (1982).** Section 704.930 continues portions of former Civil Code Sections 1262,
31 1263, 1266, 1267, 1300, and 1301. Section 704.930 also makes clear that a homestead
32 declaration may be executed, acknowledged, and recorded by a guardian or conservator or
33 other person authorized to act on behalf of the declared homestead owner or spouse of the
34 declared homestead owner.

35 Section 704.930 applies only to a homestead declaration recorded pursuant to this article.
36 The section does not affect a declaration of homestead recorded under former law.

37 **Comment (1983).** See the Comment to Section 704.710.

38 **§ 704.940. Right to convey or encumber not limited; Evidentiary effect of homestead**

39 704.940. A homestead declaration does not restrict or limit any right to convey
40 or encumber the declared homestead. A homestead declaration, when properly
41 recorded, is prima facie evidence of the facts therein stated, and conclusive
42 evidence thereof in favor of a purchaser or encumbrancer in good faith and for a
43 valuable consideration.

44 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

1 **Comment.** The first sentence of Section 704.940 makes clear that the recording of a
2 homestead declaration does not restrict the right to convey or encumber the declared
3 homestead. The provisions of former law (e.g., former Civil Code § § 1242, 1243, 1243.5)
4 which gave a declaration of homestead that effect are not continued. See also Section
5 694.090. However, Section 704.930 has no effect on the other provisions of law that restrict
6 the right to convey or encumber community property. See Civil Code § § 5127, 5128. See
7 also Civil Code § 5102. The second sentence of Section 704.940 is drawn from a portion of
8 former Civil Code Section 1263.

9 **§ 704.950. Attachment of judgment lien to homestead**

10 704.950. (a) Except as provided in subdivisions (b) and (c), a judgment lien on
11 real property created pursuant to Article 2 (commencing with Section 697.310) of
12 Chapter 2 does not attach to a declared homestead if both of the following
13 requirements are satisfied:

14 (1) A homestead declaration describing the declared homestead was recorded
15 prior to the time the abstract or certified copy of the judgment was recorded to
16 create the judgment lien.

17 (2) The homestead declaration names the judgment debtor or the spouse of the
18 judgment debtor as a declared homestead owner.

19 (b) This section does not apply to a judgment lien created under Section
20 697.320 by recording a certified copy of a judgment for child , family, or spousal
21 support.

22 (c) A judgment lien attaches to a declared homestead in the amount of any
23 surplus over the total of the following:

24 (1) All liens and encumbrances on the declared homestead at the time the
25 abstract of judgment or certified copy of the judgment is recorded to create the
26 judgment lien.

27 (2) The homestead exemption set forth in Section 704.730.

28 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983. Amended 1992 Cal. Stat. ch.*
29 *163, § 44 (AB 2641), operative January 1, 1994.*

30 **Comment (1982).** Subdivision (a) of Section 704.950 continues former law. A judgment
31 lien does not attach to property subject to a prior homestead declaration; likewise, such a
32 judgment is not a lien on a surplus value therein over and above the amount of the homestead
33 exemption, regardless of the value of the property. *Yager v. Yager*, 7 Cal. 2d 213, 60 P.2d
34 422 (1936); *Boggs v. Dunn*, 160 Cal. 283, 116 P. 743 (1911); *Engelman v. Gordon*, 82 Cal.
35 App. 3d 174, 146 Cal. Rptr. 835 (1978). [This Comment was not revised to reflect the
36 addition of subdivision (c) to Section 704.950 prior to the enactment of the section.]
37 However, as under former law, a judgment creditor may reach the value of the equity in a
38 declared homestead in excess of the homestead exemption by levy of execution on the
39 property. See Section 704.970. See also former Civil Code § § 1245-1255; *Swearingen v.*
40 *Byrne*, 67 Cal. App. 3d 380, 136 Cal. Rptr. 736 (1977). In the proceedings following levy of
41 execution, the judgment creditor may also raise the issues of whether the judgment debtor is
42 entitled to a homestead exemption (as where neither the judgment debtor nor the spouse of
43 the judgment debtor occupies the property as their principal dwelling) or the amount of the
44 homestead exemption. See Sections 704.740-704.840, 704.970.

