

***New Developments in  
Bankruptcy Law and  
Debtor-Creditor  
Relations Affecting  
Estate and Financial  
Planning***

**ESTATE COUNSELORS FORUM**  
**Los Angeles, California**

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# ***Who Should Pay Attention?***

- Our goal is to provide relevant information concerning new developments in bankruptcy law and debtor-creditor relations to those involved in the fields of estate and financial planning.
- *Who should be paying attention to these developments?*
  - Planning in anticipation of death, incapacity, and transferring wealth to the next generation; and
  - Advising or assisting in the process of administering property held in a fiduciary capacity (i.e., decedent's estates, trusts, conservatorships, and guardianships) for the benefit of others.

# New Developments

- *Bankruptcy Law*
  - Federal law
  - U.S. Bankruptcy Code
- *Debtor-Creditor Relations*
  - Mixed federal and state law
    - Exemptions from the enforcement of judgment
    - Homestead

# Bankruptcy Law

## BACKGROUND

- Article I, Section 8, of the United States Constitution authorizes Congress to enact “uniform Laws on the subject of Bankruptcies.”
- Under this grant of authority, Congress has enacted several versions of the “Bankruptcy Code.” It is the uniform federal law that governs all bankruptcy cases.
- The current version is entitled the “United States Bankruptcy Code,” codified as Title 11 of the United States Code (11 U.S.C. §§101 et seq.). The Bankruptcy Code has been amended several times since its enactment.

# Bankruptcy Law

## PURPOSE

A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court of the United States made this point about the purpose of the bankruptcy law in a 1934 decision:

“[I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.” *Local Loan Co. v. Hunt* (1934) 292 U.S. 234, 244.

This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from ever taking any action against the debtor to collect those debts.

# Bankruptcy Law

## CHAPTERS

The Bankruptcy Code is divided into several well-known “chapters”:

***Chapter 7***

“Liquidation”

***Chapter 13***

Adjustment of Debtors of an Individual with Regular Income (a.k.a., “Rehabilitation”)

***Chapter 11***

“Reorganization”

And now we have...

***Subchapter V of Chapter 11***

Small Business Reorganization

# Bankruptcy Law

## BANKRUPTCY COURT and BANKRUPTCY JUDGE

- ❖ The court official with decision-making power over federal bankruptcy cases is the United States Bankruptcy Judge.
  - Unit of the United States District Court.
  - Each state has one or more federal court districts.
- ❖ The bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge of debts.
- ❖ Much of the bankruptcy process is administrative, however, and is conducted away from the courthouse.
- ❖ In cases under Chapters 7, 12, or 13, and sometimes in Chapter 11 cases, this administrative process is carried out by a “trustee” who is appointed to oversee the case.
  - Role/involvement of the Office of the U.S. **Trustee**
  - Role/involvement of the Office of the U.S. **Attorney**

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 7 - Liquidation:

This contemplates an orderly, court-supervised procedure by which an appointed Chapter 7 trustee takes over the assets of the debtor's estate, reduces them to cash, and makes distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secured creditors.

This is the prototypical **'consumer'** bankruptcy case.

- ***"I give up!"***
- ***"Sell off my valuable assets, distribute the net proceeds to my creditors, and then give me back anything that is leftover or that the law allows me to keep."***



# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 7 (con't)

Because there is usually little or no non-exempt property in most Chapter 7 cases, there may not be an actual liquidation of the debtor's assets. These cases are called "no-asset cases." A creditor holding an unsecured claim will get a distribution from the bankruptcy estate only if the case is an asset case and the creditor files a proof of claim with the bankruptcy court.

In most Chapter 7 cases, if the debtor is an individual, he or she receives a discharge that releases him or her from personal liability for certain dischargeable debts. Secured claims are normally unaffected by the liquidation process. The debtor normally receives a discharge just a few months after the petition is filed.

Recent amendments to the Bankruptcy Code require the application of a "means test" to determine whether individual consumer debtors qualify for relief under chapter 7. If such a debtor's income exceeds certain designated thresholds, the debtor may not be eligible for Chapter 7 relief.

# Bankruptcy Law

## **BANKRUPTCY PROCEEDINGS**

### **Chapter 13 - Adjustment of Debts of an Individual with Regular Income:**

This is designed for an individual debtor who has a regular source of income, like a wage-earner. Chapter 13 is also used by consumer debtors who do not qualify for chapter 7 relief under the means test.

