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A Declaration of Homestead is a pivotal legal document for homeowners. It formalizes and acknowledges a homeowner's rights under homestead protection laws, providing a shield from certain creditor claims. Why is a Declaration of Homestead Important? A Homestead Declaration is crucial for safeguarding a homeowner's equity in their primary residence. When properly filed, it activates legal protections against forced sales to satisfy unsecured debts. Here's how it works: Enhanced Protection: Protects a specified amount of equity in a principal residence from creditors (excluding tax liens, mortgages, and government claims). Legal Shield: Once declared and filed, the homeowner's rights are prominently recorded in public records, making it clear to creditors the extent of their protections. Peace of Mind: Offers homeowners the comfort of knowing that despite financial downturns or boycotts by creditors, their family home is secure. An Inspiring Example of Declaration of Homestead Consider the story of Mary and John. When they purchased their family home in a bustling city, they were advised to file a Declaration of Homestead. Understanding its benefits, they promptly had their lawyer draft the declaration and filed it in the local county records office. This process wasn't just a formality; it granted them significant legal reinforcement against potential adversities, such as unsecured creditors attempting to claim their property as repayment for debts. When the unexpected struck, and an economic setback led to debts they couldn't immediately settle, their Homestead Declaration ensured their primary residence remained intact. The equity shielded by their declaration meant they did not lose their home, preserving their family stability and financial future. How to file a Declaration of Homestead Consult Legal Counsel: Though not always necessary, seeking guidance from a legal expert can help you understand state-specific requirements and make the process smoother. Draft the Declaration: You can either draft the document yourself using state templates or have it professionally done to ensure all particularities are meticulously addressed. File the Document: Submit the completed document to your county clerk or recorder's office. A nominal fee is typically required for this service. Frequently Asked Questions 1. Is a Homestead Declaration the same in every state? No, homestead laws can vary significantly from state to state. It's important to consult local statutes or a legal professional in your jurisdiction. 2. Where do I file my Declaration of Homestead? The Declaration of Homestead should be filed with your local county recorder's office or clerk where the property is located. 3. How much equity does the Homestead Declaration protect? The equity amount protected differs based on state laws. Some states provide a variable amount depending on circumstances such as age, disability, and family status. 4. Does the Declaration of Homestead protect against mortgage foreclosure? No, the Declaration of Homestead does not protect against foreclosure for default on a mortgage or other secured debts such as tax liens. By taking proactive steps to declare your homestead, you safeguard one of your most valuable assets—your home—while ensuring greater peace of mind for the future. Related Terms: Homestead exemption, Creditor protection, Property ownership laws. Click here for printer friendly PDF formatJames M. Lynch reviews a 2021 Appeals Court decision that explores the limits of homestead protections in Massachusetts. In 1851, the Massachusetts Legislature passed the "Massachusetts Homestead Act", G.L.c. 188, §§ 1-14, a humanely inspired piece of legislation designed to protect families from losing their homes to creditors. In simple terms, the act protects the equity in an individual's home up to the first \$500,000 from being seized by creditors for debts including civil liability arising out of personal injury claims.The Act was last revised in 2010, when the legislature increased the protection limit from \$300,000 to \$500,000 and introduced several additional protections, such as automatic homestead protection of up to \$125,000 when it comes to filing a formal declaration of homestead at the Registry of Deeds.What is a Declaration of Homestead? Generally, a homestead declaration is a legal document that can be filed and claimed with the state. This document claims that a specific house is the owner's principal dwelling or homestead. A house registered as someone's declaration of homestead will have certain protections against creditors.A declaration of Homestead may be recorded in the Registry of Deeds for the protection of homeowners, or their families who actually live in the protected property, for the \$35 cost of the recording fee. The declaration serves as a notice that the owner(s) are protected from creditors up to an aggregate total of \$500,000 if the owners are not disabled or 62 years of age or older (in which case the \$500,000 protection extends to each individual owner). The protection will survive the sale of the property to third parties and will apply to the proceeds of the sale so long as the individual either acquires a new home or for one (1) year after the date of sale, whichever occurs sooner.Exceptions to Homestead Protection Create Risk Property May Sold or Auctioned to Pay DebtsHomestead protections generally do not extend to "secured" transactions in which the homeowner agrees to give her or her property to a lender if the homeowner fails to pay his or her loan. Other exceptions to the Homestead Act's protections include tax liens, orders of the Probate & Family Court pursuant to the division of assets or to enforce child support, debts acquired prior to the homestead, and certain court judgments for liability arising out of fraud, mistake, duress, undue influence or lack of capacity. Homestead protection also does not include vacation or investment homes (i.e. homes that are not a primary residence) or equity in a residence that exceeds \$500,000.Debts and liabilities that are not subject to Homestead protection can make homeowners vulnerable to creditors, who can seek a court-ordered auction of the homeowner's property in order to pay the debt.Massachusetts Appeals