45 Subdivision (b) of Section 704.950 makes clear that a judgment lien on a judgment for
46 child or spousal support may attach to a declared homestead.

47 **Comment (1992).** Subdivision (b) of Section 704.950 is amended to make clear that the
48 section applies to a judgment for family support. See Fam. Code § 4501 (family support

1 order enforceable in same manner and to same extent as child support order). See also
2 Section 680.145 ("child support" includes family support).

3 **§ 704.960. Proceeds exemption after voluntary sale; Reinvestment of proceeds of**
4 **voluntary or involuntary sale and effect of new declaration**

5 704.960. (a) If a declared homestead is voluntarily sold, the proceeds of sale are
6 exempt in the amount provided by Section 704.730 for a period of six months
7 after the date of sale.

8 (b) If the proceeds of a declared homestead are invested in a new dwelling
9 within six months after the date of a voluntary sale or within six months after
10 proceeds of an execution sale or of insurance or other indemnification for damage
11 or destruction are received, the new dwelling may be selected as a declared
12 homestead by recording a homestead declaration within the applicable six-month
13 period. In such case, the homestead declaration has the same effect as if it had
14 been recorded at the time the prior homestead declaration was recorded.

15 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

16 **Comment.** Subdivision (a) of Section 704.960 continues the substance of the last portion
17 of former Civil Code Section 1265. As to the proceeds exemption where a dwelling is sold at
18 an execution sale, see Section 704.720. See also Section 704.970. Subdivision (b) of Section
19 704.960 continues the substance of former Civil Code Section 1265a. See also *Houghton v.*
20 *Lee*, 50 Cal. 101, 103 (1875) (proceeds from insurance on declared homestead exempt).

21 **§ 704.965. Determination of amount of exemption**

22 704.965. If a homestead declaration is recorded prior to the operative date of an
23 amendment to Section 704.730 which increases the amount of the homestead
24 exemption, the amount of the exemption for the purposes of subdivision (c) of
25 Section 704.950 and Section 704.960 is the increased amount, except that, if the
26 judgment creditor obtained a lien on the declared homestead prior to the
27 operative date of the amendment to Section 704.730, the exemption for the
28 purposes of subdivision (c) of Section 704.950 and Section 704.960 shall be
29 determined as if that amendment to Section 704.730 had not been enacted.

30 *Added 1984 Cal. Stat. ch. 454, § 2.*

31 **§ 704.970. Effect of article on rights after levy of execution**

32 704.970. Whether or not a homestead declaration has been recorded:

33 (a) Nothing in this article affects the right of levy pursuant to a writ of
34 execution.

35 (b) Any levy pursuant to a writ of execution on a dwelling (as defined in
36 Section 704.710) and the sale pursuant thereto shall be made in compliance with
37 Article 4 (commencing with Section 704.710) and the judgment debtor and the
38 judgment creditor shall have all the rights and benefits provided by that article.

39 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

40 **Comment.** Section 704.970 makes clear that the homestead declaration does not affect the
41 right of a judgment creditor to levy on the declared homestead pursuant to a writ of
42 execution. See the Comment to Section 704.950. Nor does the failure of a judgment debtor
43 to record a homestead declaration affect the judgment debtor's rights under the homestead

1 exemption when a dwelling is levied upon pursuant to a writ of execution. See Section
2 704.740. Section 704.970 continues the substance of former Civil Code Section 1259.2.

3 **§ 704.980. Declaration of abandonment**

4 704.980.(a) A declared homestead may be abandoned by a declaration of
5 abandonment under this section, whether the homestead declaration was
6 recorded pursuant to this article or pursuant to former Title 5 (commencing with
7 former Section 1237) of Part 4 of Division 2 of the Civil Code.

8 (b) A declaration of abandonment shall be executed and acknowledged in the
9 manner of an acknowledgment of a conveyance of real property. It shall be
10 executed and acknowledged by a declared homestead owner or by a person
11 authorized to act on behalf of a declared homestead owner. If it is executed and
12 acknowledged by a person authorized to act on behalf of a declared homestead
13 owner, the declaration shall contain a statement that the person has authority to
14 act on behalf of the declared homestead owner and the source of the person's
15 authority.

16 (c) The declaration of abandonment does not affect the declared homestead of
17 any person other than the declared homestead owner named in the declaration of
18 abandonment.

