

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

Homestead Exemption:  
Dwelling

September 2017

California Law Revision Commission  
c/o UC Davis School of Law  
Davis, CA 95616  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Homestead Exemption: Dwelling*, 45 Cal. L. Revision Comm'n Reports 11 (2017).

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c/o UC Davis School of Law  
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September 28, 2017

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

The California Constitution has long provided for a homestead exemption, to shield a person's principal dwelling from the enforcement of a money judgment.

Under existing law, an attempt by a judgment creditor to force the sale of a dwelling to satisfy a judgment must be authorized by court order. The purpose of that judicial review is to determine whether the property at issue is subject to a homestead exemption and, if so, to effectuate the exemption.

The statutes that establish and govern the judicial review requirement are phrased in a way that seems to presuppose that the property is, in fact, a dwelling. That phrasing could cause confusion about how to proceed when a judgment creditor believes that the property at issue is not a dwelling.

The Commission recommends that the law be revised to make clear that a judgment creditor may dispute whether property is a dwelling, as part of the existing process for judicial review of the proposed sale of a purported dwelling. The Commission believes that this would be a clarification of existing law, rather than a substantive change.

This recommendation was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,

Susan Duncan Lee

*Chairperson*

## HOMESTEAD EXEMPTION: DWELLING

### BACKGROUND

The California Constitution provides for a homestead exemption to protect certain real property from forced sale by creditors: “The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.”<sup>1</sup> Although constitutional in origin, the homestead exemption is defined and effectuated by statute.<sup>2</sup>

In general terms, a “homestead” is the principal dwelling of a judgment debtor or the judgment debtor’s spouse.<sup>3</sup> A “dwelling” is any “place where a person resides,” which can include (but is not limited to) a house, mobilehome, or boat.<sup>4</sup> Notably, the definition of “dwelling” focuses on how property is used (to reside), rather than on the existence of any particular kind of residential structure.

Under existing law, the interest of a natural person in a dwelling may not be sold to satisfy a money judgment without first obtaining an authorizing court order.<sup>5</sup> If a judgment creditor seeks to execute a writ of execution against a dwelling, to force its sale, the levying officer will notify the judgment creditor that the sale will not proceed without court authorization.<sup>6</sup>

The purpose of that judicial review is to determine whether the dwelling is a homestead. If so, the court will determine the amount of the homestead exemption and how to effectuate it.<sup>7</sup>

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1. Cal. Const. art. XX, § 1.5.

2. Code Civ. Proc. §§ 704.710-704.995.

3. Code Civ. Proc. § 704.710(c).

4. Code Civ. Proc. § 704.710(a).

5. Code Civ. Proc. § 704.740(a). For exemptions not relevant to this discussion, see Code Civ. Proc. § 704.740(b).

6. Code Civ. Proc. § 704.750.

7. Code Civ. Proc. § 704.780.

## PROBLEM

The judicial review requirement described above is triggered when the levying officer determines that the property at issue is a dwelling and notifies the judgment creditor that an authorizing court order is required. From that point forward, the statutory procedure seems to presuppose that the levying officer's determination was correct, that the property at issue is, in fact, a dwelling. All of the relevant provisions refer to the property as a "dwelling."<sup>8</sup>

If the judgment creditor believes that the levying officer was not correct, because the property is not a dwelling, there is no obvious way for the judgment creditor to raise that issue. This can lead to confusion, with judges and practitioners unsure of how to proceed. That confusion can create cost and delay.

## RECOMMENDATION

In order to avoid the problem described above, the Commission recommends that the law be revised to expressly state that a judgment creditor may dispute the existence of a homestead exemption on the ground that the property at issue is not a dwelling.

This would not be a substantive change, as the homestead exemption is only available for property that is a dwelling. It would instead be a clarification, dispelling any confusion as to whether the wording or structure of existing law precludes that issue being raised.

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8. See Code Civ. Proc. §§ 704.740(a) ("dwelling" may not be sold without court order), 704.750 (levying officer will not proceed with sale of "dwelling" without court order), 704.760 (judgment creditor's application for court order shall describe the "dwelling"), 704.770(b)(2) (service of documents on occupant of "dwelling"), 704.780 (determination of whether "dwelling" is homestead), 704.790 (order of sale of "dwelling" after non-appearance of specified persons).

## PROPOSED LEGISLATION

### **Code Civ. Proc. § 704.755 (added). Dispute as to whether property is a dwelling**

SECTION 1. Section 704.755 is added to the Code of Civil Procedure to read:

704.755. Notwithstanding any other provision of this article, a judgment creditor may dispute that the property at issue is a homestead, on the ground that the property is not a dwelling.

**Comment.** Section 704.755 is added to provide clarification. Although the language and structure of this article seems to presuppose that the property at issue is a dwelling, it does not prevent a judgment creditor from arguing to the contrary. This section makes that point express. This is not a substantive change. See Section 704.710(a) (“dwelling” defined), (c) (“homestead” defined).

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