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HOMESTEAD DECLARATION

Protecting the Equity in Your Home

This Guide includes instructions and sample forms. The Guide and related forms may be downloaded from:

www.saclaw.org/homestead-guide

BACKGROUND

Under California law, homeowners are entitled to protection of a certain amount of equity in their home. The amount protected varies depending on the age, marital status, and income of the property owner.

The homestead exemption does not prohibit the sale of the property. The property can be sold if the sale would produce enough money to:

- Pay all existing liens on the property
- Pay off all mortgages and loans secured by the equity in the home
- Pay the costs of selling the home
- Allow the homeowner to keep equity in the amount protected by the homestead exemption

Rather than prohibiting the sale, the homestead exemption merely ensures that the homeowner receives the amount of the exemption before the creditors are paid from the sale proceeds. The exempt funds received from the voluntary sale of the property remain exempt from debt collection attempts for six months, and can be used to purchase another residence.

The homestead exemption does not apply in the following situations:

- Judgments obtained prior to the recording of the homestead declaration
- Debts secured by encumbrances on the premises executed by the owner before the declaration was recorded
- Obligations secured by mechanics' liens on the premises
- Voluntary encumbrances on the premises, such as mortgages or deeds of trust
- Judgments for child, family, or spousal support

There are two types of Homestead Exemptions:

Automatic: applies only upon forced sale of the property. The automatic exemption requires continuous residence from the date the judgment creditor's lien attaches until the date the court determines that the dwelling is a homestead. If a creditor attempts to sell the home, the burden of proof is on the homeowner to prove to the court that an automatic homestead exemption exists.

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in Sacramento County. Please keep in mind that each county may have different requirements. If you need further assistance consult a lawyer.

You may also need...

Related Guide on Similar Topic

- [Exemption from the Enforcement of Judgements](#)

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Declared: applies both to forced and voluntary sales of the property. Exempt proceeds from a voluntary sale are protected if another home is purchased within 6 months. Homeowners must reside in the dwelling on the date the homestead declaration is recorded. If a creditor attempts to sell your home, the burden of proof is on the creditor to prove to the court that your homestead declaration is invalid.

Requirements:

The homestead exemption applies only when certain requirements are met. These requirements, described in California Code of Civil Procedure (CCP) Section [704.710](#), are:

1. The residence must be the principal dwelling of the judgment debtor or his or her spouse.
2. The judgment debtor, or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached.
3. The judgment debtor and/or their spouse must reside continuously thereafter until the date of the court determination that the dwelling is a homestead.

Eligible properties:

Homestead exemptions are available for a variety of dwelling types. "Dwelling" means a place where a person resides and may include, but is not limited to, the following:

1. A house or mobilehome, together with the outbuildings and the land upon which they are situated.
2. A boat or other waterborne vessel.
3. A condominium, as defined in Section [783](#) of the Civil Code.
4. A planned development, as defined in Section [11003](#) of the Business and Professions Code.
5. A stock cooperative, as defined in Section [11003.2](#) of the Business and Professions Code.
6. A community apartment project, as defined in Section [11004](#) of the Business and Professions Code.

Amount of exemption:

The amount of the exemption varies, depending on the age, marital status, and income of the property owner. Under CCP Sections [704.720 - 704.730](#), the exemptions are:

1. \$75,000 unless the judgment debtor or their spouse who resides in the homestead is a person described below in (2) or (3).
2. \$100,000 if the judgment debtor or spouse is a member of a family unit, if at least one member of the family unit owns no interest in the homestead, or has only community property interest in the homestead with the judgment debtor.
3. \$175,000 if the judgment debtor who resides in the homestead is at the time of the sale either (a) a person 65 years old, (b) a person physically or mentally disabled and as a result of that disability unable to engage in substantial gainful employment, or (c) a person 55 years old with a gross annual income less than \$15,000, or, if the judgment debtor is married, a gross annual income, including that of the spouse, of not more than \$20,000, and the sale is involuntary.

Abandonment of homestead

By operation of law: If a homestead declaration is executed or recorded on a different property, the first declared homestead is abandoned. Additionally, abandonment is implied when the debtor

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establishes another dwelling as his or her personal residence, even when there is no declaration of homestead made. A party may not have two homesteads simultaneously.

By declaration: A property owner can record a Declaration of Abandonment of Declared Homestead.

STEP-BY-STEP INSTRUCTIONS

Step 1: Complete the Required Forms

Evaluate if you qualify for a Homestead Exemption. Determine if you are filing as an individual or as spouses. Homestead documents must be in a format that the Sacramento County Clerk/Recorder's Office will accept. Customizable templates may be downloaded from these links:

- [Homestead Declaration](#)
- [Homestead Declaration-Spouses](#)
- [Abandonment of Declared Homestead](#)

Sample filled-in forms with instructions are available at the end of this Guide.