19 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

20 **Comment.** Section 704.980 supersedes provisions of the Civil Code which restricted the
21 right to record a declaration of abandonment of a declared homestead. See, e.g., former Civil
22 Code § § 1243, 1243.5, and 1244. Under Section 704.980, a declared homestead owner or a
23 person authorized to act on behalf of the declared homestead owner may execute,
24 acknowledge, and record a declaration of abandonment as to the declared homestead of that
25 declared homestead owner. Such abandonment does not affect the rights of any other person.
26 Accordingly, where married persons have their marriage dissolved and one continues to
27 reside in the declared homestead, the other may abandon the declared homestead and
28 establish a new declared homestead. In such case, the abandonment does not affect the right
29 of the former spouse who continues to reside in the declared homestead to retain the dwelling
30 as his or her declared homestead if that former spouse owns an interest in the dwelling.

31 **§ 704.990. Abandonment of homestead by recording homestead declaration for different**
32 **property**

33 704.990. (a) A declared homestead is abandoned by operation of law as to a
34 declared homestead owner if the declared homestead owner or a person
35 authorized to act on behalf of the declared homestead owner executes,
36 acknowledges, and records a new homestead declaration for the declared
37 homestead owner on different property. An abandonment under this subdivision
38 does not affect the declared homestead of any person other than the declared
39 homestead owner named in the new homestead declaration.

40 (b) Notwithstanding subdivision (a), if a homestead declaration is recorded
41 which includes property described in a previously recorded homestead
42 declaration, to the extent that the prior homestead declaration is still valid, the
43 new homestead declaration shall not be considered an abandonment of the prior
44 declared homestead.

1 *Added 1982 Cal. Stat. ch. 1364, § 2, operative July 1, 1983.*

2 **Comment.** Subdivision (a) of Section 704.990 is new and is designed to preclude a person
3 from having two declared homesteads on different property. Subdivision (b) continues the
4 substance of former Civil Code Section 1261.1.

5 **§ 704.995. Continuation of protection after death of declared homestead owner**

6 704.995. (a) The protection of the declared homestead from any creditor having
7 an attachment lien, execution lien, or judgment lien on the dwelling continues
8 after the death of the declared homestead owner if, at the time of the death, the
9 dwelling was the principal dwelling of one or more of the following persons to
10 whom all or part of the interest of the deceased declared homestead owner
11 passes:

12 (1) The surviving spouse of the decedent.

13 (2) A member of the family of the decedent.

14 (b) The protection of the declared homestead provided by subdivision (a)
15 continues regardless of whether the decedent was the sole owner of the declared
16 homestead or owned the declared homestead with the surviving spouse or a
17 member of the decedent's family and regardless of whether the surviving spouse
18 or the member of the decedent's family was a declared homestead owner at the
19 time of the decedent's death.

20 (c) The amount of the homestead exemption is determined pursuant to Section
21 704.730 depending on the circumstances of the case at the time the amount is
22 required to be determined.

23 *Added 1984 Cal. Stat. ch. 538, § 27.*

24 **Comment.** Section 704.995 is added to make clear that the surviving spouse or resident
25 family does not lose the declared homestead right by the death of a declared homestead
26 owner. Hence, the protection afforded the declared homestead from creditors continues even
27 though the person who recorded the homestead declaration or who was the sole or joint
28 owner is dead. This section rejects a contrary dictum in *Estate of Grigsby*, 134 Cal. App. 3d
29 611, 615, 184 Cal. Rptr. 886, 888 (1982) ("... the declared homestead does not survive the
30 death of one of the spouses."). See also Prob. Code § 6528 (effect of probate homestead on
31 declared homestead). Subdivision (c) makes clear that where the right to a declared
32 homestead continues, the amount of the homestead exemption is determined under the
33 normal rules. For example, if the surviving spouse is not 65 years of age or older and does
34 not have another family member living in the dwelling, the dollar amount of the declared
35 homestead that is protected from creditors will be reduced. See Sections 704.730 (amount of
36 homestead exemption), 704.950 (attachment of judgment lien to surplus value).

Homesteading Scam Targets Unwary Homeowners

Many people who recently bought houses in the Bay Area have received official-looking application forms in the mail, with a sales pitch encouraging them to shell out \$25 to file a legal document called a homestead declaration.

