



PREVENTIVE LAW SERIES
CALIFORNIA
HOMESTEAD DECLARATIONS



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WHAT IS A HOMESTEAD DECLARATION?

A homestead declaration is a legal document that claims and registers a particular house as the owner's homestead or principle dwelling. This document helps to protect the house against loss to creditors. The legal effect is to partially immunize the house and the land on which it is situated from many (but not all) legal enforcement measures. For instance, if a homeowner files a petition in bankruptcy, it may be possible, because of the declared homestead, to retain the family home, or at least a portion of the equity in the property, instead of losing it to creditors.

Filing of a homestead exemption does not prevent a creditor from suing you or trying to collect on a debt, it simply delays the creditor from being able to take the money from your real property private residence while the exemption is in effect. Your judgment creditors still have a remedy even if you have filed the homestead declaration. A judgment lien attaches to the real property only in the amount greater than (1) all liens and encumbrances on the homestead at the time of the recording of the judgment (ex: mortgages) **plus** (2) the amount of the homestead exemption. **However**, this rule does not apply to judgments for child support, spousal support, and tax liens.

Similar protections of the home or equity are also enjoyed by homeowners who have NOT recorded a homestead declaration. However, those protections are not quite as extensive as those provided by a properly recorded written homestead declaration. For that reason, a homeowner who is overextended financially and is being pursued by creditors or debt collection agencies should consult an attorney on the need for filing a homestead declaration.

The declaration **MUST** be filed by the homeowner **prior to the recording** of the judgment lien by the creditor.

EFFECTS OF THE HOMESTEAD DECLARATION

The first effect of the declaration is the information described above, namely the exemption from judgment liens. A second effect is that the property might be transformed into community property. If spouses execute a homestead declaration, the property may be determined to now be held as community property. *Another effect of the declaration may be to transform the owners into California residents.* For more information on the effects of a homestead declaration and effects on your particular case, please seek the advice of an attorney.

CAN I STILL SELL MY HOUSE IF I FILE A HOMESTEAD DECLARATION?

The filing of a homestead declaration does not restrict your ability to sell your real property.

WHERE DO I GET A HOMESTEAD DECLARATION FORM AND WHAT DO I DO WITH IT?

You can acquire a form from a realtor, an office supply store, or a private civilian attorney. After completing the form, you must file it with the County Recorder's office in the county where the property is located.

RESOURCES

Cal. Code Civil Proc. §§ 704.710 et seq., 704.910 et seq. (2013).
California Department of Consumer Affairs, *Regulation of Homestead Filing Services* (2012),
http://www.dca.ca.gov/publications/legal_guides/h-1.pdf