Court Case Demonstrates Limits of Homestead Act In a recently decided opinion, the Massachusetts Appeals Court reviewed how the homestead exemption from creditor attachment works in practice. In Hartog, Baker & Hand, A.P.C. v. Thomas P. Clarke (2021), the California creditor law firm (HBH) held a \$342,184.31 judgment against a California homeowner. When the homeowner failed to satisfy the judgment, HBH commenced an enforcement action in Massachusetts in which summary judgment entered in favor of HBH and an execution in the amount of more than \$390,000 issued. HBH delivered the execution to the Barnstable County deputy sheriff, who recorded a levy on the execution against the homeowner's property, which the homeowner owned solely, and, at HBH's request, suspended any further action beyond serving the homeowner with the notice of levy. The homeowner brought a motion to dissolve or terminate the levy, citing the \$500,000 protection afforded by his duly recorded homestead declaration three years earlier.The tax-assessed value of the homeowner's property was \$391,000 and it had an unpaid mortgage balance of \$99,000. Accordingly, the homeowner argued that the very existence of the lien created a cloud on his title because it impacted his ability to sell or refinance his mortgage and that the Act gave him complete protection against such encumbrances. The Appeals Court disagreed that the Act was intended to provide such protection. The Court reasoned that the purpose of the Act was to protect families from creditors' demands so that, notwithstanding their outstanding debts, families can remain in their homes.The Court found, that by immediate suspension of its lien, HBH had effectively protected the homeowner's homestead estate, and the protection of the homestead-protected person's rights to sell or refinance his/her home are not the purpose of the Act. Lastly, the Court observed that, by recording its execution, HBH had done nothing more than to fix its priority relative to other subsequent creditors and that HBH was not precluded from doing so by the Act. Thus, the execution will remain recorded against the title.Homestead Does Not Prevent Creditors from Filing Lien on Protected PropertyAt its core, the HBC v. Clarke Decision clarified that the Homestead Act does not prevent a creditor from filing a lien on a debtors' property through the Registry of Deeds. Where the creditor voluntarily suspended the lien, the Court found that the homeowner was not at risk of losing the property; the creditor was not attempting to force the sale of the home or collect the debt.In its decision, the Court acknowledged that the existence of the lien could complicate the homeowner's efforts to sell or refinance the home at some future date.[Assuming, without deciding, that [the homeowner] will encounter the difficulties he alleges, we do not agree that public policy or the purpose of the statute is to protect [the homeowner's] ability to sell or refinance without inconvenience or cost. Rather, the purpose of the act, and the reason for construing such laws liberally, is to protect families from creditors' demands so that, notwithstanding outstanding debts, families can remain in their homes.The Court further noted that "if HBH attempts to levy upon execution, [the homeowner] may appropriately seek judicial intervention at that point." Left unaddressed by the Court is exactly what steps the homeowner might be required to take in order to convey clean title to a future seller as part of a future sale. Indeed, the Court's decision makes clear that the purpose of the Act is to prevent homeowners from being forced out of their homes by creditors; the Act does not protect a homeowner's ability to sell or refinance their property without additional cost or inconvenience resulting from a creditor's lien.Legislature Should Consider Increasing Homestead Protections in MassachusettsIn general, a homeowner is not in any danger of having to deal with a creditor as long as 1) he or his family retains the property as a primary residence; 2) his taxes are paid (federal, state and local taxes assessments are not defeated by the Homestead Act); and 3) the equity in the home remains under \$500,000. Of course, it is easy to see how the \$500,000 exemption, which seemed generous when the Legislature increased it from \$300,000 in 2010, seems much smaller these days.From 2020 to 2021, the median price of a single-family home in the metro Boston area increased by 9%, even while the number of active listings have shrunk by 8%. As of February 2021, the median price of a single-family home in Massachusetts was \$445,000. As the average price of a home in Massachusetts approaches \$500,000, it may be time for the Legislature to revisit the homestead protection limit. A failure by the legislature to increase the homestead protection beyond the current \$500,000 limit is likely to result in an increasing number of homeowners being subject to forced sale due to debts.About the Author: James M. Lynch is the managing partner at Lynch & Owens, located in Hingham, Massachusetts, and in Sandwich, Massachusetts. He is also a mediator and conciliator at South Shore Divorce Mediation. Schedule a consultation with James M. Lynch today at (781) 253-2049 or send him an email A declaration of homestead is a legal document filed with the state to protect the primary residence from specific creditors when faced with financial distress. It specifies a homestead exemption, a form of security for a specific amount of the home's worth and equity against creditors and other legal settlements. This blog post will discuss in detail the declaration of homestead, its purpose, essential requirements during homestead registration, and more. Key Functions of the Declaration of Homestead In the real estate and property ownership domain, a legal document known as the declaration of homestead offers homeowners different protections and advantages. Below are some key functions of a declaration of homestead. Familiarizing with the Agreement: This document establishes a homestead exemption, which safeguards a portion of the home's equity from creditor claims. It is important to note that the scope and limitations of this document vary across jurisdictions, necessitating homeowners to be familiar with the specific regulations