

## Memorandum 96-43

### Homestead Exemption: SB 197

The Commission's homestead exemption bill, SB 197 (Kopp), is set for hearing in the Assembly Judiciary Committee on June 19. This memorandum provides an overview of the current status of the bill and proposes several technical amendments that need to be made.

The following materials are attached as exhibits:

	<i>pp.</i>
1. Bob Wilson, California Association of Collectors (May 29, 1996) . . . . .	1
2. Ike Shulman, National Association of Consumer Bankruptcy Attorneys (May 6, 1996) . . . . .	3
3. Main portion of homestead bill, with cumulative changes and revised Comments . . . . .	5

#### Technical Amendments: Elimination of Fiscal Key

A number of technical amendments have been offered to eliminate the "fiscal key" which would require the bill to be heard in the fiscal committees in addition to the policy committees. At this point in the legislative season, it is undesirable to risk the inevitable delays as bills approach deadlines where the provisions causing the fiscal committee referral are not essential to the bill.

When this bill was in print in the form of SB 1368, it had not been keyed fiscal. However, when the same language was amended into SB 197, the bill was keyed as fiscal because it imposed additional duties on the courts through the provision for depositing exempt proceeds in court under proposed Section 704.720(e). Since this was not essential to the bill, and the section provided two alternatives to deposit in court, we prepared amendments to eliminate the deposit in court language. (See proposed section at Exhibit p. 6.)

As it turned out, striking this language did not solve the problem, because the bill was keyed fiscal on other grounds — that it defined a "new crime" in Business and Professions Code Section 17537.6. This section would make it unlawful to offer a "homestead filing service," replacing the existing complicated regulatory section of the same number which provides that it is unlawful to "make any untrue or misleading statements in any manner in connection with the offering or performance of a homestead filing service." Again, this is not an

essential part of the bill, and the staff proposes to delete the new crime provision. Once the declared homestead procedure is repealed, there is no basis for anyone to offer a homestead filing service, and it is not necessary to make it unlawful to do so. We have been assured that with this change, SB 197 will not be keyed fiscal.

### **Bankruptcy-Related Revisions**

As the Commission decided at the April meeting, several amendments have been taken to clarify the relationship between the homestead exemption and bankruptcy law, working with the bankruptcy bar. (See letter from Ike Shulman, National Association of Consumer Bankruptcy Attorneys (NACBA), Exhibit pp. 3-4.) Section 703.145 makes clear that the homestead and personal property exemption amounts and qualifications provided in state law are applicable in bankruptcy, but not procedural rules. (See Section 703.145 at Exhibit p. 5.)

The transitional provision in Section 694.090 needs to be amended to make clear that it does not nullify the effect of a homestead declaration in any pending state or federal proceeding. (See proposed Section 694.090 at Exhibit p. 5.)

Mr. Shulman also suggested a revision in Section 704.720 to toll the six-month exemption period during any time that the proceeds are tied up in litigation. The amendments to SB 197 include a provision tolling the exemption period when the debtor is unable to use the proceeds to purchase another dwelling on account of judicial proceedings. (See proposed Section 704.720(g) at Exhibit p. 7.)

We expect that NACBA will support SB 197 as amended.

### **Opposition of California Association of Collectors**

The attached letter from Bob Wilson expresses the strong opposition of CAC to SB 197. (See Exhibit pp. 1-2.) At the May 9 Commission meeting, the staff reported on our meeting with CAC representatives in Senator Kopp's office. At that time, CAC was considering whether being able to reach 25% of the otherwise applicable homestead exemption in the case of a voluntary sale (the "wage garnishment approach") would meet their main objection to the bill. The staff was informed by telephone that this approach would not satisfy CAC's objections. CAC is now actively lobbying against SB 197, as expressed in Bob Wilson's letter.

In light of our discussions with CAC representatives and others, it does not appear that there is any compromise approach that CAC would agree to. This springs from one essential fact: creditors are able to ignore the voluntary sale proceeds exemption under the existing declared homestead. Thus, any legislative

proposal to make this “paper right” meaningful is viewed by CAC as a threat to the status quo.

The CAC opposition letter raises a number of points and contains some misleading statements that need to be discussed and placed in context:

- Existing law provides an “automatic” homestead exemption which protects the home from forced sale by general creditors if the debtor’s equity is below the applicable exempt amount (\$50,000 for individuals, \$75,000 for married persons and families, \$100,000 for elderly and disabled persons). The automatic homestead procedure is detailed and highly protective of the home. (Code Civ. Proc. §§ 704.710-704.850.) It also protects proceeds from *involuntary* sales (on execution or eminent domain) or insurance proceeds in the exempt amount.

