

## First Supplement to Memorandum 96-2

### **Homestead Exemption: Proceeds Exemption (Proposal from John Higgins)**

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Attached to this supplement is a proposal from John Higgins, Family Support Division, Tulare County District Attorney's Office, for a different necessity standard in Section 704.720(d) of the homestead proceeds exemption. His fax cover sheet notes: "The Oregon statute has the tighter standards that I would like to see in California law."

The Oregon statute (Or. Rev. Stat. Ann. § 23.242) is mentioned on page 5 of Memorandum 96-2. Oregon finds, among other things, that the "homestead exemption should not be permitted to serve as a shield for a debtor's evasion of child support obligations" and that "the burden for that support should not be shifted in all cases to the present family of the debtor through the sale of the family residence." *Id.* § 23.242(1)(c)-(d). The discretion standard is provided in subdivision (3) of the section as follows:

- (3) In exercising the discretion granted under subsection (1) of this section, the court shall consider:
  - (a) The financial resources of both parties;
  - (b) The number of dependents of each of the parties;
  - (c) The ages, health and conditions of parties and their dependents;
  - (d) The child support payment history of the judgment debtor on the judgment which is the subject of the petition; and
  - (e) Other collection attempts by the judgment creditor on the judgment which is the subject of the petition.

The staff has no objections to this standard on its face. Our only concern would be in creating a different standard applicable to homestead proceeds than applies to exemptions generally under Section 703.070. Perhaps the law is different enough already, that applying a new standard does not present any special difficulties.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

**Suggested Language Changes to Proposed CCP § 704.720 (d) (1/18/96):**

"(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.~~ consider:

- (a) The financial resources of both the judgment debtor and the other parent, spouse, or former spouse the subject of the proceeding;
- (b) The number of dependents of the judgment debtor and the other parent, spouse or former spouse;
- (c) The ages, health and conditions of the judgment debtor and the other parent, spouse, or former spouse;
- (d) The child support payment history of the judgment debtor on the judgment which is the subject of the motion ; and
- (e) Other collection attempts by the judgment creditor on the judgment which is the subject of the motion .