Chapter 13 enables the debtor to keep valuable assets, such as their home, through a court-supervised process to distribute the debtor's excess income to pay down allowed creditor claims over time – usually between 3 years and 5 years.

At a confirmation hearing, the court approves or disapproves the debtor's repayment plan.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 13 (con't)

Chapter 13 is very different from Chapter 7 since the Chapter 13 debtor usually remains in possession of the property of the estate and makes payments to creditors, through the trustee, based on the debtor's anticipated income over the life of the plan.

Unlike Chapter 7, the debtor does not receive an immediate discharge of debts.

The debtor must complete the payments required under the plan before the discharge is received. The debtor is protected from lawsuits, garnishments, and other creditor actions while the plan is in effect.

The discharge is also somewhat broader (i.e., more debts are eliminated) under Chapter 13 than the discharge under Chapter 7.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 – Reorganization:

This is typically used to reorganize a business. Chapter 11 is available to every business, whether organized as a corporation, partnership, or sole proprietorship, and to individuals, although it is most prominently used by corporate entities. In California, individuals with substantial debt also utilize Chapter 11 reorganization.

This is the prototypical **'business'** bankruptcy case.

- The debtor does **not** proclaim that *"I give up and sell off my assets to satisfy my creditors."*
- **Instead, *the debtor seeks to impose a plan to recapitalize a business that has viable economic merit, in accordance with a formal, judicially-approved plan, whereby the plan seeks to retain the business as a viable ongoing enterprise, but at the expense of the existing creditors and—unfortunately—the business' owners and equity interest holders.***

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 (con't)

In a Chapter 11 bankruptcy, the business debtor is typically “reorganized” so that it emerges from bankruptcy with more/new equity and less debt. That process is accomplished by a judicially-supervised procedure through which debts can be discharged and unprofitable contracts avoided, but, in exchange, the equity interest holders/owners are eliminated, reduced/transformed, or replaced.

In a Chapter 11 proceeding the debtor remains in control of its business operations as a “debtor in possession” (DIP), rather than through the appointment of a trustee, although remaining subject to the oversight by the Bankruptcy Judge under the jurisdiction of the Bankruptcy Court. Often it is accompanied by the formal involvement of the debtor’s creditors through the “Creditor’s Committee” process.

*In comparison, in a Chapter 7 liquidation, the business debtor would cease operations, a trustee would be appointed to liquidate assets and distribute net proceeds to creditors, and any residue would thereafter be returned to the owners.*

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 (con't)

In order for a Chapter 11 debtor to reorganize, the debtor must file (and the Bankruptcy Court must thereupon judicially confirm) a plan of reorganization.

The Chapter 11 plan of reorganization is a detailed compromise between the major stakeholders in the case, including the debtor and its creditors. Most Chapter 11 proceedings aim towards confirming such a plan to reorganize debt & business operations. Another option is an asset sale as supervised by the bankruptcy court.

The process is complicated and difficult and can involve battles over the valuation of assets, priorities, and payment of professional fees.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 (con't)

- ❖ The Chapter 11 process is also subject to one rule that should strike at the heart of those who plan estate and financial affairs:
  - The “**Absolute Priority Rule**”
- ❖ The Absolute Priority Rule prevents business owners and equity investors from maintaining their equity interest in a business undergoing a Chapter 11 reorganization if creditors are **not** paid in full.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 (con't)

So, a Chapter 11 bankruptcy proceeding will likely result in one of these possible outcomes for the business debtor:

- **Success** – Reorganization; or
- **Failure** – Conversion to Chapter 7 liquidation proceeding **or** Dismissal



# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Chapter 11 (con't)

In addition to the **Absolute Priority Rule**, there are substantial burdens which tend to preclude most small businesses from utilizing the benefits of Chapter 11. These burdens include the following:

- (i) **Costs and Expense**
- (ii) **Paperwork and Detailed Financial Information Disclosures**
- (iii) **Delay**
- (iv) **Complexity**
- (v) **Special rules for special industries:**
  - Railroads
  - Shopping centers
  - Single asset real estate cases
  - Individuals

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### New Developments:

### **SUBCHAPTER V (five) of CHAPTER 11**

In August 2019, the Small Business Reorganization Act of 2019 (“SBRA”) added Subchapter V to Chapter 11 of the Bankruptcy Code.