Step 2: Notarize

The Homestead Declaration must be notarized and then filed in the Recorder's Office of the county in which the property is located.

Step 3: Record the Homestead Declaration at the Recorders Office

The Recorder's Office charges a recording fee (currently \$21/first page plus \$3 for additional pages). Current Sacramento County fees are available on the County Clerk/Recorder's website at www.ccr.saccounty.net/Pages/Fees.aspx. The lien will be recorded the same day it is received at the Recorder's Office.

**Sacramento County
Recorder's Office**
600 8th Street
Sacramento, CA 95814
(916)874-6334

FOR MORE INFORMATION

Sacramento County Clerk/Recorder

600 8th Street
Sacramento, CA 95814
(916) 874-6334
www.ccr.saccounty.net/

At the Law Library:

California Jurisprudence [KFC 80 .C35](#) (Ready Reference)

Vol. 37, Homesteads.

Electronic Access: On the Law Library's computers, using *WestlawNext*.

California Real Estate, Law and Practice [KFC 140 .B45](#)

Vol. 10, Ch. 344.

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

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Miller and Star California Real Estate [KFC 140 .M51](#)

Vol. 12, Ch. 43.

Electronic Access: On the Law Library's computers, using *WestlawNext*.

California Legal Forms, Transaction Guide [KFC 68 .C32](#) (Ready Reference)

Vol. 12, Ch. 27B.

Electronic Access: On the Law Library's computers, using the *Matthew Bender CD*.

California Forms of Pleading & Practice [KFC 1010 .A65 C3](#) (Ready Reference)

Vol. 25, Ch. 294

Electronic Access: On the Law Library's computers, using the *Matthew Bender CD*.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

Homestead documents must be in a format that the Sacramento County Clerk/Recorder's Office will accept. Customizable templates may be downloaded from these links:

- [Homestead Declaration](#)
- [Homestead Declaration-Spouses](#)
- [Abandonment of Declared Homestead](#)

Sample filled-in forms with instructions are available at the end of this Guide.

Recording requested by:

Name of person requesting the recording, and address where once recorded, the document should be sent.

And when recorded mail to:

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

APN:

For recorders use

HOMESTEAD DECLARATION

I, _____, do hereby certify and declare as follows:

The full legal description of the property can be found on your Deed.

1. I hereby claim as a declared homestead the premises located in the City of _____, State of California, commonly known as: _____ (street address), and more particularly described as follows:

Name followed by how the title is held. This information can be found on your deed.

2. I am the declared homestead owner of the above-declared homestead.
3. I own the following interest in the above-declared homestead:

4. The above-declared homestead is my principal dwelling. I am currently residing on that declared homestead.

Sign in front of a notary, as the declaration must be notarized.

The facts as stated in this Homestead Declaration are known to me by my personal knowledge.

Dated: _____

Print Name

Signature

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

Name of person requesting the recording, and address where once recorded, the document should be sent.

Recording requested by:

And when recorded mail to:

APN: _____

For recorders use

HOMESTEAD DECLARATION – SPOUSES AS DECLARED OWNERS

We, _____ and _____, do hereby certify and declare as follows:

- 1. We are husband and wife.
- 2. We declare that we are joint owners of the following property located in the City of _____, State of California, commonly known as: _____ (street address), and more particularly described as follows:

The full legal description of the property can be found on your Deed.

- 3. We claim the property and the dwelling thereon as a homestead on behalf of both of us.
- 4. This property is our principal dwelling and we actually reside on this property on the date that this Homestead Declaration is recorded.
- 5. We own the following interest in the above declared homestead: _____

Names followed by how the title is held. This information can be found on your deed.

The facts as stated in this Homestead Declaration are true to my personal knowledge.

Both spouses must sign in front of a notary, as the declaration must be notarized.

Print Name _____

Print Name _____

Signature _____

Signature _____

Dated: _____

Dated: _____

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

Recording requested by:

Name of person requesting the recording, and address where once recorded, the document should be sent.

and when recorded mail to:

APN: _____

For recorders use

DECLARATION OF ABANDONMENT OF DECLARED HOMESTEAD

The undersigned declare(s) that he/she/they hereby abandon(s) the homestead previously

Name of person(s) who signed original Homestead Declaration

_____red in the Homestead Declaration executed by

on _____, and recorded on _____

in Book/Reel _____, Page/Image _____, as

Instrument # _____, in the Official Records of the County Recorder

_____ County, California .

Information can be found on the original Homestead Declaration.

Print Name

Print Name

Signature

Signature

Dated: _____

Dated: _____

Sign in front of a notary, as the declaration must be notarized.