

ALERT: COVID-19 has temporarily changed the way courts are providing services. Our guides do not reflect these temporary changes. Contact the court directly for the most up to date information on court processes and procedures. www.saccourt.ca.gov

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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: 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.

Related Guide

[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:

- The residence must be the principal dwelling of the judgment debtor or his or her spouse.
- The judgment debtor, or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached.
- 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:
- A house or mobile home, together with the outbuildings and the land upon which they are situated.
- A boat or other waterborne vessel.
- A condominium, as defined in Section [783](#) of the Civil Code.
- A planned development, as defined in Section [11003](#) of the Business and Professions Code.
- A stock cooperative, as defined in Section [11003.2](#) of the Business and Professions Code.
- 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 amount of the homestead exemption is the greater of the following:

- The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
- Three hundred thousand dollars (\$300,000).
- The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations..

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 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.

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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 \$20/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 document will be recorded the same day it is received at the Recorder's Office.

Building Homes and Jobs Act Fee (SB 2)

There is an additional \$75 fee on mortgage refinances and other real estate transactions that are exempt from Documentary Transfer Tax. Some exceptions apply. Contact your county recorder's office to determine the total amount you will need to pay.

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*.

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

Vol. 10, Ch. 344.

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

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 *Lexis Advance*.

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

Vol. 25, Ch. 294

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

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 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):

[Name(s) of owner]

Name of person recording the Homestead Declaration

Recorder's Use Only

When recorded mail to and mail tax statements to:

[Name(s) of new owners]

[Mailing Address of new owners]

[Mailing Address of new owners]

[Mailing Address City, State, ZIP]

Name and address of person who should receive the stamped copy of this document when recorded, and tax statements from now on.

1/1/2018: In addition to standard fees, a new \$75 fee is charged for recording documents unless an exemption applies. See back of sheet for more info.

HOMESTEAD DECLARATION

Assessor's Parcel No. (APN):

[Assessor's Parcel No.]

This can be found on the current deed or the tax bill.

Declaration of Exemption From

- Transfer is exempt from fee per GC § 27388.1(a)(2):
 - recorded concurrently "in connection with" transfer subject to Documentary Transfer Tax
 - recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier
- Transfer is exempt from fee per GC 27388.1(a)(1):
 - Fee cap of \$225.00 reached
 - Not related to real property

I, [Name of person signing declaration], do hereby certify and declare as follows:

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

[Enter legal description as written on deed. If you prefer, type (or photocopy) the description on a separate page labeled "Exhibit A," attach it, and enter "See Exhibit A" in this space].

Copy this from the deed to the home

2. I am the declared homestead owner of the above-declared homestead.

3. I own the following interest in the above-declared homestead: [interest owned, eg fee simple (100%), joint tenancy, etc.]

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

The facts as stated in this Homestead Declaration are known to be true as of my own personal knowledge.

Date: [Date Signed]

(Signature of declarant)

[Name of person signing declaration]

Print Name

The "interest" you own is the percent and form of title, so if you are the sole owner, you could write 100% (or in legalese, "fee simple.")

If you co-own it, put the title stated on the current deed, like joint tenant, community property, etc.

Mortgages don't count for this purpose.

Recording requested by (name):

Name of person recording the Homestead Declaration

Recorder's Use Only

When recorded mail to and mail tax statements to:

Name and address of person who should receive the stamped copy of this document when recorded, and tax statements from now on.

1/1/2018: In addition to standard fees, a new \$75 fee is charged for recording documents unless an exemption applies. See back of sheet for more info.

This can be found on the current deed or the tax bill.

HOMESTEAD DECLARATION – SPOUSES AS DECLARED OWNERS

Declaration of Exemption From Gov't Code § 27388.1 Fee

Transfer is exempt from fee per GC § 27388.1(a)(2):

- recorded concurrently "in connection with" transfer subject to Documentary Transfer Tax
- recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier

Transfer is exempt from fee per GC 27388.1(a)(1):

- Fee cap of \$225.00 reached
- Not related to real property

Assessor's Parcel No. (APN):
[Assessor's Parcel No.]

We, [Name of first spouse/DP], and [Name of second spouse/DP], do hereby certify and declare as follows:

1. We are married spouses or registered domestic partners.
2. We declare that we are joint owners of the following property located in the City of [City], State of California, commonly known as (street address) [Street address], and more particularly described as follows (legal description):
[Enter legal description as written on deed. If you prefer, type (or photocopy) the description on a separate page labeled "Exhibit A," attach it, and enter "See Exhibit A" in this space].
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: [Interest owned, eg, joint tenancy, community property with right of survivorship, community property, etc.]

Copy this from the deed to the home

The facts as stated in this Homestead Declaration are known to be true as of our own personal knowledge.

Date: [Date Signed]

(Signature of declarant)

[Name of first spouse/DP]
Print Name

Date: [Date Signed]

(Signature of declarant)

[Name of second spouse/DP]
Print Name

The "interest" you own is the percent and form of title. Put the title stated on the current deed, like joint tenant, community property, etc. Mortgages don't count for this purpose.

Recording requested by (name):
[Name(s) of owner]

Name of person recording the Homestead Declaration

When recorded mail to and mail tax statements to:

[Name(s) of owners]

[Mailing Address of owners]

[Mailing Address of owners]

[Mailing Address City, State, ZIP]

Name and address of person who should receive the stamped copy of this document when recorded, and tax statements from now on.

1/1/2018: In addition to standard fees, a new \$75 fee is charged for recording documents unless an exemption applies. See back of sheet for more info.

Recorder's Use Only


DECLARATION OF ABANDONMENT OF DECLARED HOMESTEAD

Assessor's Parcel No. (APN):
[Assessor's Parcel No.]

This can be found on the current deed or the tax bill.

Declaration of Exemption From Gov't Code § 27388.1 Fee

- Transfer is exempt from fee per GC § 27388.1(a)(2):
 - recorded concurrently "in connection with" transfer subject to Documentary Transfer Tax
 - recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier
- Transfer is exempt from fee per GC 27388.1(a)(1):
 - Fee cap of \$225.00 reached Not related to real property

The undersigned declare(s) that he/she/they hereby abandon(s) the homestead previously declared in the Homestead Declaration executed by [Name of person(s) who signed declaration], on of [Date], 20 [Year], and recorded on [Date], 20 [Year], in Book/[Book/reel], Page/Image [Page/Image], as Instrument Number [Instrument No if used]  in the Official Records of the County Recorder [County], County, California.

Copy this from the deed to the home

Date: [Date Signed]

(Signature of declarant)

[Name of person signing declaration]
Print Name

Date: [Date Signed]

(Signature of declarant)

[Name of person signing declaration]
Print Name



Note: Sacramento does not use Instrument Numbers. Some counties use Instrument Number as well as, or instead of, the Page/Image and Book/Reel numbers. Fill in whatever is on the Current deed.