applicable to their location. Protecting against Creditor Claims: The main objective of a declaration of homestead is to shield a homeowner's primary residence from creditor claims. Moreover, this declaration prevents creditors from compelling the home sale to settle outstanding debts in case of bankruptcy or unforeseen debts. By preserving the equity in their property, homeowners can secure a place to live and maintain stability during challenging times. Preserving Home Equity: A key benefit of a declaration of homestead is preserving home equity. Homeowners invest considerable financial resources in their properties, which appreciate over time. By filing a declaration, individuals can protect a portion of their home's equity, ensuring it remains unaffected by creditor claims. This safeguard provides peace of mind and allows homeowners to build wealth through homeownership. Safeguarding the Family: Homestead laws hold sentimental value and serve as a sanctuary. A declaration of homestead protects the family home from being seized or sold due to the family liabilities of individual family members. This legal protection ensures that the family can continue to reside in their beloved home, fostering stability and preserving their emotional well-being. Considering the Impact on Estate Planning: A declaration of homestead plays a vital role in estate planning. By safeguarding a portion of the home's equity, it helps guarantee that the homeowner's heirs have a secure place to live after their passing. Without this protection, creditors may claim the home's equity to settle debts, potentially leaving the family without a residence or causing major financial strain. Thus, incorporating a declaration of homestead in an estate plan provides long-term security for loved ones. Encouraging Responsible Homeownership: A declaration of homestead encourages responsible homeownership by providing additional protection for individuals and families. It emphasizes that owning a home is more than just a financial investment—it is an integral part of an individual's life and well-being. Furthermore, knowing that their home is safeguarded against unforeseen financial circumstances motivates homeowners to take pride in their property, fulfill regular mortgage payments, and build equity over time. Essential Requirements for Filing a Declaration of Homestead You must fulfill certain conditions to be eligible for filing a declaration of homestead. Initially, the property must serve as the homeowner's primary residence, where they reside for an important part of the year, and establish their legal and personal associations. In addition, the homeowner must possess legal ownership of the property, either through holding the title or having a vested interest as a joint tenant or tenant in common. Once eligibility is confirmed, you must fulfill specific obligations to successfully file a declaration of homestead. Although the process may differ by jurisdiction, the general requirements involved are as follows: Obtaining the Official Form: Reach out to the local county clerk's office, courthouse, or the relevant government agency to get the official declaration of homestead form. It may also be accessible on the official government website. Completing the Form: Accurately and comprehensively fill out the form, providing the necessary details such as the homeowner's name, address, property description, and any other specified information. Ensure all required fields are correctly completed to avoid potential complications or processing delays. Notarizing: A notary public must authenticate the declaration of homestead in many jurisdictions. It involves signing the form in the presence of a notary public, who will affix their seal and stamp to validate the document. Notarization guarantees the declaration's authenticity and legality. Filing and Associated Fees: Submit the completed and notarized declaration of homestead to the appropriate government agency responsible for processing such documents. Depending on the jurisdiction, there may be a filing fee associated with the submission. Ensure timely fee payment and adherence to the specified filing timeframe to avoid penalties or rejection. Notifying: After filing the declaration of homestead, certain jurisdictions may require homeowners to notify interested parties such as creditors or lenders. This notification is a legal notice to potential creditors, ensuring they know the homeowner's protected homestead status. Key Terms for the Declaration of Homestead Equity in Property: Refers to the net value of a homeowner's property after deducting any outstanding mortgages or liens. It signifies the homeowner's stake in the property. Creditor: A creditor is an individual or entity to whom another person or organization owes money. Financial Difficulty: It refers to a circumstance wherein an individual or household faces substantial financial challenges, such as job loss, medical expenses, or overwhelming debt, which hinders them from meeting their financial obligations. Exemption: Exemption is a legal provision that enables individuals to safeguard certain assets from being seized or liquidated by creditors. The declaration of homestead grants an exemption for a specific amount of equity in one's home. Bankruptcy: A legal process in which an individual or business declares its inability to repay debts. Also, a declaration of homestead can protect a portion of the homeowner's equity in a bankruptcy proceeding. Property Lien: A legal claim or encumbrance on property collateral for a debt. Creditors with a lien have the right to seize or sell the property to satisfy the owed debt. Primary Residence: Primary residence is the home where an individual resides and considers their permanent home. Declarations of homestead typically apply solely to primary residences and not secondary or investment properties. Homestead Exemption: The specific amount of home equity safeguarded under a declaration of homestead. The exemption amount varies by state and is often subject to certain limitations or conditions. Automatic Protection: In certain jurisdictions, filing a declaration of homestead provides a predetermined level of protection for the homeowner's equity, eliminating the need for additional legal action. Final Thoughts on the Declaration