



Interesting New Developments in Judgment Enforcement Law for Trust and Estate Practitioners: *“There’s No Place Like Home(stead)!”*

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HOMESTEAD

- Why are we talking about homestead?
- Is homestead traditionally a part of sophisticated estate planning or administrative techniques?

Property Subject to the Enforcement of a Money Judgment

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.

Property Subject to the Enforcement of a Money Judgment

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

Property Subject to the Enforcement of a Money Judgment

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.

Property Subject to the Enforcement of a Money Judgment

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.).

EXEMPTIONS - INTRODUCTION

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.

EXEMPTIONS – HOMESTEAD (CALIFORNIA)

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.
 - “The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.” Cal. Const. Art. XX, § 1.5

EXEMPTIONS – HOMESTEAD (CALIFORNIA)

THE HOMESTEAD EXEMPTION

- A judgment debtor may obtain the benefits of a homestead exemption applicable for the family home (“*Dwelling*”) by one (1) of the two (2) 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]

EXEMPTIONS – HOMESTEAD (CALIFORNIA)

CALIFORNIA'S 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

RESULT: 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.

HOMESTEAD EXEMPTION AMOUNT

HOMESTEAD 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...

HOMESTEAD EXEMPTION AMOUNT – WHAT'S NEW?

HOMESTEAD 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.

HOMESTEAD EXEMPTION AMOUNT – WHAT'S NEW?

HOMESTEAD 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

DECLARED HOMESTEADS

MECHANICS OF THE “DECLARED HOMESTEAD” EXEMPTION

- The declared homestead exemption is designed to shelter and protect the equity that may exist in a debtor’s dwelling.
- 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).

DECLARED HOMESTEADS

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 attaching to or securing the declared homestead, as of the date that the Abstract of Judgment or instrument 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).

DECLARED HOMESTEADS

PROBLEMS WITH THE “DECLARED HOMESTEAD” EXEMPTION

1. 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).
2. 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.
3. 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.

DECLARED HOMESTEADS

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

AUTOMATIC HOMESTEADS

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).

AUTOMATIC HOMESTEADS – WHAT'S NEW?

EXTENT OF THE “AUTOMATIC HOMESTEAD” PROTECTION

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

- The Debtor was the trustee of his father’s trust, which had become irrevocable upon the father’s death. The trust mandated (“shall divide”) that the trustee divide the assets and distribute them to the beneficiaries entitled to receive those assets—the Debtor and his sibling. After the trust became irrevocable, but before distribution of the trust assets, the Debtor filed for bankruptcy relief under Chapter 7. Conflict subsequently arose with the Chapter 7 Trustee.
- Here, the Debtor was entitled to assert an automatic homestead exemption in property even though his interest in title to the property was as a beneficiary of an irrevocable trust, because the Debtor met his burden to demonstrate that his beneficial interest, coupled with his actual residency in the property, was reachable (indirectly and hypothetically) by a judgment creditor.

AUTOMATIC HOMESTEADS – WHAT'S NEW?

EXTENT OF THE “AUTOMATIC HOMESTEAD” PROTECTION

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

- No direct case precedent from the California Supreme Court or Courts of Appeal.
- **Most practitioners would have concluded that a homestead is available to protect a debtor's interest in property only to the extent that the debtor holds title (either directly or indirectly through a revocable trust).**
- This trust was irrevocable and was ready for distribution to the beneficiaries. But this case arose in a dispute between a debtor-beneficiary in a Chapter 7 liquidation, not a dispute concerning the internal affairs of a trust in Probate Court. The bankruptcy trustee, standing as a hypothetical lien creditor pursuant to 11 U.S.C. §544, may reach a debtor's beneficial interests by the procedure set forth in Code of Civil Procedure §709.010.

AUTOMATIC HOMESTEADS – WHAT'S NEW?

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. Thus, any possessory interest in a dwelling may be subject to the automatic homestead exemption, including **life estates, unrecorded beneficial interests, leaseholds, and even those with colorable claims to ownership despite pre-petition lien foreclosure sales, so long as:**
 - 1. There is a pre-lien, continuous residency in the dwelling; and**
 - 2. The debtor’s interest therein could directly or indirectly be subject to creditor action.**

(*Nolan*, 618 B.R. at 868-869)

THE HOMESTEAD EXEMPTION



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."

There's No Place Like Home(stead)!

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