

A homestead declaration, when properly recorded, 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” (your home). In some cases, it may provide certain protections for some of the equity that may exist on the property. The protections specifically relate to involuntary creditors such as judgment liens that have attached to your property. NOTE: A recorded Declaration of Homestead can ONLY be validated by a “court of competent jurisdiction” (i.e. U.S. Bankruptcy Court). It cannot be validated by an escrow or title company.

TYPES OF HOMESTEADS

1. Dwelling House Exemption (or Automatic Homestead): Homeowners automatically receive homestead protections without need to record a notarized Homestead Declaration. The Creditor must give the Debtor special notice and opportunity to file a Dwelling House Homestead, which has the same effect as the Declared Homestead. No specific upfront action is required in order to qualify for the exemption.

2. Declared Homestead: This is a document that must contain certain statements by law, including a statement that the declared homestead is the principal dwelling of the declared homestead owner.

The amounts as of January 1, 2010, are as follows (You would not have to record a new Homestead Declaration to be entitled to any subsequent increases):

| Type | Amount |
|--------------------|--------------|
| Regular Homestead | \$75,000.00 |
| Family Homestead | \$100,000.00 |
| Age 65 or Disabled | \$175,000.00 |

If you voluntarily decide to sell your house, the equity upon sale may be protected up to the dollar amount equal to your applicable homestead exemption, for up to six months, for reinvestment in another home.

LIMITATIONS TO HOMESTEADS

Below is a list of a few of the types of creditors that the Dwelling House Exemption and the Declared Homestead will not protect a homeowner against:

- Mechanic’s Lien
- Federal Tax Liens
- Trust Deeds or Mortgages securing this property (regardless of recordation), whether in first Trust Deed, second Trust Deed or more
- Judgments for Spousal or Child Support
- Judgments recorded before the Homestead

REMOVAL OF HOMESTEAD DECLARATIONS

- Record a notarized “Abandonment of Homestead”
- Record a new Homestead Declaration on a different property that is the principal residence
- The sale of your principal residence

References:

- http://www.1stoplegalforms.com/FormLs/FL_0101.asp?Page_ID=1
- CALIFORNIA HOMESTEAD BASICS By: John C. Demas
- http://www.dca.ca.gov/publications/legal_guides/h-1.shtml

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