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State Homestead Laws

The origin of state homestead laws

The federal Homestead Act, which was enacted in 1862, offered free 160-acre parcels of land to anyone willing to settle on them. After five years, these "homesteaders" would become the owners of the land, as long as certain conditions were met (such as building a house and living on the property). Though this act was repealed in 1976, many states have enacted their own homestead laws. If your state has one, it may protect some or all of the equity in your home against certain creditor claims.

Caution: *A homestead filing will protect your home from most debts (including judgments) that arise after the homestead becomes effective. It generally will not protect a home from debts incurred before the homestead status attaches.*

Caution: *While the homestead laws in some states may substantially protect your residence from unsecured creditor claims, even through a bankruptcy filing, this is not always the case. You should consult an attorney about the protection offered by your state's homestead laws and other asset protection strategies.*

What homestead laws do

State homestead laws vary widely from state to state. Some offer property tax relief or other specific tax considerations to real estate owners. Generally speaking, however, most state homestead laws allow you to exempt a specified amount of the equity in your homestead property from attachment and seizure efforts by certain unsecured creditors. The intent of these laws is to ensure that you won't be forced to sell your home if you're otherwise unable to pay certain debts.

How to obtain homestead law protection

The process of acquiring homestead law protection varies from state to state. Some states require you to live in the state for a certain length of time before you become eligible for homestead law protection. In a few states, coverage is automatic. In most states, however, someone who is named on the deed to the property and who lives there must file a notarized declaration of homestead form with a local government office, such as a registry of deeds.

Generally, the property you homestead must be property that you own and occupy as your primary residence. In most states, property eligible for homestead law protection includes a single-family or multifamily home (and its lot), a condominium unit, or a mobile home.

Protection limits

Homestead laws exempt from attachment a certain amount of the equity value in the homestead property. A few states offer unlimited protection; in Florida, for example, the homestead law completely exempts a multimillion-dollar mansion's total value from attachment by certain unsecured creditors. Most states, however, assign a limit to the amount of protection offered by their homestead laws. These limits vary widely. For instance, an individual homeowner in California may be eligible for only $50,000 in exemption protection, while the same homeowner in Massachusetts would receive $500,000 in protection.

Example(s): *You are a single individual, your home is valued at $450,000, and it carries a mortgage lien of $200,000 against it. Your equity is then $250,000 ($450,000 - $200,000). If you live in California, you may use the homestead law there to protect $50,000 of that equity, leaving $200,000 unprotected. However, if you live in Massachusetts, your state's homestead declaration exempts all $250,000 of your equity from unsecured creditor attachment.*

It's important to note that the homestead laws do not automatically prevent a forced sale of your primary residence to satisfy a creditor claim. In the example above, if you live in California, the sale of your home could be forced to satisfy such a claim, since the creditor could be paid from the sale's equity proceeds over and above the amount the homestead law exempts from attachment. If you live in Massachusetts, however, the homestead law would exempt up to $500,000 of a sale's equity proceeds from attachment; in this case, there would be no point in a creditor forcing a sale of the property to satisfy a claim.

Caution: *If the equity value of your property increases over time (as your mortgage balance decreases and/or property values rise), it may exceed the exemption protection allowed by your state's homestead law. In that event, should a forced sale occur to satisfy a creditor claim, the homestead law would protect some, but not all, of the equity in your home.*

Some creditors are not subject to homestead law protections

Homestead laws do not protect your home from all creditors. Generally, these laws exempt a portion of the equity in your principal residence from attachment by creditors to whom you owe unsecured debts (e.g., medical bills, credit card balances, and personal loans), even if the creditor has obtained a court judgment against you.

Other debts are simply not subject to the exemption protection homestead laws offer. These include:

- Mortgages, second mortgages, home equity loans or lines of credit secured by the property
- Mechanic's liens for labor and/or materials provided to construct, alter, improve, or repair the property
- Federal, state, or local income taxes; property taxes; or other assessments
- Debts owed to government agencies, such as federal student loans or state Medicaid liens
- Court-ordered support of a spouse or minor children

Homestead laws and bankruptcy

State homestead laws can profoundly affect whether or not you may keep your home in bankruptcy. In bankruptcy, you are not required to surrender exempt property to satisfy the claims of creditors. The federal government allows individuals a $27,900 (effective as of April 1, 2022) exemption in bankruptcy for real estate used as a primary residence. This federal exemption can vary significantly from what you may be allowed to keep under your state's exemption laws.

Some states require you to follow their exemption laws when filing for bankruptcy. In such cases, you'll have no choice about the amount of your home exemption; you'll be able to keep what your state's homestead law allows. Other states allow you to choose between the federal and state exemption laws. In states where you have a choice, your decision about how to file for bankruptcy may turn in part on which set of rules allows you to keep the greatest amount of your home's value. In such cases, if your state homestead law allows a more liberal home exemption than the one allowed by the federal law, filing for bankruptcy under the state exemption laws may increase the probability that you'll keep your home, particularly if you have substantial equity in it.

The Bankruptcy Abuse Prevention and Consumer Protection Act imposes certain restrictions on state homestead exemptions, as follows:

- Even if your state allows for a larger exemption, you may only exempt up to $189,050 (as of April 1, 2022) if you acquired your home within the 1,215-day period (about 3 years, 4 months) prior to filing bankruptcy. This limit does not apply to equity you rolled over from one home to another within the same state during this period.
- If you made an addition to your home in the 10-year period prior to filing with the intent to hinder, delay, or defraud creditors, your allowable exemption is reduced by the value of the addition.
- An absolute cap of $189,050 applies if you (a) have been convicted of a felony that demonstrates that the bankruptcy filing is "abusive," or (b) owe a debt arising from violations of securities laws, fiduciary fraud, racketeering, or crimes or intentional torts that caused death or serious bodily injury in the preceding five years. This provision, however, will not apply if the homestead is reasonably necessary for your support and the support of your dependents.

Caution: *The Bankruptcy Abuse Prevention and Consumer Protection Act imposes a two-year residency requirement for using state homestead exemptions. Specifically, to use a state's exemption, you must have resided there for 730 days (about 2 years) prior to filing bankruptcy. If you resided in more than one state during this 730-day period, the governing exemption law will be of the state in which you resided for the majority of the 180-day period (about 6 months) preceding the 730-day period.*

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