

## Understanding Homestead Declaration in CALIFORNIA

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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.

**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.

For more information, please visit <https://saclaw.org/wp-content/uploads/sbs-homestead-declaration.pdf>.