Subchapter V, which took effect in February 2020, is reserved exclusively for the “**small business debtor**” with the purpose of expediting bankruptcy procedure and economically resolving small business bankruptcy cases. 11 U.S.C. §§101(51D)

Subchapter V retains many of the advantages of a traditional Chapter 11 case without the unnecessary procedural burdens and costs. It seeks to increase the debtor's ability to negotiate a successful reorganization and retain control of the business and increase oversight and ensure a quick reorganization.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

New Developments:

### **SUBCHAPTER V (five) of CHAPTER 11**

A Subchapter V case contrasts from a traditional Chapter 11 in several key aspects:

- (i) Limited to “small business debtors”**
- (ii) Retention of Control & Differing Role of Trustee**
- (iii) Reduced Creditor Involvement**
- (iv) Streamlined Procedures & Reduced Costs**
- (v) Retention of Equity (i.e., Ameliorating the “Absolute Priority Rule”)**

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### **Subchapter V: Limited to “small business debtors”**

To qualify for subchapter V, a debtor (whether an entity or an individual) must be engaged in commercial or business activities other than having its principal business activity be owning single-asset real estate. The debtor’s aggregate debts (including any noncontingent, liquidated, secured, and unsecured debts) must **be less than \$7,500,000 and at least 50% of that debt must have arisen from commercial or business activities**, excluding debts owed to insiders or affiliates.

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Note the CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, Public Law No. 116-136 (“CARES Act”) and also the COVID-19 BANKRUPTCY RELIEF EXTENSION ACT OF 2021, Public Law 117-5, enacted March 27, 2021

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### **Subchapter V: Retention of Control/Trustee**

- The small business debtor remains in control of the underlying business enterprise throughout the proceeding.
- However, a “subchapter V trustee” will be appointed to supervise and control estate funds and facilitate the development of a consensual plan.

### **Subchapter V: Reduced Creditor Involvement**

- There is no automatic appointment of an official committee of unsecured creditors.
- Only the small business debtor may propose a plan of reorganization.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### **Subchapter V: Streamlined Procedures and Reduced Costs/Expenses**

- There is no quarterly fees paid to the Office of the U.S. Trustee throughout the lifetime of the case.
- The paperwork requirements are lessened.
- The procedural requirements for approving a plan of reorganization are lessened.
- The financial disclosure requirements are lessened.
- Likelihood of adversarial, contested fights over reorganization plans is reduced.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### Subchapter V: Retention of Equity

(*ameliorating the “Absolute Priority Rule”*)

The owner of the “small business debtor” **may retain their equity** in the business in a confirmed Subchapter V of Chapter 11 plan of reorganization **so long as the reorganization plan** confirmed by the Bankruptcy Court:

- ***Does not discriminate unfairly***; and
- ***Is fair and equitable with respect to each class of claim or interest*** in the debtor.

# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### **Subchapter V: *WHY DO WE CARE?***

Financial uncertainty and bankruptcy affect inheritance. Depending upon timing, an inheritance may be depleted to satisfy pre-bankruptcy debt. Spendthrift protections are of dubious value depending upon when and how distributions are to be made. And most estate and financial plans have assumed that Chapter 11 bankruptcy (as well as Chapter 7 liquidation) was automatically a fatal blow to the long-term family legacies that many benefactors seek via sophisticated estate planning techniques. Hence, extensive and complicated effort is often made to separate individuals from ownership as well as business operations, which tends to be expensive, unwieldy, and difficult to properly maintain, thereby often becoming ineffectual.



# Bankruptcy Law

## BANKRUPTCY PROCEEDINGS

### **Subchapter V: EFFECTS UPON ESTATE & FINANCIAL PLANNING:**

Consequently, it has generally been assumed that businesses (both small and large) should not seek Chapter 11 reorganization, especially when there are aggressive creditors who would likely oppose the reorganization plan. Why? The Absolute Priority Rule as well as the other burdens associated with Chapter 11 proceedings.

With the enactment of Subchapter V of Chapter 11, certain debtors that qualify as a “small business” under the applicable rules **may now effectively and economically utilize the benefits of Chapter 11 to save valuable small business enterprises**, including eliminating debt and rejecting unprofitable contracts, **without losing control or ownership of the business.**

***This encourages financial risk. Planning might accommodate the changed landscape.***

# Debtor-Creditor Relations

## ENFORCEMENT OF JUDGMENT

- ❖ California's Enforcement of Judgments Law (**EJL**) is Title 9, Part 2 of the Code of Civil Procedure, enacted at Code of Civ. Proc. §§680.010-724.260.
  - See Code of Civ. Proc. §680.010 ("This title shall be known and may be cited as the Enforcement of Judgments Law.").
- ❖ A "**judgment**" is a decree or decision of a court or judge. See Code of Civ. Proc. 680.230.
- ❖ "**Money judgment**" means that part of a judgment that "requires the payment of money." Code of Civ. Proc. §680.270.