of Homestead The importance of a declaration of homestead cannot be overstated, as it offers homeowners substantial safeguards and advantages. When homeowners file this paperwork, they can protect their primary residence from creditors and retain a portion of their equity, ensuring their home's stability and security. Also, it is essential to remain familiar with the homestead exemption laws specific to your state and seek guidance from legal experts to guarantee adherence and safeguarding. If you want free pricing proposals from vetted lawyers that are 60% less than typical law firms, Click here to get started. By comparing multiple proposals for free, you can save the time and stress of finding a quality lawyer for your business needs. ContractsCounsel is not a law firm, and this post should not be considered and does not contain legal advice. To ensure the information and advice in this post are correct, sufficient, and appropriate for your situation, please consult a licensed attorney. Also, using or accessing ContractsCounsel's site does not create an attorney-client relationship between you and ContractsCounsel. Page 2 How It Works Provide details on your needs. Get bids to compare. Hire and get started. A homestead is a house, outbuildings and adjoining land owned by a person or a family and used as a residence . A homestead declaration is a form filed with the county recorder's office that records a person's homestead exemption ; which is a legal provision that prevents creditors from being paid off from a debtor's homestead, and also includes a homestead's exemption from property taxes and the death of the homeowner's spouse. In most states, homestead exemptions are automatic and homeowners are not required to record a homestead declaration in order to claim a homestead exemption. Some states, however, require recording in this procedure. Usually the homestead declaration is signed by the homeowner, notarized , and then filed in the recorder's office in the county where the home is located. See also: homestead exemption , homestead Last reviewed in March of 2022 by the Wex Definitions Team 1 Wex PROPERTY property & real estate law wex definitions property law A homestead declaration is a written statement, made under penalty of perjury, that claims a particular "dwelling" (for example, a house, condominium, boat, or similar property) as the owner's principal place of residence. When a homestead declaration is (1) signed by a homeowner, (2) acknowledged (i.e., "notarized") by a notary, and (3) "recorded," it helps to protect the home against loss to creditors. "Recorded" means that the original signed and notarized homestead declaration is filed in the clerk's or recorder's office for the county in which the home is located. A properly prepared and recorded homestead declaration immunizes the home (and the land on which it is situated) from many (but not all) legal enforcement measures. For example, if a homeowner files a petition in bankruptcy, it may be possible, because of a homestead declaration, to retain the home, or at least a portion of the equity in the property, instead of losing it to creditors. Determining when to file a Homestead Declaration is fact-based and dependent upon your situation. California has an automatic homestead exemption. Based on that, you may or may not want to file a homestead declaration. If you have little or no equity in your home, little advantage is to be gained. Should you have minimal debt, there is also no reason to file a homestead declaration. Finally, if you're planning to sell your home in the near future and have no delinquent debt problems, filing the declaration form offers no immediate advantages. If you have little equity or minimal debt, you may still be concerned for the future.While you should file the homestead form before you have a serious financial problem, creditors cannot file liens until they obtain court judgments. You'll have plenty of notice before you need to declare a homestead. Speak with a professional about this topic before making this declaration with the County offices. Besides increased protection, a Declared Homestead offers many other benefits. The protection extends to a spouse, children, and any other family members living in the home. If an unmarried individual later marries, the protections are automatically applied to the spouse. In the event of a death, a surviving spouse automatically inherits the Homestead, preserving the protection for her, her children, and any other family members living in the home. Under a new Massachusetts law, each spouse can declare a Homestead, which doubles the protection to an aggregate value of \$1,000,000. If there are more than two joint tenant owners, it may be possible to secure an additional \$250,000 under certain circumstances. Multiple tenants in common or beneficiaries of a trust, however, are protected proportionate to the percentage of the property they own. Upon divorce, the spouse residing in the home retains the Homestead. The home is shielded to some extent in the event of a sale or damage. If the home is sold, the proceeds are protected for one year or until a new home is purchased. Funds collected from insurance in the event of a fire or other damage are protected for two years or until a new home is purchased or the damaged home is reconstructed. There are certain types of creditors against whom no protection is granted, even with a Declaration of Homestead. The exemptions include mortgages, taxes, spousal and child support, and debts recorded prior to the Homestead. Any liens recorded after the Declaration, however, are subject to protection, which highlights the importance of declaring a Homestead as soon as possible. Homesteads can be terminated in a number of ways, such as a conveyance of the home to a non-family member, an subsequent declaration on another home, abandonment of the home, a recorded release of the Homestead (signed by each owner), or sometimes death. Nevertheless, other transactions can be made without terminating the Homestead, including transfers between spouses, former spouses, co-owners, trustee and beneficiary (if the property is held in a trust), and life tenant and remainderman (the person who inherits or is entitled to inherit property upon the termination of the life estate), or