

First Supplement to Memorandum 95-64

Homestead Exemption: Comments on Tentative Recommendation

Attached to this supplement are two letters relating to the *Homestead Exemption* tentative recommendation:

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| | <i>pp.</i> |
| 1. Richard W. Frey, Senior Deputy District Attorney, Fresno County
(Oct. 25) | 1 |
| 2. Sandra L. Fuhrman, Forms and Practices Committee, California
Land Title Association (Nov. 1) | 3 |

Support Enforcement

Richard W. Frey, Senior Deputy District Attorney, Fresno County, provides a more detailed analysis of the potential effect of the tentative homestead exemption revisions. (Exhibit pp. 1-2.) Mr. Frey's office obtained details of 30 recent real property lien collections for support. Based on these case studies, about 30% of the total amount lien collections came through the sale of single family owner occupied dwellings, which would be likely candidates for homestead protection in enforcement proceedings. Mr. Frey believes these figures are conservative. The maximum amount received by a seller-debtor after payment of the lien for support was \$21,000.

We cannot determine how many cases involved single family dwellings, but in any event the total collected from sales of homestead-type property in the 30 cases analyzed was about \$43,000. This is less than the bottom rung of the homestead exemption, which is set at \$50,000. Thus, in this set of cases, if the proceeds exemption were applied, taking into account that the maximum amount paid any seller was \$21,000, there would apparently have been no lien collections. In other words, the minimum homestead exemption is greater than the total lien collections in these cases. Unless the lien in the case with the largest equity was for at least \$30,000, meaning that the support creditor would get \$1,000 if the lowest homestead exemption applied, it can be concluded from these figures that application of the homestead proceeds exemption would eliminate collections out of the sale of dwellings that are entitled to homestead protection.

Whether these cases are representative of cases statewide is unknown, but it is clear that there would be a significant effect, as recognized in Memorandum

95-64. The staff appreciates the assistance from Fresno County in providing some numbers for the Commission to consider.

CLTA Comments

The Forms and Practices Committee of the California Land Title Association supports the proposed legislation on condition that “all benefits of a declared homestead” are carried over to the automatic homestead. (Exhibit pp. 3-4.) CLTA notes, in this preliminary letter, that declared homesteads are frequently misunderstood and sometimes considered a cloud on title. The details on preserving the rule in the declared homestead that the lien attaches only to the surplus value will need to be discussed. The staff thinks this is a technical matter that can be solved by drafting or comment language and that the theoretical distinction is largely meaningless. For example, does the lien come and go as the value of the property shifts under the declared homestead rule? How do you determine if the lien attaches to anything unless you know the actual value of the property? What is the value of property? What happens when a debtor gets married and the exemption amount increases or becomes disabled? Does the lien that had attached to a surplus disappear? Or does it hang on to the former surplus value over the theoretical value of the dwelling? In other words, the existing rule in the declared homestead is unworkable as it is worded. The lien and applicable exemption can only be determined in a practical setting when a value is determined. Then the lien and exempt amounts can be settled and priorities lined up and proceeds distributed. This the tentative recommendation should do. If it is deficient, then it will need further work to make it clear. But the staff does not believe there is a policy difference between the recommendation and the opinion of CLTA as expressed in the letter.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



Office of the District Attorney
Family Support Division

October 25, 1995

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California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Tentative Recommendation Homestead Exemption

Gentlemen:

Deputy District Attorney John Higgins of Tulare County asked me to survey the files of Fresno County Family Support Division for the most recent 30 real property lien payments.

Our office is divided into 6 support teams with each assigned a portion of the alphabet by obligors names. I asked each team to ascertain details on their last 5 cases in which a real property lien caused a payment to be made to our office.

From these 30 cases our office received \$144,347.66. Of this amount 30% or \$42,962.06 was from the sale of owner occupied single family houses. The most money which any seller received from the sale after the FSD lien was paid off was \$21,000.

