

Second Supplement to Memorandum 95-75

Homestead Exemption: Proceeds Exemption (Family Support Council comments)

Attached to this supplement are some comments just received from John Higgins on behalf of the Family Support Council. Mr. Higgins suggests a revision to draft Section 704.720(d) as set out in Memorandum 95-75 in order to restrict the debtor's ability to seek an equitable division of the proceeds exemption to cases where the debtor has other child, family, or spousal support obligations.

The relevant language of the general rule in Section 703.070 is broader: "In making this determination, the court shall take into account the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances." The draft statute picks up this standard by reference in Section 704.720:

(d) The exemption of proceeds provided in paragraph (2) of subdivision (b) does not apply to the enforcement of a judgment for child, family, or spousal support, unless the judgment debtor obtains an order, on noticed motion, that the proceeds are exempt in all or part. In making this determination, the court shall apply the standards provided in subdivision (c) of Section 703.070.

Comment. ...

Subdivision (d) is a new provision which implements the application of the general rule on equitable division of exemptions in Section 703.070 in a situation where the judgment debtor has multiple support obligees. Unlike the general rule, however, subdivision (d) places the burden on the judgment debtor to file the motion and seek the court order.

The concern expressed by Mr. Higgins relates to the whether the court should take the judgment debtor's own needs into account and whether the court should consider "all other relevant circumstances." He suggests limiting the standard to other support creditors.

The Commission needs to consider whether this limitation should be adopted. The staff does not think the "all other relevant circumstances" language is very significant and that it would be an exceedingly rare case where the court would look to factors other than the needs of the persons who are required to be

supported by the debtor. The standard in Section 703.070 assumes that the court will balance the needs of all of these persons and make an equitable division of the property. As a general rule, it permits support creditors to invade the exemptions to which the debtor is normally entitled. As noted in the Commission's comment to the section, it is generalized from the case law on dividing earnings. In *Rankins v. Rankins*, 52 Cal. App. 2d 231, 234-35, 126 P.2d 125 (1942) (cited in the comment), the court stated: "Obviously, the husband cannot be deprived of the means of livelihood, even for the most solemn obligation to others. He cannot earn without eating. Equally, the second family, which is authorized by our laws, is entitled to support."

The staff still believes this is the best rule. We doubt that there is a significant risk that debtors will obtain overreaching court orders under the proposed procedure. However, if a more limited rule is desirable for practical reasons (such as the assumption that the debtor will always be able to fend for himself, probably from money he has hidden from the creditor), the procedure in draft Section 704.720(d) could be restricted to other support obligations as proposed by Mr. Higgins.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

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Suggested Changes in Homestead Exemption Proposal:

Comment: The comment of the Law Revision Commission with respect to proposed CCP §704.720(d) is that it will implement equitable division principles of CCP §703.070 "in a situation where the debtor has multiple support obligees." Actually, application of the equitable distribution scheme of CCP §703.070 is much broader and allows the court to deprive the support creditor of the homestead proceeds based "upon the needs of the judgment debtor" and "all other relevant circumstances." Thus, a debtor with no other support obligees may be awarded up to the full amount of the exemption in a voluntary sale of the homestead.

Suggested Language Changes to Proposed CCP §704.720(d):

"(d) The exemption proceeds provided in paragraph (2) of subdivision (b) does not apply to the enforcement of a judgment for child, family, or spousal support unless the judgment debtor has other obligations for the support of a spouse, former spouse or child, and then only to the extent that the judgment debtor obtains an order on noticed motion that the proceeds are exempt in all or part. In making this determination the court shall apply the standards provided in subdivision (c) of Section 703.070."