Filing the declaration will "ensure the maximum protection of the equity in your home provided by state law," declares the sender — an entity called State Recording Service.

The California attorney general's office points out that despite the name, State Recording Service is not a governmental body, and that the mailing appears to be a copycat version of a scam that has been perpetrated repeatedly against California consumers.



*Arthur M.
Louis*

Almost nobody in California needs to file for homestead protection, because almost every homeowner gets it automatically. When you buy a home, \$50,000 to \$100,000

in equity will be protected against seizure by most creditors. What's more, those rare homebuyers who have reason to file a formal homestead declaration can do it themselves for substantially less than \$25.

Laura Kaplan, a deputy attorney general specializing in con-

sumer fraud, has successfully prosecuted civil suits against three homestead services. She notes that most such services don't do anything to earn the \$25 fee. They don't even file your homestead declaration with the county recorder's office, as required by law.

"They just act as a typing service," Kaplan said. After sending in the application form and a check for \$25, the homeowner gets back a neatly typed version of the form he filled out, together with instructions on how to get it notarized and recorded himself.

The state, alleging deceptive advertising and other illegal practices, got court judgments and settlements totaling nearly \$800,000 against Dublin-based Morse and

Associates and American Homestead Service Agency and California Homestead Service Agency, both of Los Angeles.

Homestead protection, which effectively stymies such garden-variety creditors as auto-finance companies, credit-card companies, furniture dealers and utilities, amounts to \$50,000 for single people, \$75,000 for a family and \$100,000 for seniors. If, for example, a family owes a single creditor more than \$80,000, that creditor could go after part of the family's home equity.

Filing a formal homestead application won't change those limits — they're set by law.

It also won't stave off certain MONEY: Page B3 Col. 1

MONEY: Do Homesteading Yourself

From Page B1

types of creditors who have a pipeline to your home equity. Mortgage lenders, taxing authorities or mechanics, builders and others who have performed work on your house can seize your equity when the house is sold, even if you have homestead protection. In fact, they might be able to persuade a court to force a sale.

The One Exception

There is one set of circumstances that could justify filing a formal homestead declaration.

The exception is convoluted and slightly absurd: If you can't pay your debts while living in your present house, and if you voluntarily sell that house and buy another within six months, then the equity in your new house won't be off-limits to any of your present creditors unless you filed a formal homestead declaration before you fell into debt.

So, if you own a house and are up to date on your debt payments, but expect (or intend) to become a serious deadbeat later on, you might want to file a homestead declaration to protect the equity in your next house. (The law doesn't explain how people in serious money trouble can afford to buy the next house.)

If you want to file a homestead declaration cheaply, you can buy the necessary form for a dollar or two at a stationery store, get it notarized for a dollar or two more,

and file it with the county recorder's office for maybe \$4 or \$5. There is no need to spend anything near \$25.

But even a prospective deadbeat might not find it necessary to file. He will get automatic homestead protection on his next house if the sale of his present house is involuntary — that is, if there is a foreclosure. He also gets protection if the sale is voluntary but he waits more than six months before buying the next house. Someone in serious financial trouble might very well have to wait more than six months — perhaps forever.

What's in a Name

State Recording Service — the company whose forms are pop-

Even a prospective deadbeat might not have to file

ping up in Bay Area mailboxes — evidently doesn't deliver homestead declarations to county recorders, as required by law. The application form sent to homeowners states that a document "will be returned to you for your signature(s) along with recording instructions."

The very name "State Recording Service" appears to be illegal, because California law forbids the use of the word "state" as a part of any homestead service's name.

The legislature doesn't want consumers to suppose they are dealing with governmental bodies. (State Recording Service does acknowledge, far down the page on the reverse side of its application form, that it is "not affiliated with any government or public entity.")

Other verboten words are "homestead," "agency," "bureau," "department," "division," "federal," "county," "city," "municipal," "California," "United States" and the names of particular cities, counties and other governmental entities.

Some State Recording Service application forms bear a Las Vegas return address. It takes a bit of detective work to find this out, because the form and a return envelope coyly refrain from mentioning the name of the city or state, giving only the zip code. Other forms give a return address in Sacramento.

