

INFORMATION

CALIFORNIA DECLARATION OF HOMESTEAD—MARRIED COUPLE

Overview

A homestead law helps to protect you from losing your home to creditors. If you are sued for money in court and lose, the person who sued you will receive a judgment from the court. If you do not pay the judgment, they can then try to collect the judgment by garnishing your wages, having your automobile sold or by having your home sold. The homestead law protects a certain amount of your equity in your home from being taken to pay the judgment.

The amount of the protection you will receive varies depending on your classification as the owner, with a minimum of \$50,000. For example, if you are over the age of 65, you will receive \$150,000 worth of protection. This means that the equity in your home up to \$150,000 will be protected from your creditors. If your home is worth \$175,000 and you have a mortgage of \$75,000, your entire equity in the house (\$100,000) is protected. But creditors may still be able to force a sale of your home if there is a surplus over the exemption amount plus other liens and encumbrances (e.g. if your house is worth more than your mortgage and the homestead exemption).

There are 2 kinds of homestead exemption—one is *automatic* and the other is *declared*. Every homeowner has an *automatic* homestead exemption of at least \$50,000 for his or her residence. This protection does not require the signing or recording of any documents. The homeowner can have a declared homestead exemption as well by recording a homestead declaration form with the County Recorder in the county where the house is located. The amount of the exemption does not change or increase when a homestead declaration is recorded, but it offers extra protection because it's not automatically lost when you move. It will also protect proceeds of the sale exempted by the homestead from creditors for six months after the house is sold, even if the house was voluntarily sold by the homeowner.

Please note: the Declaration does not protect you from: (i) loans or debts secured by the dwelling, (ii) liens by contractors who put labor and materials into the dwelling, or (iii) tax liens.

For more information you should read sections 704.710-704.995 of the California Code of Civil Procedure.

Requirements

To use this packet you must be:

- (i) The owners of a dwelling (e.g. house, condo, etc.), not renters;
- (ii) Married;
- (iii) You must reside in the dwelling at the time of the recording;
- (iv) A resident of the state of California; and
- (v) A resident of the county where you will record the Declaration.

Materials

This packet contains:

- (i) Information for the Declaration;
- (ii) Instructions for the Declaration; and
- (iii) The Declaration

You can fill out the forms on the computer by entering the requested information in the appropriate spaces or you can fill them out manually. If you are filling out the forms manually and are not using a typewriter, use black ink and print as legibly and neatly as possible. The court may reject forms that are difficult to read or they may input the information incorrectly.

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An attorney should be consulted for all serious legal matters.

INSTRUCTIONS

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A. GETTING STARTED – COMPLETING THE FORMS

Step 1: Read the Instructions Carefully. You need to read these instructions as well as the instructions contained in the form carefully.

Step 2: Completing the form. Insert the appropriate information in the form. Below are additional instructions for the trickier sections of the form:

- Return Address.** In the upper right hand corner, insert the address you would like the Declaration mailed to once it is recorded.
- Legal Description.** You are asked to give a legal description of the dwelling. Don't panic, this description can be taken off the deed to the property. If you do not have this description, the court will often accept the complete address alone.
- Signature and Date.** You will need to have this form notarized, so wait to sign it until you are in front of the notary. Both of you will need to sign the Declaration at that time.
- Notarization.** Don't bother filling this in, it will be completed by the notary.

B. RECORDING THE DECLARATION

Step 3: Notary Acknowledgement. Take the form to a Notary Public, you can find one in your telephone directory or at local bank. Take personal identification with you (e.g. social security card, driver license, passport, etc.). Because you will both need to sign the document, both of you will need to go to the Notary.

Step 4: Copies. You should make at least two copies of your completed forms in case additional copies are required by the court and for your personal records.

Step 5: Recording. You can either record the Declaration in person or by mail.

In Person –Recording your Declaration in person will be quicker because you won't have to wait for delivery. You can take the form to your County Recorder. You will need to bring in the original and two copies (just to be safe) of your completed and notarized Declaration. You will tell the clerk you want to record a Declaration of Homestead. The clerk will help you from here.

Fees. You will need to pay the clerk the amount of the recording fee, probably around \$10. To get the specific amount of the recording fee you can contact your County Recorder. You can find its address and telephone number in you local telephone directory.

- **Mail** –If you choose to mail your Declaration to the County Recorder you will need to begin with a cover letter explaining what you have included and what you need done. You will want the clerk to record the Declaration and mail back it back to you (in the self-addressed stamped envelope you’ve enclosed).

You will need to include the following items:

Forms. The original and a copy of the Declaration

Fees. You will need to include a check for the recording fee. To get the specific amount of the recording fee you can contact your County Recorder. You can find its address and telephone number in your local telephone directory.

One Self-Addressed Stamped Envelopes. You will need this because you will be asking the clerk to return a copy of the recorded Declaration.

Recording Request By _____)
 and When Recorded Mail To _____)
 _____)
 Name _____)
 _____)
 Address _____)
 _____)
 City State and Zip _____)

HOMESTEAD DECLARATION
(Spouse as Declared Owners)

We, _____ and _____
 do hereby certify and declare the following:

1. We are husband and wife.
2. That we are the joint owners of the following property located at the address of _____,
 in the City of _____, and County Of _____,
 _____, State of California, and more particularly described as
 follows (give complete legal description):
3. We claim this property and the dwelling thereon as a homestead on behalf of both of us.
4. This property is our principal dwelling, and we reside in this property on the date that the homestead declaration is recorded.
5. The facts stated in this homestead declaration are known to be true as of our own personal knowledge.

Dated _____ Signed _____

Signed _____

State of California }
 County of _____ } ss.

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
 WITNESS my hand and official seal.

NOTARY SIGNATURE

(Name of Notary)

NOTARY SEAL