

## First Supplement to Memorandum 96-46

### Legislative Program: SB 197 (Homestead Exemption)

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The Commission's homestead exemption bill, SB 197 (Kopp), failed passage in the Assembly Judiciary Committee on July 3. As discussed in this supplement, the staff believes there is little possibility of repealing or fixing the anachronistic declared homestead statute.

#### Report on Hearing in Assembly Judiciary Committee

The bill was first heard on June 19, but in the face of vigorous opposition from the California Association of Collectors (CAC) and late opposition from the Bank of America, the bill was put over until July 3 so that we could amend the bill to include language to ameliorate the concerns of the opposition. The bill was amended on June 26 to implement the "necessity standard" option that was approved in concept by the Commission at the June meeting. As amended, the bill sought to balance the interests of debtors and creditors by limiting the voluntary sale proceeds exemption to cases of hardship (court-ordered sale in dissolution, etc., job loss or transfer, death or serious illness in debtor's immediate family).

The amendments did not remove opposition to the bill. CAC took the position that no amendment would remove their opposition and discussions with BofA were equally unproductive. The amendments threatened loss of support for the bill from the National Association of Consumer Bankruptcy Attorneys.

At the beginning of the second hearing on July 3, Bill Morrow, the Committee Chairman, said that there was some question whether the Law Revision Commission still was sponsoring the bill, noting that he had received an opposition letter from Assemblyman Dick Ackerman, the Commission's Assembly member. The staff assured Chairman Morrow and the Committee that the Commission was sponsoring the bill and had approved the substance of the amendments at its June meeting.

The Chairman asked that the hearing focus on the amendments adopting the necessity standard. The amendments did not dampen the opposition and also appear to have lost potential favorable votes on the Committee.

### **Prospect for Future Reform**

The Committee vote illustrates in capsule form the difficulty in finding a consensus on disposition of the homestead proceeds exemption. Creditors seem unwilling to accept any compromise that makes effective the “paper right” to a proceeds exemption. Creditors are able to satisfy money judgment liens without regard to the declared homestead exemption and do not want to see this ability limited in any way. Attempts to satisfy creditors’ substantive objections were not successful and only undermined the support the bill would have had from those who favor making the existing statutory right effective.

The declared homestead concept does not work. It didn’t work very well when it actually had some teeth (before July 1983) and is a complete failure in accomplishing its intended purpose under current practice. Unless the courts find a way to enforce the declared homestead proceeds exemption, homeowners will continue to file pointless homestead declarations which title companies will report and creditors will ignore.

Throughout the Commission’s work on this topic and again in staff discussions with CAC representatives, bank lobbyists, bar committees, and committee staff, we could never find a set of revisions that could be supported by both debtor and creditor interests.

The only idea that creditors would support is the outright repeal of the declared homestead procedure. The staff believes that this approach makes some sense from a theoretical point of view, since it would prune a dead letter out of the law. However, we have found no support for outright repeal, even from people who recognize that the declaration is ignored in practice. Nor did the Commission respond favorably to this concept when it was offered for discussion.

The staff does not believe that further study will result in finding a consensus solution or one that could be enacted. The Commission tried in 1982 to unify the homestead exemption rules and has now tried in 1996. Perhaps the time will be ripe for this needed reform in 2010.

Respectfully submitted,

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