- A remnant of the older homestead declaration procedure, carried over from the Civil Code, also still exists. (Code Civ. Proc. §§ 704.910-704.995.) Almost all functions of the old homestead declaration procedure have been taken over by the automatic exemption in place since 1983. For most purposes, the declaration procedure is *not* an independent exemption, but relies on the automatic exemption for determination of amounts. It is simply a recording procedure, subject to several confusing and unclear rules.

- SB 197 would eliminate the declaration procedure. The remains of the declaration procedure are confusing and widely misunderstood, misleading to homeowners and largely ineffective in voluntary sales. Declarations complicate real property sales since title companies search for and report homestead declarations. Stale declarations remain of record indefinitely. The availability of the procedure has led to a cottage industry by “declaration filing services” and some sharp practices, which in turn necessitated the regulations in the Business and Professions Code, and enforcement actions by district attorneys and the Attorney General. (See, e.g., *In re Morse*, 11 Cal. 4th 184 (1995).) The protections stated in the declared homestead article appear to be largely illusory — we have been told by CAC representatives and a bank attorney that they ignore homestead declarations. Discussions with district attorneys who enforce support orders confirm this creditor practice. Contrary to popular notions, title companies report recorded homestead declarations, but have nothing to do with determining their validity or enforcing them in a voluntary sale transaction.

- SB 197 would continue the intended benefit of the declaration procedure in the “automatic” homestead procedure — the ability to protect the debtor’s proceeds from a voluntary sale (to exemption limits) for a period of six months so that the debtor can seek to move the exemption to another qualifying homestead. The voluntary sale proceeds exemption has been in the declared homestead procedure since 1911. The proceeds exemption is limited and directed toward its purpose of providing a baseline protection for the home. The intent of the law is “to allow the owner of the homestead to substitute one family home for another without losing his exemption.” *Thorsby v. Babcock*, 36 Cal. 2d 202, 205 (1950). The debtor should not be a “prisoner in his home.”

- SB 197 also continues special treatment of support judgments. This aspect of the bill was worked out with the District Attorney's Family Support Council last fall. The voluntary sale exemption does not apply against enforcement of child or spousal support unless the debtor obtains a court order for an equitable division of the proceeds where there are competing support obligees. (See new CCP § 704.720(d).)

- Contrary to CAC assertions, there is general support for eliminating the declared homestead procedure. The difficulty is in deciding how to do it, and state bar committees with which we have worked have been unable to come to any consensus on the issue. But it was pursuant to a request from the Legal Services Section that the Commission revived this issue. And the Debtor-Creditor Committee of the State Bar Business Law Section also supported the concept of repealing the declared homestead procedure and continuing its protections in the automatic exemption. The California Land Title Association supported the repeal so long as existing protections were continued in the automatic homestead exemption. The National Association of Consumer Bankruptcy Attorneys has indicated it will support for the bill.

- CAC appears to believe that recording a judgment lien prevents the debtor from recording an effective homestead declaration. This has not been the law since July 1, 1983. Under earlier law, the first to record the declaration or the judgment lien would prevail. An earlier homestead declaration *prevented* attachment of later judgment liens. And an earlier judgment lien was immune from a later homestead declaration. This is no longer the law. If the debtor records a homestead declaration after a judgment lien, the debtor is entitled to the exempt amount in effect at the time the lien attached. If the declaration was first, the debtor gets the benefit of future increases in exempt amounts enacted by the Legislature. The concept of "perfection" urged by CAC has no relevance to homestead declarations or judgment liens. In any event, creditors ignore *all* homestead declarations, *not only* declarations recorded after the judgment lien has attached to the property.

- In the staff's discussions with CAC representatives, they indicated (if memory serves) that 95% of their collections are for amounts under \$8,000. In order to avoid cumbersome exemption procedures and continue some level of homestead protection, we proposed to apply a rule patterned on the wage garnishment exemption. Thus, 25% of the otherwise applicable exemption would be available to creditors in a voluntary sale context. E.g., if the debtor's equity qualifies for the \$50,000 exemption, \$12,500 would be available to creditors. This would also encourage voluntary settlement and continue the practice (but on a legitimate footing) that CAC advocates. However, CAC did not accept this compromise.