a party who has a future ownership interest and will inherit the property upon the death of the life tenant. Elderly Homesteads apply to individuals 62 years of age and older, protecting the home up to a value of \$500,000. If the elderly individual also has a Declared Homestead, the home is protected up to \$1,000,000. If there are two elderly individuals living in the same home, then the value protected is aggregated to \$1,000,000, whether they declare the Homestead individually or jointly. Elderly Homesteads terminate at death. For this reason, if there are other individuals living in the home who are under the age of 62, it is important to consult an attorney in order to adequately protect the home. This type of homestead also applies to disabled individuals. Although your home may be automatically protected, it may not be wise to rely on a secured value of \$125,000. The benefits of a Declared Homestead are far-reaching. Our attorneys are experienced in additional asset protection tools, estate planning, and elder law. Contact an attorney at the Baker Law Group of Massachusetts to discuss your individual circumstances and ways to protect your home. Call 781-996-5656 or 800-701-0352 A declaration of homestead is a legal document that homeowners can file to protect their primary residence from certain financial risks. Think of it as a shield that helps keep your home safe from creditors, especially if you find yourself in a tough financial spot. When you file this declaration, you are essentially telling the world that your home is your sanctuary, and you want to ensure it remains yours, even if you face debts or legal troubles. This declaration is particularly important for individuals who may be worried about losing their home due to unpaid bills or lawsuits. By filing a declaration of homestead, you can activate a homestead exemption, which can provide significant protection. This exemption can prevent creditors from seizing your home to pay off debts, giving you peace of mind during difficult times. It's like having a safety net that allows you to focus on getting back on your feet without the constant fear of losing your home. To qualify for a declaration of homestead, you typically need to meet certain criteria. Generally, you must be the owner of the property and use it as your primary residence. Each state has its own rules regarding the specifics of the declaration, including how much equity in the home is protected and the process for filing. It's important to check your local laws to understand what applies to your situation. Filing a declaration of homestead is usually a straightforward process. You'll need to fill out a form, submit it to your local government office, often the county recorder or assessor's office. Once filed, this document becomes part of the public record, making it official. It's a good idea to keep a copy for your records, as it serves as proof of your claim to the homestead exemption. In summary, a declaration of homestead is a valuable tool for homeowners looking to protect their primary residence from financial threats. By filing this document, you can secure your home and gain some relief during challenging financial times. It's a proactive step that can make a significant difference in safeguarding your most important asset. What are some examples of "declaration of homestead" in legal contracts? Mortgage Agreement: "The borrower filed a declaration of homestead to ensure their primary residence was protected from potential foreclosure." Debt Settlement Agreement: "As part of the negotiations, the debtor submitted a declaration of homestead to safeguard their home from creditor claims." Bankruptcy Filing: "In the bankruptcy petition, the individual included a declaration of homestead to claim the homestead exemption for their primary residence." Property Transfer Agreement: "The seller provided a declaration of homestead to confirm that the property being sold was their primary residence and eligible for the exemption." Divorce Settlement Agreement: "During the divorce proceedings, the couple agreed to file a declaration of homestead to protect their shared home from creditors." Estate Planning Document: "The testator included a declaration of homestead in their will to ensure their home would remain protected for their heirs." Real Estate Purchase Agreement: "The buyer filed a declaration of homestead to secure the homestead exemption for their new primary residence." Loan Modification Agreement: "As part of the loan modification process, the homeowner submitted a declaration of homestead to maintain protection for their residence." FAQs about "declaration of homestead" What is a declaration of homestead? A declaration of homestead is a legal document that protects your home from certain creditors. It shows that you live in your home and have a certain amount of equity in it. This helps protect your home from being sold to pay off debts. How do I declare homestead? You need to fill out a form and submit it to your local government office, often the county recorder or assessor's office. Once filed, this document becomes part of the public record, making it official. What are the benefits of homestead? Homestead provides a shield for your home against creditors. It can protect your home from being sold to pay off debts. It can also protect your home from being seized by creditors. How is a declaration of homestead filed? A declaration of homestead is filed by the owner of the property. It is usually filed with the county recorder or assessor's office. What are the requirements for homestead? The requirements for homestead vary by state. Generally, you need to be the owner of the property and live in it. You also need to have a certain amount of equity in the property. How is a declaration of homestead protected? A declaration of homestead is protected by law. It is a legal document that is filed with the county recorder or assessor's office. It is a public record, so it is easy to verify. What are the limitations of homestead? Homestead does not protect your home from all types of debts. It only protects your home from certain types of debts. It also does not protect your home from mortgage obligations, property taxes, or debts related to home improvement loans. It mainly protects against