The Arizona attorney general's office says State Recording Service's name and *modus operandi* sound all too familiar. Last June, Arizona filed a complaint against a Las Vegas man named Jeremiah J. Donovan, doing business as State Recording Service.

Court Settlement

Arizona alleged that Donovan used fraudulent and deceptive methods to induce people to pay \$25 simply for transferring information "onto another form." His customers were instructed to send their applications to the same Las Vegas post-office box indicated on State Recording Service forms circulating in California.

In a settlement approved by an Arizona court last week, Donovan agreed to stop doing business in the state and to reimburse all Arizona consumers who sent him filing fees. There were 250 complaints filed against his service even before the settlement was announced.

Donovan couldn't be reached for comment.

Declaration of Homestead Application
for properties located in
SAN FRANCISCO COUNTY

STATE RECORDING SERVICE
Mail Processing Division
P.O. Box 94913 89193 - 4913

Las Vegas, Nevada address

INSTRUCTIONS

1. Print or Type all information.
2. Enclose check or money order in the amount of \$25.00 for document preparation.
3. Mail completed application in the enclosed envelope.
4. Document will be returned to you for your signature(s) along with recording instructions.

YOUR NAME (please print) _____

NAME OF SPOUSE _____

PROPERTY ADDRESS _____

MAIL ADDRESS _____

PROPERTY TYPE

☐ HOUSE

☐ CONDO / TOWNHOUSE

☐ MOBILE HOME

FILING STATUS

☐ SINGLE UNMARRIED PERSON

☐ BOTH HUSBAND AND WIFE FILING

LEGAL DESCRIPTION _____

NOTE: Joint owners who are not married to each other may file individual Declarations - Copy this application as needed.

NOTE: Do not fill in this section.
We will do a complete Title / Property search for you.

Make check or money order in the amount of \$25.00 payable to:

STATE RECORDING SERVICE

Homestead services are required to do the recording themselves

The word 'state' is prohibited from names of homestead services operating in California

State Recording Service sent out this form to exact pay for an unnecessary typing service

HOMESTEAD INFORMATION SHEET

WHAT IS THE PURPOSE OF HOMESTEAD EXEMPTION? - The policy underlying all homestead laws is to provide a place for the family where they may reside and enjoy the comforts of a home, free from the anxiety that it may be taken away from them.

WHO MAY RECORD A DECLARATION OF HOMESTEAD? - Every homeowner may record a Homestead. In fact, unrelated persons can record separate Homesteads on the same property if each person owns a portion of it. A Homestead will remain in effect until the house is sold or until you decide to abandon it by recording another document. You are only entitled to one Homestead at a time.

WHO IS ELIGIBLE FOR THE HOMESTEAD EXEMPTION? - Every homeowner who resides in his/her home is entitled to this protection. The basic requirement is that the dwelling be your principal place of residence. Thus, rental properties or a second home do not qualify. However, if you own an apartment building where you reside in one unit, Homestead Exemption will apply to the entire building.

WHAT KIND OF PROPERTY IS COVERED? - Your principal place of residence may be protected by a Declaration of Homestead. This may include, but is not limited to, the following: a house, a condominium, a duplex, a community apartment project, a planned development, a mobile home, a boat, other water-borne vessels, or a stock cooperative.

DECLARED HOMESTEAD INFORMATION AND BENEFITS

In today's society, it is possible to become involved in a lawsuit at one time or another. Hopefully, you will not. Many times a lawsuit is caused by circumstances beyond our control.

When you owe someone money, they are considered your creditor. If a creditor sues you in court and wins, they can record a lien against your home. This is often called a judgment lien.

- (1) **JUDGMENT LIENS:** When a Declaration of Homestead has been properly prepared and recorded, it precedes most judgment liens. Simply stated, the recording of a Declaration of Homestead provides maximum protection for the equity in your home.

NOTE: This benefit becomes very important when you want to sell your home. Title companies usually will not establish a clear title unless and until all liens are paid. By recording a Declaration of Homestead, you can sell your home and put the exempt proceeds (\$50,000 to \$100,000) in a new home within six months without having to use that money to pay for existing judgments that were protected by virtue of the declared homestead. This ONE TIME recording will last as long as you own (or are buying) and live in the home.