# Debtor-Creditor Relations

## GOAL

- ❖ The goal is **payment**, i.e., collecting the debt or amount owed.
  - Unsecured creditors, with rare exception, are not permitted self-help remedies.
  - There is no longer any “debtor’s prison.”
  - Judgment is simply the means to the end, and judgment enforcement is the process of doing so.
  - Warning -- the state and federal governments often use different rules.
- ❖ Satisfaction of Judgment – the creditor obligated to extinguish the judgment through formal process (usually an affidavit filed with the court which entered judgment, i.e., "Satisfaction") when a money judgment is paid.

# Debtor-Creditor Relations

## WHO IS INVOLVED?

- ❖ **“Judgment Creditor”** means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record.
  - See Code of Civ. Proc. §680.240
  
- ❖ **“Judgment Debtor”** means the person against whom a judgment is rendered.
  - See Code of Civ. Proc. §680.250

# Debtor-Creditor Relations

## EXECUTION

**"Execution"** is the process by which money judgments are enforced. Code of Civ. Proc. §699.010.

- "Levy" (seizure) of assets through the delivery of Writ of Execution by court-appointed levying officers;
  - Regardless of whether in the hands of a judgment debtor or someone else (third person).
- Selling or disposing of the seized assets.
- Applying the net proceeds towards payment of the balance due on the money judgment.
- Resulting in satisfaction of the judgment.

Detailed procedures are set forth in the EJI. See Code of Civ. Proc. §§699.010-701.830.

# Debtor-Creditor Relations

## PROPERTY SUBJECT TO ENFORCEMENT OF JUDGMENT

- ❖ "Except as otherwise provided by law, all **property** of the judgment debtor is subject to enforcement of a money judgment." Code of Civ. Proc. §695.010(a).
- ❖ "Except as otherwise provided by law, **all property** that is subject to enforcement of a money judgment pursuant to [Code of Civ. §695.010, see above] is subject to levy under a writ of execution to satisfy a money judgment." Code of Civ. Proc. §699.710.
  - There are exceptions:
    - Property held in a trust relationship.
    - Property held in a conservatorship estate.
    - Certain types of regulated property (ABC license, etc.).

# Debtor-Creditor Relations

## EXEMPTIONS

The judgment enforcement laws of the State of California and the bankruptcy laws of the United States both offer debtors the opportunity to **exempt certain property** from creditors. The fundamental purpose behind these exemptions is to ensure that the debtor is not left destitute and dependent upon the public purse after the debtor's assets are used to satisfy creditor claims.

- ❖ California (Code of Civ. Proc. §§704.010 - 704.850)
  - Available even if assets are held in trust: if the trustor retains a *power to revoke*, in whole or in part, then the property held in trust is subject to creditor claims and consequently the trustor may directly claim exemptions. Code of Civ. Proc. §§18200-18201.
- ❖ Exemptions available in bankruptcy cases (11 U.S.C. §522; Code of Civ. Proc. §703.130)
  - CAUTION: The homestead exemption available for debtors in bankruptcy cases is *not identical*. The debtor may either choose California's exemptions, or, alternatively, a different set of exemptions that are only available in bankruptcy cases pursuant to Code of Civ. Proc. §§703.140.

# Debtor-Creditor Relations

## THE “HOMESTEAD” EXEMPTION

- The California legislature enacted homestead exemption laws “to protect the sanctity of the family home against a loss caused by a forced sale by creditors...[and] ensure that insolvent debtors and their families are not rendered homeless by virtue of an involuntary sale of the residential property they occupy.” Hence, there is a strong public policy toward adopting “a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor.” *Amin v. Khazindar* (2003) 112 Cal.App.4th 582, 588.
- **A judgment debtor may obtain the benefits of a homestead exemption by one of the two available statutory methods:**
  1. The “**declared homestead**” exemption pursuant to the recording of a signed declaration of homestead [see Code of Civ. Proc. §§704.910 - 704.995]
  2. By application of law (the “**automatic homestead**” exemption) automatically by the enforcement of a judicial lien [see Code of Civ. Proc. §§704.710 - 704.850]



# Debtor-Creditor Relations

## THE “HOMESTEAD” EXEMPTION DOES NOT DIRECTLY IMPAIR CONSENSUAL ENCUMBRANCES

The homestead exemption is designed to protect the value of the homestead from judgment liens, but it does not impair the right of a homestead owner to encumber the homestead with consensual liens, such as a deed of trust securing a promissory note executed by the homestead owner. *Smith v. James A. Merrill, Inc.* (1998) 64 Cal.App.4th 94, 102.

