



# Arizona State Senate Issue Brief

November 23, 2022

## Note to Reader:

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## **ARIZONA'S HOMESTEAD EXEMPTION**

### **INTRODUCTION**

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

### **FEDERAL REGULATION**

Federal bankruptcy law sets a schedule of real and personal property that is exempt from bankruptcy. This exemption may not exceed \$27,900 or \$55,800 if married and jointly filing for bankruptcy.

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 40-month requirement is not satisfied, the federal government limits the homestead exemption to \$189,050 in aggregate value, regardless of the state's statutory limit.<sup>1</sup>

State governments may honor federal exemptions, establish their own exemptions or allow debtors to choose between the state or federal exemptions. Homestead exemptions vary significantly from state to state.

### **ARIZONA'S HOMESTEAD EXEMPTION**

Arizona law does not recognize federal property exemptions, but instead establishes exemptions specific to Arizona residents.<sup>2</sup>

Arizona's homestead exemption laws protect up to \$250,000 of a person's equity in their dwelling from attachment, execution or forced sale. The exemption applies to a person's house and land, condominium or cooperative, mobile home or mobile home and land. A person or married couple may claim only one homestead exemption and must reside in the dwelling for which the exemption is

<sup>1</sup> 11 U.S.C. § 522

<sup>2</sup> A.R.S. § 33-1133

claimed. A person may reside away from their dwelling for up to two consecutive years and the exemption still applies.

The homestead exemption automatically attaches to a person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property which continues for the shorter of 18 months or until the person establishes a new homestead with the proceeds. The homestead exemption does not apply when refinancing homestead property.

If a person's home equity exceeds \$250,000, 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 priority liens and encumbrances in addition to the costs of sale. In many cases, the creditor may choose not to force the sale of the property if a person has more than \$250,000 of equity in the property.<sup>3</sup>

A judgment lien is a lien placed on a debtor's property by a court judgment to secure the payment of debt by a debtor. [Laws 2021, Chapter 368](#) required a judgment creditor, on the sale of homestead property that is subject to a judgment lien, to be paid from the proceeds of the sale after the homestead exemption amount is paid to the debtor and after payment of any priority liens. If the anticipated payment to the judgment debtor is less than 80 percent of the homestead exemption, a title insurer may record a notice of partial release of judgment without prior notice to the judgment creditors. If the anticipated payment to the judgment debtor is at least 80 percent of the homestead exemption, the judgment creditor's lien on the homestead property is extinguished on compliance with certain statutory notification requirements.

If a debtor receives cash proceeds from refinancing a homestead property that is subject to a judgment lien, the judgment creditor must be paid in full from those proceeds before the debtor or other person receives any proceeds. Monies

used to pay direct costs associated with the refinance or to satisfy priority liens do not constitute cash proceeds.<sup>4</sup>

### EXCEPTIONS

Statute outlines situations in which the homestead exemption does not protect a person's home equity. 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 lien for labor or materials or a recorded civil judgment if the equity in the property exceeds the exemption. This means 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 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, but only if the owner's assessment is delinquent for one year or in the amount of \$1,200 or more, whichever occurs first, as determined on the date the action is filed. Liens for other HOA penalties or fees cannot be foreclosed. Proceedings to enforce a lien must begin within six years after the full amount of the assessment becomes due.<sup>5</sup>

<sup>3</sup> A.R.S. §§ [33-1101](#); [33-1104](#); and [33-1105](#)

<sup>4</sup> [A.R.S. § 33-964](#)

<sup>5</sup> A.R.S. §§ [33-1103](#); [33-1256](#); and [33-1807](#)

## CLAIMING A HOMESTEAD EXEMPTION

Arizona's 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 with 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 the person to designate which property is protected. The debtor can either respond to the creditor with a certified letter within 30 days or record the homestead exemption in the office of the county recorder at any time.<sup>6</sup>

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 in an amount up to \$2,000 or a month and a half of rent, whichever is less.<sup>7</sup>

## 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 U.S.C § 522](#)
- Judicial Conference of the United States  
[Notice of Adjusted Dollar Amounts](#)

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<sup>6</sup> [A.R.S. § 33-1102](#)

<sup>7</sup> [A.R.S. § 33-1321](#)