



# Arizona State Senate *Issue Brief*

September 19, 2008

## **Note to Reader:**

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## **ARIZONA'S HOMESTEAD EXEMPTION**

### **INTRODUCTION**

Generally, a homestead is a dwelling with its land and buildings occupied by the owner as a home that is exempted, by homestead law, from seizure or sale for debt.

### **FEDERAL REGULATION**

Federal bankruptcy law allows a person who files for bankruptcy to exempt from seizure an amount of interest in a property that the person uses as a residence, in a cooperative that owns property that the person or the person's dependent uses as a residence, or in the burial plot of the person or the person's dependent, among other property exemptions. This exemption may not exceed \$18,450. These laws are the basis of state homestead laws.

State governments may choose to honor federal exemptions or establish laws that prohibit debtors from claiming any exemption provided under federal bankruptcy law. States may also establish their own exemptions. As a result, homestead exemptions vary significantly from state to state. A few states do not provide a specific homestead exemption, while others provide exemptions based on total property area as opposed to a maximum monetary value. In some states, homestead exemptions are automatic and in others they must be declared in writing. Other details of homestead exemption laws, such as treatment of married and divorced couples, vary as well.

The federal government does, however, regulate some aspects of state homestead exemption laws. The Bankruptcy Abuse Prevention and Consumer Act of 2005 (Act) modified federal bankruptcy law. As a result of the Act, a person cannot exempt any amount of interest, which is acquired within 1,215 days prior to filing for bankruptcy and that exceeds \$125,000 in value in a property that the person claims as a homestead. This \$125,000 limitation extends to other specified situations, such as if the person owes a debt arising from a violation of securities laws. Both limitations are subject to exceptions. Additionally, the Act determines that a person only qualifies for the homestead exemption permitted in the state in which the person's domicile has

been located for 730 days prior to filing for bankruptcy. The Act establishes a remedy for persons who have lived in more than one state during that period. Further provisions limit the value of interest that a person may claim exempt if the person has disposed of property in the ten years previous to filing for bankruptcy in an attempt to defraud creditors.

## **ARIZONA'S HOMESTEAD EXEMPTION**

Arizona law does not recognize federal property exemptions, but establishes exemptions specific to Arizona residents.

Arizona's homestead exemption laws protect up to \$150,000 of a person's equity in the person's dwelling from attachment, execution or forced sale. A person or married couple may only claim one homestead exemption and must reside in the dwelling for which the exemption is claimed. Nevertheless, a person may reside away from the dwelling for up to two years without automatically causing a waiver. The exemption applies to the person's house and land, condominium or cooperative, mobile home or mobile home and land, as well as to the identifiable cash proceeds from the voluntary or involuntary sale of the property for up to 18 months after sale.

Because the homestead exemption protects a maximum of \$150,000 in equity, if a person's equity exceeds \$150,000, a creditor may force the sale of the property. However, statute prohibits a creditor from taking such action unless the proceeds from the sale would cover the homestead exemption and all liens and encumbrances that have priority over the creditor forcing the sale and the costs of sale. Therefore, in many cases if a person has more than \$150,000 of equity in the property, the creditor may still not force the sale of the property.

## **Exceptions**

Statute specifies situations in which the homestead exemption does not apply. For example, the homestead exemption does not protect a person's equity against debts that have a special relationship to the property, including a consensual lien, such as a mortgage or deed of

trust, a contract of conveyance or a lien for labor or materials. In other words, a resident cannot claim the homestead exemption to protect against the foreclosure of a mortgage, a materialmen's lien or a government tax lien.

The homestead exemption also does not protect a person against liens resulting from child support or spousal maintenance arrearages. In a contempt proceeding brought to enforce the payment of any form of child support or spousal maintenance, the court may consider the debtor's homestead equity as a financial resource. Also, a court may consider the homestead exemption when dividing community property.

Additionally, the homestead exemption does not protect a person against some liens placed on a home by a homeowners' association (HOA). Statute allows an HOA to place a lien on a home for any regular assessments charged to the owner for HOA expenses and for late fees for those assessments from the time the assessment becomes due and authorizes the foreclosure of these liens if the owner has been delinquent in the payment of the assessment for one year or in the amount of \$1,200, excluding late fees, whichever occurs first. Liens for other HOA penalties or fees cannot be foreclosed. Proceedings to enforce a lien must begin within three years after the full amount of the assessment becomes due.

## **Claiming A Homestead Exemption**

The Arizona homestead exemption is automatic, meaning that no written claim is required. If a person desires to waive the exemption, the person must record the waiver in the office of the county recorder. Additionally, if a debtor has more than one property interest to which the homestead exemption could reasonably apply, a creditor may require by certified letter that the person designate which property is protected. The debtor can either respond with a certified letter within 30 days after receipt of the creditor's letter or record the homestead exemption in the office of the county recorder at any time.

If a debtor does not claim a homestead exemption for any reason, the person may

instead claim an exemption for any prepaid rent, including security deposits, for the person's residence. This exemption may not exceed \$1,000 or one and one-half months rent, whichever is less.

## ***ADDITIONAL RESOURCES***

- Judgment Liens on Real Property: A.R.S. § 33-964
- Homestead Exemption Statutes: Arizona Revised Statutes, Title 33, Chapter 8, Article 1
- Condominium Statutes: Arizona Revised Statutes, Title 33, Chapter 9
- Planned Community Statutes: Arizona Revised Statutes, Title 33, Chapter 16
- Dissolution of Marriage Statutes: Arizona Revised Statutes, Title 25, Chapter 3
- Federal Bankruptcy Law: United States Code, Title 11