



HOMESTEADS: Step by Step

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Disclaimer: This guide is intended as general information only. Your case may have factors requiring different procedures or forms. If you need further assistance, consult a lawyer.

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This packet includes:

- Sample Form: Abandonment of Declared Homestead
- Sample Form: Homestead Declaration
- Sample Form: Homestead Declaration – Spouses

BACKGROUND

Under California law, homeowners are entitled to protection of a certain amount of equity in their home. The amount protected varies depending on the age, marital status, and income of the property owner.

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 on 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

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

PROCEDURE

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.

Requirements:

The homestead exemption applies only when certain requirements are met. These requirements, described in California Code of Civil Procedure (CCP) Section [704.710](#), are:

1. The residence must be the principal dwelling of the judgment debtor or his or her spouse.
2. The judgment debtor, or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached.
3. The judgment debtor and/or their spouse must reside continuously thereafter until the date of the court determination that the dwelling is a homestead.

Eligible properties:

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:

1. A house or mobilehome, together with the outbuildings and the land upon which they are situated.
2. A boat or other waterborne vessel.
3. A condominium, as defined in Section [783](#) of the Civil Code.
4. A planned development, as defined in Section [11003](#) of the Business and Professions Code.
5. A stock cooperative, as defined in Section [11003.2](#) of the Business and Professions Code.
6. A community apartment project, as defined in Section [11004](#) of the Business and Professions Code.

Amount of exemption:

The amount of the exemption varies, depending on the age, marital status, and income of the property owner. Under CCP Sections [704.720](#) - [704.730](#), the exemptions are:

1. \$75,000 unless the judgment debtor or their spouse who resides in the homestead is a person described below in (2) or (3).
2. \$100,000 if the judgment debtor or spouse is a member of a family unit, if at least one member of the family unit owns no interest in the homestead, or has only community property interest in the homestead with the judgment debtor.
3. \$175,000 if the judgment debtor who resides in the homestead is at the time of the sale either (a) a person 65 years old, (b) a person physically or mentally

disabled and as a result of that disability unable to engage in substantial gainful employment, or (c) a person 55 years old with a gross annual income less than \$15,000, or, if the judgment debtor is married, a gross annual income, including that of the spouse, of not more than \$20,000, and the sale is involuntary.

Abandonment of homestead

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.

STEP-BY-STEP INSTRUCTIONS

Step 1: Evaluate if you qualify for a Homestead Exemption and determine if your exemption will be automatic or declared.

Step 2: If you are declaring the homestead, a Homestead Declaration must be notarized and filed in the County Recorder's Office of the county in which the property is located.

FOR MORE INFORMATION

Sacramento County Clerk/Recorder
600 8th Street
Sacramento, CA 95814
(916) 874-6334
www.ccr.saccounty.net/

RESEARCH AT THE LAW LIBRARY

California Jurisprudence, Vol. 37, Homesteads. KFC 80 .C35
California Real Estate, Law and Practice, Vol. 10, Ch. 344. KFC 140 .B45
Miller and Star California Real Estate, Vol. 5, Ch. 13. KFC 140 .M51
California Legal Forms, Transaction Guide, Vol. 12, Ch. 27B. KFC 68 .C32
California Forms of Pleading & Practice, Vol. 25, Ch. 249 KFC 1010.A65 C3

BLANK FORMS

Abandonment of Declared Homestead
http://www.saclaw.org/Uploads/files/forms/AbandonmentOfDeclaredHomestead_1.doc
Homestead Declaration
http://www.saclaw.org/Uploads/files/forms/HomesteadDeclaration_1.doc
Homestead Declaration – Spouses
http://www.saclaw.org/Uploads/files/forms/HomesteadDeclarationSpouses_1.doc

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Recording requested by:

And when recorded, mail to:

APN:

**DECLARATION OF ABANDONMENT
OF DECLARED HOMESTEAD**

For recorder's use

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

The undersigned declare(s) that he/she/they hereby abandon(s) the homestead previously declared in the Homestead Declaration executed by _____[Insert Full Legal Name]_____ on ____[Insert Date Declaration was signed]_____, and recorded on _____[Insert Date Declaration was Recorded]_____ in Book/Reel ____[Insert Book Number]_____, Page/Image ____[Insert Page Number]_____, as Instrument No. ____[Insert Instrument Number]_____, in the Official Records of the County Recorder _____[Insert County Name]_____ County, California.

Dated _____

(SIGNATURE OF DECLARANT)

(SIGNATURE OF DECLARANT)

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

NOTARY SEAL

On _____, 20____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Notary Signature _____

Recording requested by:

And when recorded, mail to:

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

APN:

For recorder's use

HOMESTEAD DECLARATION

I, _____ [Insert Full Legal Name _____], do hereby certify and declare as follows:

- I hereby claim as a declared homestead the premises located in the City of ____ [Insert City Name] _____, County of _____ [Insert County Name] _____, State of California, commonly known as: _____ [Insert Street Address] _____, and more particularly described as follows:

[Insert Legal Description of Property such as:

"Lot 817 of Tract 14079, as per map recorded in Book 891, Pages 17 21 of Maps, in the Office of the County Recorder of Sacramento County."]

This language can be found on your Deed.

- I am the declared homestead owner of the above-declared homestead.
- I own the following interest in the above-declared homestead: _____ [The persons' name(s), followed by: a single man, an unmarried man, a married man as His Sole & Separate Property, Community Property, Joint Tenancy, Tenancy in Common, etc..] _____
- The above-declared homestead is my principal dwelling. I am currently residing on that declared homestead.

This language can be found on your Deed.

The facts as stated in this Homestead Declaration are known to be true as of my own personal knowledge

Dated _____

(SIGNATURE)

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

NOTARY SEAL

On _____, 20____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature _____

Recording requested by:

And when recorded, mail to:

APN is the Assessor's Parcel Number. This should be on your Deed, or you can get it from the Assessor's Office.

APN:

For recorder's use

HOMESTEAD DECLARATION – SPOUSES AS DECLARED OWNERS

We, _____ [Insert Full Legal Name] _____ and _____ [Insert Full Legal Name] _____, do hereby certify and declare as follows:

- 5. We are husband and wife.
- 6. We declare that we are joint owners of the following property located in the City of _[Insert City Name]_, County of _____ [Insert County Name] _____, State of California, commonly known as: _____ [Insert Street Address] _____, and more particularly described as follows:

[Insert Legal Description of Property such as:

"Lot 817 of Tract 14079, as per map recorded in Book 891, Pages 17-21 of Maps, in the Office of the County Recorder of Sacramento County."]

This language can be found on your Deed.

- 7. We claim this property and the dwelling thereon as a homestead on behalf of both of us.
- 8. This property is our principal dwelling and we actually reside on this property on the date that this Homestead Declaration is recorded.
- 9. We own the following interest in the above-declared homestead: ___ [The persons' name(s)], followed by: a single man, an unmarried man, a married man as His Sole & Separate Property, Community Property, Joint Tenancy, Tenancy in Common, etc..]

This language can be found on your Deed.

STATE OF CALIFORNIA)
COUNTY OF _____) ss.

NOTARY SEAL

On _____, 20____, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Signature _____