- (2) **WHAT ARE THE AMOUNTS OF PROTECTION?**

EQUITY PROTECTED FROM LIEN ATTACHMENT IN AMOUNTS UP TO:

HUSBAND AND WIFE	\$75,000
HUSBAND AND WIFE (when one or both is 65 or older or *disabled)	100,000
HEAD OR MEMBER OF **FAMILY UNIT	75,000
HEAD OR MEMBER OF FAMILY UNIT (when declarant is 65 or older or disabled)	100,000
SINGLE PERSON (65 or older or disabled)	100,000
SINGLE PERSON	50,000

NOTE: \$50,000 available to each person owning an interest in the home; e.g., unmarried co-owner living in the home.

* Disabled individuals can include those receiving Social Security Disability or SSI benefits and others who are incapable of substantial gainful employment.

** This can be an individual who has a dependent close relative under his or her care and maintenance and who resides on the premises.

DO THE PROTECTION LIMITS EVER INCREASE? - Yes. The California State legislature periodically raises the declared homestead protection amounts as shown above. You automatically receive any increases that are made without having to record any additional documents.

- (3) **SELLING THE HOME:** AFTER you voluntarily sell your home, if you invest the exempt proceeds in another home within six months, the previously exempted amount of equity WILL REMAIN PROTECTED WHILE MOVING TO A NEW RESIDENCE. By recording a Declaration of Homestead on the new home within six months, your protection continues from the date of the original homestead recording. In other words, YOUR PROTECTION IS CONTINUOUS AND UNINTERRUPTED EVEN THOUGH YOU SELL YOUR HOME.

- (4) **PROTECTION CONTINUES AFTER DEATH:** Any surviving spouse, or other member of the deceased declared homestead owner's family, will be protected under the declared homestead providing (a) they are living in the dwelling at the time the declared homestead owner dies, and (b) they inherit all or part of the deceased owner's interest in the dwelling. This is true even if the surviving person was not listed in the Declaration of Homestead.

WILL MY HOMESTEAD DECLARATION PREVENT ME FROM REFINANCING MY PROPERTY? - No. Homestead Exemption does not apply to mortgages or deeds of trust placed on the property. You'll be free to refinance the property or obtain second and third deeds of trust.

CAN I REMOVE HOMESTEAD IF I WANT TO? - Yes. You may remove a homestead at any time by recording a form called Abandonment of Homestead. Also, if you change your principal place of residence and record a new Homestead, the first Homestead recorded would cease to exist by operation of law. When you sell your home, the homestead on it is automatically removed.

ARE THERE DISADVANTAGES TO RECORDING A DECLARATION OF HOMESTEAD? - No. Homestead is a valuable right given to you by law. By recording a Declaration of Homestead, you are exercising your right to protect your home to the maximum extent allowed by law.

WHAT SITUATIONS ARE NOT COVERED BY HOMESTEAD EXEMPTIONS?

1. Judgment liens recorded before you recorded your Declaration of Homestead will attach to your home (this is why it is wise to record your Declaration of Homestead as soon as possible).
2. Loans or debts secured by the property (mortgages, deeds of trust, etc.) are not covered by the Homestead Exemption. When you voluntarily use your home as security for a debt, Homestead Exemption usually will not protect you.
3. When a contractor puts labor or materials into repairs or improvements on your property and you do not pay him, Homestead Exemption will not protect against his mechanics' lien.
4. Homestead Exemption will not protect against a judgment for spousal, child support, or tax liens.

SOME ADDITIONAL BENEFITS OF RECORDING A DECLARATION OF HOMESTEAD

1. Your Homestead Declaration will precede most judgment liens attaching to your home - up to an amount equaling the total of most liens and encumbrances on the house and your Homestead Exemption; i.e., if your house is worth \$175,000 with first and second mortgages totaling \$100,000 and your Homestead Exemption as a married person is \$75,000, judgment liens will not attach up to \$175,000 (e.g., \$100,000 plus \$75,000).
2. If you have not homesteaded your home, and judgment liens have been filed against it, title insurance companies may not establish a clear title until all liens have been paid off. This may make it difficult, if not impossible, to sell your nonhomesteaded home.
3. If a creditor tries to force a sale of your home, with a Declaration of Homestead you'll have an important advantage over him in court. The creditor has the burden of proof to show why you should not be allowed the Homestead Exemption. Otherwise, the court will take your Declaration at its face value and grant you the exemption.
4. Court decisions have established that property protected under a declared homestead may not be subjected to prejudgment attachment. A prejudgment attachment, if placed on your home, would make it virtually impossible to sell or refinance your home pending the outcome of the litigation.