unsecured debts. How long does a declaration of homestead last? A declaration of homestead generally remains in effect as long as you own and occupy the home as your primary residence. However, if you sell the home or stop living there, you may need to file a new declaration for a different property. Is there a limit to how much my home can be protected under a declaration of homestead? Yes, many states set a limit on the value of the home that can be protected under a declaration of homestead. This limit varies by state, so it's important to check the specific laws in your area to understand how much protection you can receive. Can I change or revoke my declaration of homestead? Yes, you can change or revoke your declaration of homestead if your circumstances change, such as selling your home or moving. To do this, you typically need to file a new document with your local county recorder's office to update your status. The legal significance of a homestead is the privilege of a homeowner to remain in his home even in the face of creditor claims. For this reason, a homestead includes the family home, the real estate on which the family home sits, and any out buildings or appurtenances. Because the purpose of the homestead is to protect a family from homelessness, an individual cannot have more than one homestead at a time, and must live in the property to claim the homestead protection. To explore this concept, consider the following homestead definition.NounA dwelling, and the land on which it sits, used by a person or a family as their primary residence. A statute created in order for a person to request a homestead exemption to lower their property taxes, or to protect the dwelling from creditors.Origin1862 Enacted by Congress, signed into law by President Lincoln signed on January 1, 1863Originally, the Homestead Act of 1862 allowed pioneering individuals and families to stake a claim to a piece of property as their own by building a home, and staying on the land for a specified period of time. The modern homestead exemption protects a family's home from being seized, or from a forced sale, due to financial or credit issues. Although a modern homestead is still referred to by its traditional concept of a land estate, modern statutes actually create a monetary exemption from creditor action, the amount of which varies by state. Many states also allow a homestead exemption in specified amounts for tax relief in certain circumstances.As the American West opened up in the mid-1800s, wealthy land entrepreneurs made huge land grabs, clearing and farming on a scale that required the use of slave labor. In 1848, the Free Soil Party, and the newly birthed Republican Party, lobbied heavily for land in the West to be made available to independent farmers and ranchers, fearing the creation of an elitist class taking complete control of the nation's new territory. Southern Democrats of the time had vehemently fought against previous homestead laws, fearing the offer of "free land" would attract more immigrants from Europe, and bring "poor Southern whites" to claim homestead farms in the West. Once the South seceded from the Union in 1861, taking their Congressional delegates with them, the Homestead Act of 1862 was passed.The first Homestead Act to pass brought by Congress required settlers of the land to pay 25 cents per acre. President Buchanan vetoed that bill in 1860, sending it back to the drawing board. Two years later, Abraham Lincoln signed the Free Homestead Act into law and it went into effect on January 1, 1863. The Act allotted any person over the age of 21, or any head of household, 160 acres of land, as long as they lived on that land for five years, and paid just \$18 in fees, which compares to about \$550 today. Claiming a piece of land and paying the fee were not enough, however, to gain title through a homestead, as the individuals were required to build a home on the land, and to make other improvements, such as additional buildings, clearing the land for farming, and even building fences. While required improvements were not specified by law, the intent was for the person to make it obvious that he was holding and working the land.This early Homestead Act provided another way for people to stake a claim, by paying \$1.25 per acre, after they had lived on the land for a continuous six months. Civil War veteran and physician, Daniel Freeman, was the first to file a claim under the newly passed Homestead Act of 1862. Freeman's homestead farm remains in Nebraska, as the Homestead National Monument.In 1912, the amount of time a homesteader had to live on the land claimed was reduced by Congress from five to just three years, though by this time, there was little land remaining that could be claimed. As such land disappeared, the Federal Land Policy Management Act of 1976 was enacted, effectively ending homesteading in the traditional sense, except for in certain areas of Alaska, where homesteading continued for several more years. The ability to claim land by homesteading came to a complete end in the 1980s, homestead laws still strive to protect individuals and families from having their home taken from them.A Declaration of Homestead is a legal document that must be filed with the county registrar, or county assessor, declaring a home as the filer's principal residence, in order to protect it from being seized to satisfy debts. Filing a Declaration of Homestead does not provide blanket protection of the home or property against all debts. For example, if the homeowner uses the home's value as collateral for a secured loan, the lender can seize the home if the borrower defaults.A Declaration of Homestead provides only partial protection against seizure for overdue taxes, the specifics of which vary by state. Generally speaking, the homeowner is allowed to claim the amount allowed by home state law, as a protection against seizure. A Declaration of Homestead is filed by the head of household and covers all members of the family residing within the home. The specifics of a Declaration of Homestead form vary by jurisdiction, but it is generally required that the person filing the document swear to the fact that the home is indeed their primary residence. As of 2015, only four states do not extend homesteaded rights, and a handful of states