

RESOLUTION 10-09-2013 (As Amended and Adopted)

DIGEST

Miscellaneous: Homestead Exemption for California Residents

Amends Code of Civil Procedure section 704.730 to increase the homestead exemptions for single judgment debtors, family units, and senior/disabled debtors to \$150,000, \$200,000, and \$350,000, respectively.

RESOLUTIONS COMMITTEE RECOMMENDATION

~~DISAPPROVE~~ (*Amendments respond to Rescomm concerns*)

History:

Similar to Resolution 11-07-2003 which was approved in principle.

Reasons:

This resolution amends Code of Civil Procedure section 704.730 to increase the homestead exemptions for single judgment debtors, family units, and senior/disabled debtors to \$150,000, \$200,000, and \$350,000, respectively.

California's homestead exemption protects prescribed home equity amounts by preventing a forced sale that would not yield the debtor's allowance and, when a sale occurs, by shielding those proceeds up to those prescribed amounts. (See Code Civ. Proc., §§ 704.720, subd. (b), 704.800, subd. (a), 704.960, subd. (a).) Under present section 704.730, subdivision (a), a single judgment debtor has a homestead allowance of \$75,000; a debtor (or resident spouse) who is a member of a "family unit" is entitled to a \$100,000 homestead; and the exempt amount is \$175,000 for debtors (or spouses) who are 65 or older (or over 55 with very low income) or who are disabled from substantial gainful employment. The amounts have been adjusted at various times over the last 20 years, most recently in 2009. (Stats. 2009 ch. 499 § 2 (AB 1046).) Other provisions of the exemption statutes provide that the Legislature is to adjust the homestead amounts for inflation every three years, beginning on April 1, 2013, after being advised of the appropriate adjustment by the Judicial Council. (See Code Civ. Proc., § 703.150.)

The exemption amounts necessarily represent a balance between the competing interests of homeowner debtors (to retain their homes or the means to replace them) and their creditors (to recover amounts rightfully due). While a good argument can be made that the homestead exemption allowances have not kept pace with the rise in residential real estate values over the last two decades, the proposed increases, ~~all of which are in excess of 500%, are too generous and would constitute a substantive change in exemption policy~~ *are in keeping with exemption policy*. As reported by the U.S. Census Bureau, the median single-family home price in California in 1990 was \$194,300. According to Bloomberg.com the current median in California is approximately \$400,000. That means the home price has basically doubled. If we double the allowances, they would rise to \$150,000, \$200,000, and \$350,000.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure section 704.730 to read as follows:

1 § 704.730

2 (a) The amount of the homestead exemption is one of the following:

3 (1) ~~Seventy-five thousand dollars~~ One hundred fifty thousand dollars (~~\$75,000~~ \$150,000) unless
the
4 judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in
5 paragraph (2) or (3).

6 (2) ~~One hundred thousand dollars~~ Two hundred thousand dollars (~~\$100,000~~ \$200,000) if
7 the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the
8 attempted sale of the homestead a member of a family unit, and there is at least one member of the family
9 unit who owns no interest in the homestead or whose only interest in the homestead is a community
10 property interest with the judgment debtor.

11 (3) ~~One hundred seventy-five thousand dollars~~ Three hundred fifty thousand dollars
12 (~~\$175,000~~ \$350,000) if the judgment debtor or spouse of the judgment debtor who resides in the
13 homestead is at the time of the attempted sale of the homestead anyone of the following:

14 (A) A person 65 years of age or older.

15 (B) A person physically or mentally disabled who as a result of that disability is unable to engage
16 in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a
17 person receiving disability insurance benefit payments under Title II or supplemental security income
18 payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph
19 as to his or her inability to engage in substantial gainful employment.

20 (C) A person 55 years of age or older with a gross annual income of not more than twenty-five
21 thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the
22 gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars
23 (\$35,000) and the sale is an involuntary sale.

24 (b) Notwithstanding any other provision of this section, the combined homestead exemptions of
25 spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is
26 applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and
27 regardless of whether the homestead consists of community or separate property or both. Notwithstanding
28 any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of
29 proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate
30 interests in the homestead.

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

The Problem: California provides a homestead exemption for the personal residences of its residents, in an effort to protect them from losing their homes in face of a significant debt or judgment against them. The homestead exemption protects between \$75,000 (for individuals) to \$100,000 (for couples), and up to \$175,000 for persons who certain age or disability requirements. The reason states, including California, have enacted various forms of the homestead exemption is to provide a measure of security for families. With this protection, more California families, the elderly and others can be protected from penury. Unfortunately in California, the statute governing the size of the homestead exemption has not kept pace with desired policy goals of a homestead exemption, and in a large number of instances simply does not protect the homestead at all, rather protects a relatively small amount of money from the sale of a homestead. Californians who use the homestead exemption to protect the relatively small amount of cash from bankruptcy would find purchasing or even renting a home difficult.

Those Californians who have the means to pay for asset protection planning through “equity stripping” and other means, as a practical matter, can protect homes worth several millions of dollars from future creditor claims. These techniques are not available to the vast majority of Californians.

The code section designed to provide a baseline of protection simply falls short when it comes to protecting the security of California homeowners, as the exemption amount is too small to provide any meaningful level of security.

The Solution: This resolution addresses, through a substantial enough increase in the homestead exemption amounts, restoring the security of California families so that their homes can be protected from creditor claims. The exemption amounts are large enough so that even if a creditor were to force the sale of a home, the individual or family using the homestead exemption can purchase another home in even higher priced metropolitan areas, causing less disruption and more security.

To uproot a family from their home to pay a creditor represents a poor policy choice for California, as it would tend to increase poverty and force parents to raise children with less stability. This simple fix will solve this problem with minimal harm to creditors, who must content with significantly larger homestead exemptions in other states.

It is fully anticipated as prices rise, the homestead exemption will be subject to periodic revision.

IMPACT STATEMENT:

This resolution affects the amount of the homestead exemption, which is periodically revised in smaller increments. It directly affects Code of Civil Procedure sections 704.710 and 704.720. It will affect the ability of creditors to collect against personal residences.

AUTHOR AND PERMANENT CONTACT: Ahmed Shaikh, 14471 Chambers Rd, STE 103 92780
Telephone: (714) 505-3631, Email: shaikh@gmail.com

RESPONSIBLE FLOOR DELEGATE: Ahmed Shaikh

COUNTER-ARGUMENT(S) TO RESOLUTION 10-09-2013

BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY

We have a different perception of the homestead exemption. The whole idea is not, as the proponent implies, to prevent legitimate judgments from being collected, but rather to strike a balance between the right of the judgment creditor to collect, and the ability of the homestead holder to have a place to live. Under current law, in order to levy execution on an owner occupied dwelling to satisfy a fully matured collectible judgment against that owner, the creditor has to file an application with the court under Code of Civil Procedure section 704.750 and demonstrate that in addition to the existing liens on the property, there is equity beyond the homestead exemption that would be available to satisfy the judgment. If there is, unless the judgment creditor is paid by the judgment debtor in the interim, the Sheriff sells the property, and the judgment debtor owner gets the homestead exemption amount in cash. The suggestion that such a sale would render a homeowner "homeless" is not well taken, given that such homeowner has at least \$75,000.00 to find alternative housing.

Under this Resolution, the homestead would allow unscrupulous people to shelter their assets in residences so as to prevent collection of such legitimate debts as child support arrearages. This would be bad policy for California.