WHAT IS THE PROCEDURE FOR RECORDING A DECLARATION OF HOMESTEAD? - Just complete the enclosed retainer/information form and drop it in the mail. We will prepare the original documents for your signature and forward them to you with recording instructions. The cost for our service is \$20.00.

NOTE: Please remit only \$20.00 with your retainer information form to Morse & Associates. There will be a \$5.00 recording fee (payable to the county recorder in your area), and a small fee (up to \$5.00) to have your Homestead Declaration notarized.

RETAINER/INFORMATION FORM

MORSE & ASSOCIATES

ATTORNEYS AT LAW

DOCUMENT PROCESS CENTER

1039 Serpentine Lane, Ste. G, Pleasanton, California 94566 • (510) 828-7653

PLEASE READ AND FOLLOW INSTRUCTIONS CAREFULLY

1. PLEASE PRINT OR TYPE ALL INFORMATION CLEARLY AND COMPLETELY.
2. ATTACH CHECK OR MONEY ORDER FOR \$20.00 MADE PAYABLE TO MORSE AND ASSOCIATES WITH YOUR RETAINER/INFORMATION FORM IN THE ENVELOPE PROVIDED.
3. NOTE: WHEN WE RETURN YOUR HOMESTEAD PAPERS YOU WILL RECEIVE STEP-BY-STEP RECORDING INSTRUCTIONS.

NAME	LAST	FIRST	MIDDLE	UNMARRIED CO-OWNER
ADDRESS	(NUMBER AND STREET)			(1) NAME
	CITY	COUNTY	ZIP CODE	(2) NAME
SPOUSE	LAST	FIRST	MIDDLE	(3) NAME
PHONE NO.	(AREA CODE AND NUMBER)			(4) NAME
CHECK ONE	<input type="checkbox"/> SINGLE FAMILY HOME <input type="checkbox"/> DUPLEX <input type="checkbox"/> CONDOMINIUM <input type="checkbox"/> MOBILE HOME <input type="checkbox"/> OTHER _____			

PROPERTY DESCRIPTION

THIS DESCRIPTION IS ON YOUR DEED OR TITLE INSURANCE POLICY (USUALLY ON REAR PAGES). THE LOT NUMBER, TRACT NO. (OR TRACT NAME), BOOK NO., AND PAGE(S) ARE ALL THAT IS NECESSARY. IF YOU ARE NOT SURE OF WHAT YOUR PROPERTY DESCRIPTION IS, OR IF THE DESCRIPTION IS TOO LENGTHY, ATTACH A COPY OF YOUR DEED. DO NOT SEND THE ORIGINAL DEED (COPY ONLY PLEASE).

LOT NO. _____ BOOK NO. _____

TRACT NO. (or name) _____ PAGE(S) _____

RECORDED IN THE FOLLOWING COUNTY: _____

PLEASE CHECK ONE BOX ONLY

- | | |
|---|--|
| <input type="checkbox"/> MARRIED (filing joint Homestead) | <input type="checkbox"/> SEPARATED OR DIVORCE NOT FINAL |
| <input type="checkbox"/> SINGLE, UNMARRIED, OR WIDOWED | <input type="checkbox"/> WIFE SOLE OWNER (FILING FOR MARRIED BENEFIT OF BOTH) |
| | <input type="checkbox"/> HUSBAND SOLE OWNER (FILING FOR MARRIED BENEFIT OF BOTH) |

RETAINER FEE PER MARRIED COUPLE, OR PER UNMARRIED CO-OWNER

- ☐ MONEY ORDER OR CHECK ATTACHED - \$20.00
☐ PLEASE CHARGE MY CREDIT CARD - \$20.00 CARD NO. _____
☐ MasterCard ☐ VISA ☐ AMERICAN EXPRESS EXP. DATE _____ SIGNATURE _____