### **Necessity Standard**

In discussions with legislative staff, the question arose as to whether an acceptable compromise might be found by limiting the type of voluntary sale for

which the exemption would be granted. Examples of situations where a debtor needs to sell the home include cases where the debtor's job is transferred to a new location, where the dwelling must be sold in dissolution proceedings, or where a family necessity arises such as the need to move to care for a parent or sibling. This type of proceeds exemption, distinguishing the necessitous sale from the casual sale, might invoke more legislative sympathy. Obviously it would be a challenge to craft the right formulation of a necessity standard, but it could be done. Under this scheme, a debtor would try to work out some accommodation with his or her creditor. Failing that, the debtor could apply to the court for an order determining the exemption under the necessity standard, using the usual exemption procedures.

The staff is not proposing the necessity approach at this point. We doubt that it would answer the concerns expressed by CAC. However, we would like to get some reading from the Commission as to whether this is acceptable as a last resort if it is proposed in committee hearings.

The staff is concerned that if the Commission can't succeed in clearing up the mess in existing law caused by the inconsistencies, overlapping rules, and misconceptions arising from the declared homestead procedure, no one else will try in the foreseeable future. The statute is not working. The courts and the bar do not understand it. See, e.g., *Kahn v. Berman*, 198 Cal. App. 3d 1499, 244 Cal. Rptr. 575 (1988); *Webb v. Trippet*; 235 Cal. App. 3d 647, 286 Cal. Rptr. 742 (1991); *Reddy v. Gonzalez*, 8 Cal. App. 4th 118, 10 Cal. Rptr. 2d 55 (1992); *Berhanu v. Metzger*, 12 Cal. App. 4th 445, 15 Cal. Rptr. 2d 191 (1992); *Tassone v. Tovar*, 28 Cal. App. 4th 765, 33 Cal. Rptr. 2d 786 (1994); *In re Chabot*, 992 F.2d 891 (9th Cir. 1993). The declared homestead concept does not work. The Legislature recognized this in 1974 when the first "automatic" homestead procedure was enacted. Reliance on the recording of a declaration is inefficient and outmoded. Once the declaration lost its ability to *prevent* attachment of judgment liens, the declared homestead procedure became an illusory protection and practices a deception on debtors who waste their time and money recording declarations.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

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May 29, 1996

Assemblyman Bill Morrow  
Chairman, Assembly Judiciary Committee  
State Capitol, Room 6027  
Sacramento, CA 95814

Dear Assemblyman Morrow:

Please be informed that my client, the California Association of Collectors, Inc. is opposed to Senate Bill 197 (Kopp), relating to homesteads which will be heard in the Assembly Judiciary Committee on Wednesday, June 5, 1996.

The California Association of Collectors, Inc. strongly opposes SB 197 that would amend the California homestead law. This bill would give every judgment debtor the right to voluntarily sell a home notwithstanding a perfected judgment lien of a creditor. In this process, the judgment lien rights of the creditor would be effectively destroyed. The result would be a situation where judgment debtors could shift property and monies around the perfected lien rights of judgment creditors.

There has been no objection to the current state of the law or practical application raised from any creditor, consumer, or debtor groups. No consumer/debtor can point to any situation or even to where the current law has produced an unfair or inequitable result. Currently, a debtor seeking to voluntarily sell his/her homestead

must negotiate the release of a judgment lien that has been recorded by a creditor. Both the judgment debtor and judgment creditor are driven by their economic interests to be reasonable. Each party to the negotiations is compelled to make sure the other party has a sufficient economic incentive to close the sale.

The proposed amendment complicates current practice and promotes judgment debtors petitioning the court to force a sale against the creditor. A judgment creditor should not be forced into further judicial proceedings and expense because a judgment debtor decides to voluntarily sell a homestead. If the judgment debtor wants to voluntarily sell the house, then it is fair that the debtor negotiates to obtain a voluntary release of the judgment lien.

The unfairness of a forced sale over a judgment creditor's lien is highlighted by the fact that the judgment debtor has created the value in the homestead at the expense of the judgment creditor. The judgment debtor originally obtained goods, monies or services from the creditor, and then failed to pay. The creditor had to incur the further time and expense in attempting to collect the obligation, file suit, obtain a judgment, and ultimately record the judgment lien. After being "forced" to fund the debtor's monthly mortgage payment, the judgment creditor should not have his/her judgment lien stripped from the property. The judgment debtor should responsibly negotiate with the judgment lien creditor.