Other than as permitted by federal law in bankruptcy proceedings, California’s homestead exemptions apply to shelter equity from involuntary encumbrances – not from consensual liens.

# Debtor-Creditor Relations

## MECHANICS OF THE “DECLARED HOMESTEAD” EXEMPTION

- Standard form **declaration, signed** under penalty of perjury, that must be **recorded** in the official title records of the county in which the debtor(s) hold title to a dwelling.
- The declared homestead is expressly limited to an “interest in real property (whether present or future, vested or contingent, legal or equitable) that is a '**dwelling**' as defined in [Code of Civ. Proc.] §704.710, **but does not include a *leasehold estate with an unexpired term of less than two years* or the interest of the beneficiary of a trust.**” Code of Civ. Proc. §704.910(c).
- The recorded declared homestead limits the extent to which a **subsequently-recorded, involuntary judicial lien** will attach to the declared homestead.
  - This affects both judgment liens as well as attachment liens. See Code Civ. Proc. §704.950 (enforcement of judgment lien) and Code of Civ. Proc. § 487.025(b) (enforcement of attachment lien).

# Debtor-Creditor Relations

## **SURPLUS VALUE PROTECTED BY THE “DECLARED HOMESTEAD”**

When there is a declared homestead, a judgment lien will attach only to the **surplus value** of the property.

- The “surplus value” is the amount of the homestead exemption set forth in Code of Civ. Proc. §704.730, plus the amount of all liens and encumbrances on the declared homestead at the time the abstract of judgment is recorded to create the judgment lien.
- Proceeds from the voluntary sale of a declared homestead are also exempt in the amount of the homestead exemption for a period of six months after the date of the sale. Code of Civ. Proc. § 704.960(a).

# Debtor-Creditor Relations

## PROBLEMS WITH THE “DECLARED HOMESTEAD” EXEMPTION

- The declared homestead does not impair a judgment lien created under Code of Civ. Proc. §697.320 for **child, family, or spousal support**. Code of Civ. Proc. §704.950(b).
- The declared homestead does not impair judgment liens recorded **before** the recording the declaration. In other words, a judgment lien does not attach to a declared homestead when the declaration was recorded before the lien.
- The amount of a declared homestead **does not increase in value** upon amendment to the declared homestead statutes if a judgment lien has been already recorded. Code of Civ. Proc. §704.965.

# Debtor-Creditor Relations

## CONFLICT IN AUTHORITIES

Interesting conflict between federal and state authorities – what if there is no surplus equity in existence at the time of the recording the declared homestead, but the property then appreciates in value and/or other liens are reduced, thereby generating surplus equity?

- In the Ninth Circuit, no attachment to surplus equity.
  - *In re Jones* (9th Cir. 1997) 105 F.3d 923
- Under California authorities, the judgment lien does attach to subsequently generated surplus equity.
  - *Teaman v. Wilkinson* (1997) 55 Cal.App.4th 1259
  - *Smith v. James A. Merrill, Inc.* (1998) 64 Cal.App.4th 94

# Debtor-Creditor Relations

## THE “AUTOMATIC HOMESTEAD” EXEMPTION

- The automatic homestead exemption protects a debtor from **forced judicial sales** of a debtor's dwelling.
  - “The filing of a bankruptcy petition constitutes a forced sale for purposes of the automatic homestead exemption.” *In re Diaz* (B.A.P. 9th Cir. 2016) 547 B.R. 329, 334.
- The automatic homestead defines a homestead for these purposes as “the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.” Code of Civ. Proc. § 704.710(c).

# Debtor-Creditor Relations

## EXTENT OF THE “AUTOMATIC HOMESTEAD” PROTECTION

*In re Nolan* (Bankr. C.D.Cal. July 21, 2020) 618 B.R. 860.

