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Filing A Homestead Declaration

If you own a home, you should consider filing a homestead declaration with the County Recorder in your county. A homestead declaration protects your home from being seized and sold in the event that a money judgment is entered against you by a court.

What kinds of property may be declared as a homestead?

These types of property may be homesteaded:

- ◆ Land with a dwelling house on it plus appurtenances (fixtures and buildings).
- ◆ A mobile home, whether or not the mobile home owner owns the land on which it sits.
- ◆ A condominium unit.

Who can decide to declare a homestead?

A single person or, in the case of a married couple, either or both spouses.

If someone obtains a money judgment from a court against me, how will a homestead declaration protect my home?

For most judgments against you, a homestead declaration protects the first \$550,000 of equity you have in your home. If you have less than \$550,000 equity in your home and the judgment is not of the type listed below, your home will not be sold to satisfy a judgment. If your equity exceeds \$550,000, the property (or a portion of it, if a court determines it can be divided) may be sold, but you are entitled to keep the first \$550,000. If allodial title has been established, the exemption extends to all equity in the land, dwelling and appurtenances.

A homestead declaration will not prevent your home from being sold to pay a judgment for:

- ◆ Taxes
- ◆ A mortgage, trust deed or other loan arrangement used to purchase or refinance your property or improvements to your property
- ◆ A mechanic's lien or other obligation to pay because of improvements made to your property
- ◆ Any lien to which you agree by accepting the property subject to codes, covenants and restrictions, deed restrictions or equitable servitudes

What information must I include in a homestead declaration?

If an unmarried person is making the homestead declaration, it must state that the person is a householder. If a married person or persons sign the homestead declaration, it must state if the person or persons are married. Regardless of the marital status of the signer of the declaration, it must state that the intention is to use and claim the property as a homestead.

When the homestead declaration is signed by a married person or persons, it must state that the spouse or spouses are residing with their family, or with a person or persons under their care and maintenance on the homestead premises. If the premises are the separate property of one spouse, both spouses must join in signing the homestead declaration. The premises claimed should be described by a full address and a full legal description. The deed to your property will contain the legal description.

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How do I file a homestead declaration?

A state-approved Homestead Declaration Form can be found on the recorder's website for the county in which your property is situated. After the necessary information has been filled in, the person or persons who will sign the homestead declaration must sign it in the presence of a Notary Public, who will notarize the signature. A Notary Public can be found in banks, law offices, real estate offices or title companies. Finally, the notarized Declaration of Homestead must be filed with the County Recorder in the county in which the property is located. There are small fees for notarization of documents and for their recording with the County Recorder.

May a homestead be filed for property held by the type of title known as "tenancy in common?"

Yes. Each tenant in common may declare a homestead covering his or her interest in the property. The homestead protection is subject to the rights of each co-tenant to enforce partition of the property.

What is the appropriate time to file a homestead declaration?

Because no one can predict when death or sudden incapacity may strike, it is prudent to file a homestead declaration upon purchasing a home and taking title to it, or as soon as possible thereafter. However, a homestead will protect up to \$550,000 of your equity in your home provided that it is recorded with the County Recorder at any time before proceedings are instituted to cause the forced sale of your home to satisfy a judgment. So, even after a judgment has been entered against you, it is possible to record a homestead declaration.

What are the procedures if there is a judgment against me and I have more than \$550,000 in equity in my home?

A judge normally will appoint three appraisers who will determine the value of the property, your equity in it and whether the property can be divided in such a way as to protect your home while paying your judgment creditors. If such a division proves to be impractical, the property will be sold, and you will receive the first \$550,000 from the sale, which cannot be seized to pay the judgment.

Can I prepare a homestead declaration myself?

The declaration itself is a simple, one-page form. If you follow the proper steps, particularly in noting the correct legal description of the property and having it notarized and recorded, you should have no difficulty. If you feel unsure or have specific legal problems arising out of a judgment or potential judgment against you, you should consult an attorney.

How do I find an attorney with experience in homestead matters?

You can contact the State Bar of Nevada's Lawyer Referral & Information Service at (702) 382-0504 (toll-free in Nevada at 1 (800) 789-5747) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The state bar's main office (see numbers listed below) can tell you whether or not an attorney is licensed in Nevada and in good standing.

CONTACT INFORMATION

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