Please place my clients position on any prepared analysis for Senate Bill 197. Thank you for your attention to this matter.

Sincerely,



BOB WILSON

cc: Senator Quentin L. Kopp  
Assembly Judiciary Committee Members  
Cliff Zall, Consultant  
Christina Harbridge, President, California Association of  
Collectors, Inc.

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OF  
CONSUMER BANKRUPTCY ATTORNEYS

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RE: S.B. 197 (Kopp)

Dear Stan:

I have had the opportunity to review the proposed changes to S.B. 197 and the Comment which you sent me this weekend. NACBA suggests additional revisions which are contained on the attached sheet. We believe these revisions will further clarify that the procedural limitations under Articles 3 and 4 are not applicable in bankruptcy cases.


NACBA has also reviewed the balance of S.B. 197 and has reservations about its impact on non-bankruptcy judgment debtors. While we have not prepared drafts of suggested revisions, we feel it is important to note the following potential problem areas:

1. The mechanism set forth under proposed CCP 704.720(e) places a substantial burden for obtaining a release of the funds on the debtor by requiring the debtor to obtain a court order within a short six-month window of time. Such a procedure invites abuse by creditors who would be rewarded by delaying a court decision beyond the six months. We suggest a procedure where the debtor would be able file and serve a declaration of intent to reinvest the proceeds in a new homestead, subject to the creditor having the right to request a court hearing to be held within a specified period of time.

2. During the pendency of any legal proceeding under CCP 704.720, the six-month period should be tolled.

We appreciate the opportunity to review your proposed revisions and make further suggestions to ensure that debtors' exemption rights in bankruptcy continue to be protected.

Sincerely,

  
IKE SHULMAN  
President

Law Revision Commission  
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File: SB 197



S.B. 197 (Kopp)  
WITH CHANGES PROPOSED BY NACBA

SEC. 4. Section 694.090 of the CCP is amended to read:  
694.090.

(a) ...

(b) Subdivision (a) does not apply to any declaration of homestead that is the subject of or is being used in any federal or state proceeding pending on January 1, 1997.

SEC. 5. Adds new CCP Section 703.145, to read:

703.145. For purposes of subdivision (a) of section 703.140, the amount of, and qualifications for the personal property exemptions shall be determined under Article 3 (commencing with Section 704.010) and the amount of, and qualifications for the homestead exemption shall be determined under Article 4 (commencing with Section 704.710) without regard to the procedural rules, the rules governing the rights of judgment creditors, and other limitations and conditions provided by that those articles. For purposes of subdivision (b) of section 703.140, the amount of, and qualifications for, the exemptions shall be determined without regard to the rights of judgment creditors.

Comment. Section 703.145 is new. This section is intended to avoid problems in applying the state ~~homestead~~ exemptions in bankruptcy pursuant to Section 703.140. The exemptions in bankruptcy cases are determined as of the bankruptcy filing date and are not subject to subsequent changes in exemption amounts or property valuations, in contrast with state money judgment enforcement proceedings, which may extend over a long period of time. In bankruptcy cases, the substantive rules of Articles 3 and 4 are applied but not the procedural rules. For bankruptcy purposes, only the substantive rules governing the ~~homestead~~ exemptions are borrowed, since exemptions in bankruptcy cases are not subject to the built-in procedural limitations designed for use in state money judgment enforcement proceedings. Thus, for example, the amount of the ~~homestead~~ exemption is determined based on the ~~bankrupt's~~ debtor's personal circumstances under Section 704.730. Also, if proceeds are claimed as exempt in bankruptcy proceedings, the protection provided in Section 704.720(b) would apply, but is not limited to six months or limited for the purpose of purchasing another qualifying homestead. Similarly, the rules concerning creditors' rights and agreements between debtors and creditors ~~should do~~ not apply in the bankruptcy context.

## Exhibit

### Homestead Exemption Bill (SB 197) Selected Sections With Amendments

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1 **Code Civ. Proc. § 694.090 (amended). Effect of homestead declaration**

2 SEC. 3. Section 694.090 of the Code of Civil Procedure is amended to read:

3 694.090. (a) On and after the operative date January 1, 1997, a declaration of  
4 homestead made under prior law pursuant to Title 5 (commencing with Section  
5 1237) of Part 4 of Division 2 of the Civil Code is effective only to the extent  
6 provided in or Article 5 (commencing with Section 704.910) of Chapter 4 of  
7 Division 2 of this code is ineffective.