- The bankruptcy court noted that, while the declared homestead statute explicitly **excludes** the interest of a debtor-beneficiary in a trust, the automatic homestead does not.
- In *Nolan*, the Bankruptcy Court determined that the automatic homestead exemption does not limit the type of interest that may be protected, and therefore it may apply to any interest constituting a debtor’s dwelling that would be reachable directly or indirectly by action of a judgment creditor.
- Any possessory interest in a dwelling may be subject to the automatic homestead exemption, **such as life estates, unrecorded beneficial interests, leaseholds, and even those with colorable claims to ownership despite pre-petition lien foreclosure sales – so long as there is a pre-lien, continuous residency in the dwelling and the debtor’s interest therein could directly or indirectly be subject to creditor action.** *Nolan*, 618 B.R. at 868-869.

# Debtor-Creditor Relations

## EXEMPTION AMOUNT (BOTH DECLARED & AUTOMATIC)

The amount of the homestead exemption has increased and expanded over the years by legislative changes. Through the last day of December 31, 2020, the California homestead exemption amount was (as set forth in Code of Civ. Proc. §703.730) the following:

- **\$75,000** if you are a single homeowner
- **\$100,000** if you live with a dependent family member; and
- **\$175,000** if you meet certain family, age, income, and other qualifications (blind, disabled, senior (elder), low income, etc.).

This applies as a family unit, hence spouses are entitled to a single homestead exemption amount. Code of Civ. Proc. §703.110.

***This is not particularly helpful and, consequently, the homestead exemption (whether voluntary or involuntary) has not been a traditional technique applied in wealth transfer techniques for sophisticated estate and financial planning.***

***That has changed...***



# Debtor-Creditor Relations

## EXEMPTION AMOUNT (BOTH DECLARED & AUTOMATIC)

As of **January 1, 2021**, the amounts have increased:

Code of Civ. Proc. §704.730. Amount of Homestead Exemption.

a. The amount of the homestead exemption is the **greater** of the following:

1. The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, **not to exceed six hundred thousand dollars (\$600,000)**.

[ *or* ]

2. Three hundred thousand dollars (\$300,000).

b. The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

# Debtor-Creditor Relations

## EXEMPTION AMOUNT (BOTH DECLARED & AUTOMATIC)

California Association of Realtors (CAR) public-access database of countywide **median sale price for a single-family home** in the calendar year prior to the calendar year: <https://car.sharefile.com/share/view/s0c02663a5c54e23a>

**Los Angeles County:** 2019 (low \$539,480 to high \$663,110 = median > \$600,000)

2020 (low \$546,930 to high \$747,380 = median > \$600,000)

**Orange County:** 2019 (low \$792,500 to high \$845,000 = median > \$600,000)

2020 (low \$880,000 to high \$950,000 = median > \$600,000)

**Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties have the maximum exemption amount (\$600,000) for 2021 and likely in the future.** The only projected locations in Southern California that will not have \$600,000 for the homestead exemption in 2021 will be Riverside, San Bernardino, and Imperial Counties.

*Marin County -- lowest in 2018-2020 was \$1,172,940 and highest was \$1,545,500*

*Kern County -- lowest in 2018-2020 was \$235,250 and highest was \$300,000*

# Debtor-Creditor Relations

## EXEMPTION AMOUNT (ALTERNATIVE IN BANKRUPTCY)

The alternative exemption available in California bankruptcy proceedings:

Code of Civ. Proc. §703.140(b)(1) [*periodically adjusted*]:

The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

This alternative is primarily chosen by people filing bankruptcy who are either not homeowners or have no equity in their homes, as the amount of the exemption is a "wildcard" that may be applied to any property, not simply dwellings.

# Debtor-Creditor Relations

## HOMESTEAD EXEMPTIONS

### **EFFECTS UPON ESTATE & FINANCIAL PLANNING:**

Until recently, it has generally been assumed that the homestead exemption would not play a significant role in sophisticated estate and financial planning. Often the plans and structures were or are deliberately designed to obfuscate the interests of beneficiaries in valuable residential real property.

With the enactment of California's revised homestead rules, those who plan estates (and fiduciaries who act on behalf of beneficiaries) should revisit their plan structures to see if heightened exemption values might benefit those persons whose entitlement to exercise possessory interests in dwellings has been restricted through traditional planning techniques.

***Planning should accommodate the ability to shelter significant equity by and through the appropriate use of the homestead exemption, and to do so with respect to interests in property that may fall within the expanded definition of "dwelling."***

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