that do provide these rights do not require that a Declaration of Homestead be filed.A homestead exemption protects a surviving spouse from seizure of the home by creditors or tax liens following the death of a homeowner spouse. In some states, such a homestead exemption is automatically provided for in the state's Constitution, other states require the homeowner to file a claim requesting the homestead exemption. Laws concerning homestead exemptions vary by state, but the goal of forcing people out of their homes through seizure or forced sale remains the same. Ultimately, the goal is to shelter individuals experiencing financial difficulties following the death of their spouse. Homestead laws provide that, if the individual moves out of the home, or begins living elsewhere, he is likely to lose the homestead exemption.The amount of protection offered under a homestead exemption varies greatly, with most states protecting property only up to a certain value. In cases where the home's value homestead exceeds the homestead exemption limit, a creditor can proceed with a forced sale, but the homeowner keeps the portion of the sale price that is equal to the exemption.Ned and Amy own their home in Nevada, and have filed a homestead on their property. The house is valued at \$425,000, and Nevada's homestead exemption amount is \$550,000. The couple owes debts in the amount of about \$200,000 when they file bankruptcy. Because the couple's home is protected up to a value of \$550,000, which exceeds its actual value, they will likely be able to keep their home.Ben owes \$35,000 in unsecured debt on a credit card, for which the creditor has obtained a judgment, which allows the creditor to force the sale of Ben's home to satisfy the debt. Ben claimed a homestead exemption, however, which protects his equity in the home. Because the homestead exemption is \$150,000, and Ben's home is valued at \$190,000, because there is only \$20,000 of equity value on the home, which is less than the homestead limit, the credit card company cannot force the sale of Ben's home.Many states provide for a homestead tax credit on property that has been declared a homestead. The tax credit assists the homeowner by reducing the amount of property tax owed each year. In most jurisdictions, the amount of the homestead tax credit is based on the amount of property taxes and the household's total resources, but the laws vary by state. In order for a person to claim the homestead tax credit, certain requirements must be met. For example, as of 2012 in Michigan, a person can claim the homestead tax credit if:The homestead is located in the state and he has lived in the home for at least six monthsHe owns, or is under contract to rent and occupy the home on which the taxes are leviedThe taxable value of the property is less than \$135,000The total household resources do not exceed \$50,000For example, if Bob's house is valued at \$250,000 and the state in which he lives allows him to claim a homestead tax credit of \$25,000, he would only have to pay taxes on \$225,000.In most states, a person is required to file for the property tax credit on his individual income tax return each year. In a handful of states, including Kentucky, if a person 65 and over has been approved for the homestead tax credit, it is automatically applied each year, and it is not necessary to apply each year.In some states, the homestead tax credit offered to homeowners applies to more than their property taxes. For example in Michigan, the tax credit exempts homeowners from paying the portion of their property taxes bookmarked for the operation of local schools. In New York, homesteaders over the age of 65 may also be exempt from paying school taxes.Bankruptcy - A federal court procedure by which individuals and entities can get rid of debts they are unable to pay.Contract - An agreement between two or more parties in which a promise is made to do or provide something in return for a valuable benefit.Debtor - A person who is in debt, or under a financial obligation to another.Equity - The monetary value of a property or shares in a company after all debts have been paid.Jurisdiction - the legal authority to hear legal cases and make judgments, the geographical region of authority to enforce justice.Tax Credit - An amount of taxes that a taxpayer is allowed to subtract from the amount of taxes he owes to the government.Tax Lien - A charge against a taxpayer's property due to non-payment of taxes.Unsecured Debt - A debt for which no property serves as collateral of, or guarantee for, repayment. When clients come to us wanting to protect their primary home, one of the tools we use is the Declaration of Homestead. These are the common questions we are asked about the homestead declaration, and how it can help our clients achieve their goals. A homestead refers to the Homestead Act, a specific law in Massachusetts (M.G.L.c. 188) that is intended to help homeowners protect the equity value in their primary home from creditors' claims. The Homestead Act provides for an automatic homestead protection of \$125,000 with respect to your equity in your primary home without having to take any further action. Given the value of primary homes here in Massachusetts the automatic \$125,000 is usually not enough to protect the full value of your equity in your primary home. For example, if you have a motor vehicle accident with injuries and you are deemed responsible, your principal residence will automatically be protected up to \$125,000 against recovery. (It is important for you to remember: a homestead declaration is not a substitute for appropriate home and/or vehicle insurance!) Taking the necessary steps to file a Homestead Declaration provides you with benefits beyond those that you get through the automatic protection by increasing the value of the protection of the equity value in your primary home against creditors' claims'. To understand this protection, you first have to understand what equity in your primary home is. Suppose your house is worth \$600,00 and you have a mortgage on the property for \$250,000. The equity value in your home is \$350,000. That \$350,000 is subject to creditors' claims against you. The automatic protection the Homestead Act provides will cover \$125,000, leaving \$225,000 of your