8 (b) Subdivision (a) does not apply to any declaration of homestead that is the  
9 subject of, or is being used in, any state or federal proceeding pending on January  
10 1, 1997.

11 **Comment.** Section 694.090 is amended to reflect the repeal of the homestead declaration  
12 procedure in Sections 704.910-704.995. The homestead exemption is governed by Sections  
13 704.710-704.860. The protection of voluntary sale proceeds under the former homestead  
14 declaration procedure is continued in Section 704.720.


15 **Code Civ. Proc. § 703.145 (added). Homestead exemption in bankruptcy**

16 SEC. 4. Section 703.145 is added to the Code of Civil Procedure, to read:

17 703.145. For purposes of subdivision (a) of Section 703.140, the amount of, and  
18 qualifications for, the personal property exemptions shall be determined under  
19 Article 3 (commencing with Section 704.010) and the amount of, and  
20 qualifications for, the homestead exemption shall be determined under Article 4  
21 (commencing with Section 704.710) without regard to the procedural rules, the  
22 rules governing the rights of judgment creditors, and other limitations and  
23 conditions provided by ~~that article~~ those articles.

24 **Comment.** Section 703.145 is new. This section is intended to avoid problems in applying state  
25 exemptions in bankruptcy pursuant to Section 703.140. The exemptions in bankruptcy cases are  
26 determined as of the bankruptcy filing date and are not subject to subsequent changes in  
27 exemption amounts or property valuations, in contrast with state money judgment enforcement  
28 proceedings, which may extend over a long period of time. In bankruptcy cases, the substantive  
29 rules of Articles 3 and 4 are applied, but not the procedural rules, since the procedural rules are  
30 designed for use in state money judgment enforcement proceedings. For bankruptcy purposes,  
31 only the substantive rules governing the exemptions are borrowed, since exemptions in  
32 bankruptcy cases are not subject to the built-in procedural limitations designed for use in state  
33 money judgment enforcement proceedings. Thus, for example, the amount of the homestead  
34 exemption is determined based on the debtor's personal circumstances under Section 704.730. If  
35 proceeds are claimed as exempt in bankruptcy proceedings, the protection provided in Section  
36 704.720(b) would apply, but is not limited to six months or limited for the purpose of purchasing

1 another qualifying homestead. Similarly, the rules concerning creditors' rights and agreements  
2 between debtors and creditors do not apply in the bankruptcy context.

3  **Staff Note.** The amendments to this section are in the latest set. The Comment has been  
4 revised to reflect the changes. (See also Exhibit p. 4.)

5 **Code Civ. Proc. § 704.720 (amended). Homestead exemption**

6 SEC. 6. Section 704.720 of the Code of Civil Procedure is amended to read:

7 704.720. (a) A homestead is exempt from enforcement of a money judgment as  
8 provided in this article and is exempt from sale under this division to the extent  
9 provided in Section 704.800.

10 (b) The proceeds from a disposition of a homestead are exempt for the purpose  
11 of purchasing another qualifying homestead under the following conditions:

12 (1) If a homestead is sold under this division or is damaged or destroyed or is  
13 acquired for public use, the proceeds of sale or of insurance or other  
14 indemnification for damage or destruction of the homestead or the proceeds  
15 received as compensation for a homestead acquired for public use are exempt in  
16 the amount of the homestead exemption provided in Section 704.730. ~~The~~  
17 ~~proceeds are exempt~~ for a period of six months after the ~~time~~ date the proceeds are  
18 actually received by or become payable in an amount certain to the judgment  
19 debtor, whichever is the earlier date ~~except that, if a homestead exemption is~~  
20 ~~applied to other property of the judgment debtor or the judgment debtor's spouse~~  
21 ~~during that period, the proceeds thereafter are not exempt.~~

22 (2) If a homestead is voluntarily sold, or otherwise sold in a manner not  
23 described in paragraph (1), the proceeds of sale are exempt in the amount of the  
24 homestead exemption provided in Section 704.730 for a period of six months after  
25 the date of sale.

26 (3) If a homestead exemption is applied to other property of the judgment debtor  
27 or the judgment debtor's spouse during the six-month period provided in  
28 paragraph (1) or (2), the proceeds exemption terminates.

