

HOMESTEAD DECLARATION



What is a homestead and what does it do?

In California, a homestead gives protection against involuntary claims against an owner's home. If a money judgment is rendered against you in court, the person who won the judgment against you may try to collect the monetary damages by garnishing your wages, bank accounts, or having your automobile or home sold to pay off that judgment. The homestead law protects a specific amount of equity depending on the classification of the homeowner. A homestead can be either automatic or declared. The state of California provides for an automatic homestead, but it may still be wise to record a declaration of homestead with the County Recorder's office.

Automatic homestead

Every homeowner has an automatic homestead exemption of at least \$75,000 for their residence. In California, this protection is automatic and does not require the signing or filing of any kind of documents. The amount of the exemption increases to \$100,000 if at least one member of the family unit living in the house owns no interest in the house, for example, when a homeowner lives with their minor children. The exemption rises to \$175,000 when a homeowner is 65 years or older, or is physically or mentally disabled. The \$175,000 exemption also applies to persons 55 years of age and older if that person is: single and has a gross annual income of \$15,000 or less, or married and has a combined annual income of \$20,000 or less, and the property sale is involuntary.

Declared homestead exemption

To declare a homestead, a single-page document is usually filed with the County Recorder in the county where the property is located. A declared homestead does not change or increase the exemption amounts, but offers extra protection in that it is not automatically lost when a homeowner sells. It also protects proceeds of a sale exempted by the homestead from creditors for six months after the house is sold, even if the home was sold voluntarily. It is preferable to file a declaration of homestead before a claim is filed against the

property. However, before such a claim can be filed against the property, a lawsuit judgment is normally required. Thus, there is usually plenty of notice, and a homestead declaration can be filed even at the last minute.

How do I file a homestead declaration?

If you want a homestead declaration on your property, you can do it easily yourself, without using a professional service. Simply purchase a homestead declaration form from a legal forms supply store or they can even be purchased and downloaded online. Be sure to specify the state where the property is located when using the internet to get the appropriate document. Fill out your name and joint owner, if applicable, and the legal description of your property (this can usually be found on the grant deed when you purchased the property). You will need to sign the forms and have them notarized. To file, simply mail or take the form to the County Recorder's office with the specified recording fees.

What a homestead declaration will not do

A homestead declaration does not protect against the forced sale of property by a bank, savings and loan, or another lender holding a mortgage deed of trust on the property. It also will not protect against a judgment for child support, spousal support, or the enforcement of a valid mechanic's lien.

Homestead filing services: who needs them?

After purchasing a property, you will probably receive mail from homestead filing services. Their letters often look official and from a government office – leading you to believe that you must file a homestead declaration. You DO NOT have to file a homestead declaration. California law prohibits homestead filing agencies from making false or misleading statements by presenting themselves as a government agency. The law also prohibits charging more than \$25 to file a homestead declaration, and they are not to collect any fees until they have recorded the homestead declaration with your approval.

This is for informational purposes only and not meant to be a legal document. Please contact your legal professional with specific questions.