equity vulnerable to creditors. However, if you file a Homestead Declaration, you can increase that protection to \$500,000, per primary residence, per family. It is important to note if you and your spouse (or joint owner of the house) are each over the age of 62 or disabled, you can each file a homestead for a total protection of \$1 million. No. There are certain creditors that the homestead declaration will not protect you from these include: failure to pay mortgage, judgments against you based on fraud, duress, undue influence or lack of capacity, failure to pay federal, state or local taxes, and failure to pay child or spousal support. The Homestead Declaration will also not protect your home's equity value from a MassHealth (Medicaid in Massachusetts) lien. Your estate planning or elder law attorney can create the document for you as part of your estate plan. Once the document is signed and notarized, your attorney can file it at the Registry of Deeds in the county where the property is located. There is a nominal fee for filing a homestead declaration, and it is worth it to obtain this unique protection for the equity you hold in your primary property. Founded by nurse attorney and with offices in Acton, Burlington, and Sudbury, Massachusetts, Generations Law Group helps families navigate the complex areas of estate planning, elder law, and probate to inform and protect loved ones of every generation. Contact Us Under California law, a homeowner is entitled to the protection of a certain amount of equity in the home that is his or her principal residence (home). The protected amount is called the "homestead exemption." Related Guide: Exemption from the Enforcement of Judgment All homeowners automatically have a homeowner's exemption, which protects part of their equity from involuntary sales (foreclosures). Recording a declaration of ownership extends this protection to voluntary sales. The protected amount was recently significantly increased to \$300,000 or the countywide median sales price for a single-family home, up to \$600,000, whichever is greater. 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 that are secured by 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 in addition to this protection, a homeowner's primary place of residence is exempt from foreclosure for judgments on consumer debt, unless the home was put up for collateral for that loan. CCP § 669.730. 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. The homestead exemption applies only when certain requirements are met. These requirements, described in California Code of Civil Procedure (CCP) Section 704.710, are: The residence must be the principal dwelling of the judgment debtor or his or her spouse. The judgment debtor, or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached. The judgment debtor and/or their spouse must reside continuously thereafter until the date of the court determination that the dwelling is a homestead. 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: A house or mobile home, together with the outbuildings and the land upon which they are situated. A boat or other waterborne vessel. A condominium, as defined in Section 783 of the Civil Code. A planned development, as defined in Section 11003 of the Business and Professions Code. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code. A community apartment project, as defined in Section 11004 of the Business and Professions Code. Under CCP Sections 704.720 – 704.730, the amount of the homestead exemption is the greater of the following: 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). Three hundred thousand dollars (\$300,000). These amounts adjust annually for inflation. By operation of law: If a homestead declaration is executed or recorded on a different property, the first declared homestead is abandoned. Additionally, abandonment is implied when the debtor establishes another dwelling as his or her personal residence, even when there is no declaration of homestead made. A party may not have two homesteads simultaneously. By declaration: A property owner can record a Declaration of Abandonment of Declared Homestead. Evaluate if you qualify for a Homestead Exemption. Determine if you are filing as an individual or as spouses. Homestead documents must be in a format that the Sacramento County Clerk/Recorder's Office will accept. Customizable templates may be downloaded from these links: Sample filled-in forms with instructions are available at the end of this Guide. The Homestead Declaration must be notarized and then filed in the Recorder's Office of the county in which the property is located. The Recorder's Office charges a recording fee (currently \$20/first page plus \$3 for additional pages). Current Sacramento county fees are available on the County Clerk/Recorder's website. The document will be recorded the same day it is received at the Recorder's Office. Building Homes and Jobs Act Fee (SB 2) There is an additional \$75 fee on mortgage refinances and other real estate transactions that are exempt from Documentary Transfer Tax, including Homestead Declarations. Some exemptions apply: Contact your county recorder's office to determine the total amount you will need to pay. Sacramento County Recorder's Office#636 American River Drive, Ste. 110Sacramento, CA 95864916-674-6334 California Jurisprudence KFC 80 C35 (Ready Reference) Vol. 37, Homesteads, California Real Estate Law and Practice KFC 140 .B45 Vol. 10, Ch. 344, Electronic Access: On the Law Library's computers, using LexisAdvance, Miller and Star California Real Estate KFC 140 .M51 Vol. 12, Ch. 43, California Legal Forms, Transaction Guide KFC 68 .C32 (Ready Reference) Vol. 12, Ch. 27B, Electronic Access: On the Law Library's computers, using LexisAdvance. California Forms of Pleading & Practice KFC 1010 .A65 C3 (Ready Reference)Vol. 25, Ch. 294 Electronic Access: On the Law Library's computers, using LexisAdvance. Samples These declarations must be notarized. The downloadable forms include a notary page. Homestead Declaration - Sample with Instructions Homestead Declaration - Spouses as Owners Homestead Declaration -- Spouses -- Sample with Instructions Declaration of Abandonment of Homestead- Sample with Instructions This material is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.