



Arizona State Senate Issue Brief

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Note to Reader:

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ARIZONA'S HOMESTEAD EXEMPTION

INTRODUCTION

Generally, a homestead is the primary residence of an owner that is protected from seizure or sale of debt under the homestead exemption.

FEDERAL REGULATION

Federal bankruptcy law sets a schedule of property that is exempt from bankruptcy. This exemption may not exceed \$23,675 or \$47,350 if married and jointly filing bankruptcy.^{1,2}

If filing for bankruptcy, federal law requires at least 40 months of home ownership before being eligible for either the federal or state homestead exemption. If the requirement is not satisfied, the federal government limits the homestead exemption to \$125,000 in aggregate value, regardless of the state's statute limit.³

State governments may honor federal exemptions or establish their own exemptions instead and prohibit debtors from claiming exemptions under federal bankruptcy law. As a result, homestead exemptions vary significantly from state to state.

For example, in Florida, a homeowner is protected during a bankruptcy, because the home cannot be repossessed. While in California, the homestead doesn't lower property taxes, but protects the equity of the home with an exemption capped at \$7,000.

ARIZONA'S HOMESTEAD EXEMPTION

Arizona law does not recognize federal property exemptions, but instead establishes exemptions specific to Arizona residents.⁴

Arizona's homestead exemption laws protect up to \$150,000

¹ [United States Code, Title 11, Chapter 5, Subchapter II § 522](#)

² [Judicial Conference of the United States, February 16, 2016, 81 F.R. 8748, effective April 1, 2016](#)

³ [Public Law 109-8 Section 322 \(Bankruptcy Abuse Prevention and Consumer Protection Act of 2005\)](#)

⁴ [A.R.S. § 33-1133](#)

of a person's equity in their dwelling from attachment, execution or forced sale. A person or married couple may claim only one homestead exemption and must reside in the dwelling for which the exemption is claimed.

Statute provides that a person may reside away from the dwelling for up to two consecutive years and the exemption will still apply 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.^{5,6}

If a person's equity in the home 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, all liens and encumbrances that have priority in addition to 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 outlines 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. Thus, a resident cannot claim the homestead exemption to protect against the foreclosure of a mortgage, a materialmen's lien or a government tax lien.⁷

The homestead exemption also does not protect a person against liens resulting from child support or spousal maintenance arrearages. In a contempt proceeding to enforce the payment 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 once the payment of a regular assessment becomes due. The lien can be on any regular assessment, late fees and HOA expenses charged to the owner for the collection of those assessments. Foreclosure can be authorized in the same manner as a mortgage on real estate, but only 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.^{8,9}

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.¹⁰

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

⁵ [A.R.S. § 33-1104](#)

⁶ [A.R.S. § 33-1101](#)

⁷ [A.R.S. § 33-1103](#)

⁸ [A.R.S. § 33-1256](#)

⁹ [A.R.S. § 33-1807](#)

¹⁰ [A.R.S. § 33-1102](#)

residence. This exemption may not exceed \$2,000 or a month and a half of rent, whichever is less.¹¹

ADDITIONAL RESOURCES

Judgment Liens on Real Property

[A.R.S. § 33-964](#)

Homestead Exemption Statutes

A.R.S. Title 33, Chapter 8, Article 1

Condominium Statutes

A.R.S. Title 33, Chapter 9

Planned Community Statutes

A.R.S. Title 33, Chapter 16

Dissolution of Marriage Statutes

A.R.S. Title 25, Chapter 3

Federal Bankruptcy Law

¹¹ [A.R.S. § 33-1126\(C\)](#)