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

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

38 (e) Except as otherwise agreed by the judgment debtor and judgment creditor, if  
39 an exemption is claimed for proceeds under this section, the proceeds shall be  
40 deposited [with the court, or held] in a controlled deposit account, subject to the  
41 judgment creditor's lien. At any time during the applicable six-month exemption  
42 period provided in subdivision (b), the court shall, on noticed motion of the

1 judgment debtor, make an order applying all or part of the proceeds to the  
2 purchase of another dwelling that qualifies for a homestead exemption under this  
3 article. Unless the judgment debtor purchases another dwelling that qualifies for a  
4 homestead exemption under this article during the six-month exemption period,  
5 the court, on noticed motion, shall order the proceeds applied to the satisfaction of  
6 the judgment.

7 (f) The proper court for filing motions under this section is the court where an  
8 application for an order of sale of the dwelling would be made under Section  
9 704.750.

10 (g) The six-month period during which proceeds are exempt under this section is  
11 tolled during the pendency of any proceeding that prevents the judgment debtor  
12 from using the proceeds for the purpose of purchasing another dwelling pursuant  
13 to subdivision (e).

14 **Comment.** Subdivision (a) of Section 704.720 is revised for clarity and for consistency with  
15 other exemption provisions. See, e.g., Sections 703.010, 704.010, 704.020.

16 Subdivision (b) is amended to adopt as a general rule the exemption for proceeds of voluntary  
17 sales under former Section 704.960 (homestead declaration). Subdivision (b)(3) is generalized  
18 from the last clause of former subdivision (b) of this section. See also Section 703.080 (tracing  
19 exempt funds).

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

24 Subdivision (e) provides a new procedure for claiming the proceeds exemption and restricting  
25 the availability of the funds to the purpose of acquiring a new homestead. Accordingly, during the  
26 six-month period during which proceeds are exempt, the money is held in a controlled account for  
27 the purchase of another homestead that qualifies under this article. The judgment creditor's lien  
28 priority is preserved on the proceeds during the six-month period. If the proceeds have been  
29 levied upon after they were received by the judgment debtor, such as in a case where the debtor  
30 has deposited the proceeds in a deposit account, the general exemption procedure following levy  
31 of execution is applicable. See Section 703.510 *et seq.* The tracing rules in Section 703.080 apply  
32 to determine the extent to which a fund contains the exempt proceeds from disposition of a  
33 homestead.

34 Subdivision (f) specifies the proper court for proceedings under this section.


35 Subdivision (g) provides a limited tolling rule to prevent the defeat of the proceeds exemption  
36 where proceeds are tied up in litigation.

37 **Revised Background Comment (1982).** Subdivision (a) of Section 704.720 supersedes former  
38 Civil Code Section 1240 (providing for a declared homestead) and former Code of Civil  
39 Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). Unlike the  
40 former provisions, Section 704.720 does not specify the interest that is protected and does not  
41 limit the homestead in a leasehold to a long-term lease; any interest sought to be reached by the  
42 judgment creditor in the homestead may be entitled to the exemption. The homestead exemption  
43 does not apply where a lien on the property other than an enforcement lien is being foreclosed.  
44 See Section 703.010.

45 Subdivision (b)(1) provides an exemption for proceeds of an execution sale of a homestead, for  
46 proceeds from insurance or indemnification for the damage or destruction of a homestead, and for  
47 an eminent domain award or proceeds of a sale of the homestead for public use. Subdivision  
48 (b)(1) supersedes portions of former Civil Code Sections 1256 and 1265 and of former Code of  
49 Civil Procedure Sections 690.8 and 690.31(k). The exemption for insurance proceeds was not

1 found in former law. *But see* Houghton v. Lee, 50 Cal. 101, 103 (1875) (insurance proceeds for  
2 destruction of declared homestead exempt).

3 Subdivision (c) is new. The spouses may select which of the homesteads is exempt. If the  
4 spouses are unable to agree, the court determines which homestead is exempt. See Section  
5 703.110 (application of exemptions to marital property). Note that a married person may, after a  
6 decree of legal separation or an interlocutory judgment of dissolution of marriage, be entitled to a  
7 homestead in his or her own right, and this right is not affected by subdivision (c). See Section  
8 704.710(d) (“spouse” defined) & Comment.

9  **Staff Note.** The reference to depositing proceeds in court is deleted from subdivision (e) and  
10 subdivision (g) is added in the latest set of amendments. The Comment has been revised to reflect  
11 the changes.