The balance of the receipts were as follows:

27% from clearing title for new home purchases

21% from refinancing existing homes

22% from miscellaneous. These consisted of the selling of a vacant lot, the sale of rental property, and the sale of inherited property.

Because the title companies deem escrow information confidential, my staff had to assure the escrow officers that this data would only be used for general purposes and not specific information on an individual case.

In the miscellaneous category there were two unusual cases. One collected \$12,051.20 from the sale of a vacant lot. The second was the sale of a rental house to the existing tenants and this brought

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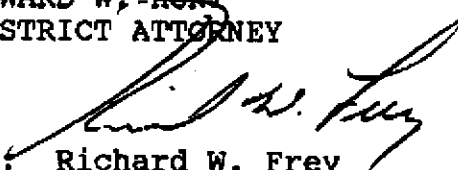
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FRM-Investigations
FRU-Family Support

in \$13,576.00. If these anomalies were not included in the survey, then the percentage of collections from the sale of owner occupied single family houses would be 36%. Statewide this would result in collections from this type of sale to \$5,192,557.56.

For the above reason, I believe that our 30% collection figure for the sale of owner-occupied homes is a minimum figure rather than an average figure. However, even at 30%, if the proposed changes to the homestead laws were enacted, this would on a statewide basis eliminate the collection of approximately \$4,325,000. annually. This is money which currently is paid directly to IV-D agencies. Who knows how much is paid by title companies directly to the custodial parents.

Sincerely,

EDWARD W. HUNT
DISTRICT ATTORNEY


By: Richard W. Frey
Senior Deputy District Attorney
(209)453-4469

Fidelity National Title

INSURANCE COMPANY

Sandra L. Fuhrman
Senior Vice President
Senior Underwriting Counsel

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VIA FACSIMILE (415) 494-1827

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November 1, 1995

File: _____

Mr. Stan Ulrich
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Item D-352 - Homestead Exemption
August 1995 Version

Dear Mr. Ulrich:

I am writing with preliminary comments on behalf of the Forms and Practices Committee of the California Land Title Association with respect to our conditional support of the above-referenced item. I have not had the opportunity to review the final version of these comments with the chairman of the committee and would like to have the opportunity for further clarification after that conversation. However, in the interest of having comments for your meeting tomorrow, I have prepared this initial version.

Please be advised that the item was discussed at the meeting of the Committee on September 15, 1995, and the general consensus of the group is to support the item, on the condition the legislation is specifically structured so as to carry over to the statutory homestead all benefits of a declared homestead.

Specifically, the protections which arise in connection with a Declaration of Homestead, as set out in Code of Civil Procedure Section 704.950, should be extended to statutory homesteads. Homesteads created by declaration provide that liens and encumbrances attach only in the amount of any surplus over liens and encumbrances at the time of creation of the new lien or encumbrance, plus the statutory homestead amount, i.e., the equity in the property, rather than attaching to the entire property. This benefit should be preserved for statutory homesteads.

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Mr. Stan Ulrich
California Law Revision Commission
November 1, 1995
Page 2

Further, it is of importance that a judgment lien attach only to such surplus, in that there is no benefit to the mere attachment of a lien if the lien itself is unenforceable by reason of the homestead exemption.

The committee was in general accord that abolishing the Declaration of Homestead procedure would have a positive effect, in that there are frequent misunderstandings as to declared homesteads and statutory homesteads. Additionally, the recordation of a Declaration of Homestead has been sometimes perceived as a cloud on title. The elimination of the recorded declaration would serve to assist in making title to real property more easily alienable, in that the requirement of documentation for an abandonment of the declared homestead would no longer be an issue.

As noted, the foregoing comments are subject to further refinement and clarification. If you have questions, please feel free to contact me.

Very truly yours,

FIDELITY NATIONAL TITLE
INSURANCE COMPANY



Sandra L. Fuhrman
Senior Vice President
Senior Underwriting Counsel

SLF:lrn

cc: Clifford L. Morgan
Craig C. Page, CLTA