
HOMESTEADS

The homestead laws are intended to protect a person's home from execution and forced sale to satisfy the claims of certain creditors.

Homestead property consists of either the dwelling house or mobile home in which the owner resides, including the land and appurtenant buildings, or unimproved land purchased with the intention of building a house and residing thereon. The homestead must be actually intended or used as a home for the owner. A purchaser under a mortgage, deed of trust, or real estate contract is an "owner" for purposes of the homestead laws.

Since 1981, the homestead exemption applies automatically and a declaration of homestead is no longer required, except as to unimproved land purchased with the intention of residing thereon.

The homestead exemption protects the owner's equity in the property up to \$40,000. For example, suppose that there is a first lien against the property in the amount of \$112,000, and a second lien of \$8,000, for a total of \$120,000 in secured debt. If the market value of the property is \$140,000, then the owner's entire equity (\$20,000) is protected by the homestead exemption. However, if the market value is \$170,000, then only the first \$40,000 of the owner's equity is protected and the remaining \$10,000 is subject to execution under a special proceeding.

The homestead laws do *not* afford protection from certain claims, such as property taxes or assessments, federal taxes, construction liens, mortgages, deeds of trust, real estate contracts, child support or spousal maintenance obligations, or certain claims in bankruptcy.

A homestead may be terminated by abandonment or sale of the property. The proceeds from a sale of homestead property for the purpose of acquiring a new homestead are exempt for one year, up to the homestead amount.

In effect, the homestead laws provide limited protection from forced sales of the owner's residence to pay unsecured creditors.

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