



# Cayman County: California's 59th County

The Homestead exemption changes January 1, 2021, protecting many more defendants from the forced sale of their home when facing a judgment

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Hello Florida? Hello Texas? Hello Cayman Islands? What do they have in common? Homes, palaces, compounds, or ranches are exempt or nearly exempt from execution under a judgment. And now – California. Signed into law by Governor Newsom. AB: 1885. Really.

## Homestead exemption to range from \$300,000 up to \$600,000

As of January 1, 2021, Code of Civil Procedure section 704.730 increases the homestead exemptions from \$75,000/\$100,000/\$175,000 to \$300,000 at the bottom and \$600,000 at the top but attached to the recording date of the abstract (Section 703.050(b)). The exemption is subject to increases based on the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year. This homestead exemption renders the home immune from the levy, execution and sheriff's sale but does not shrink the footprint of the recorded abstract of judgment which secures the judgment (Section 697.340(a)). The Defendant might buy the increased exemption by paying down the senior mortgage prior to the recording of the abstract. Maybe "yes," says *In re Stern*, 345 F.3d 1036 (9th Cir. 2003). Maybe "no," says *In re Beverly*, 374 B.R. 221 (B.A.P. 9th Cir. 2007), *aff'd in part, dismissed in part*, 551 F.3d 1092 (9th Cir. 2008) ("*Beverly*"). Crack the books before writing the check.

## How the exemption is computed

Unlike prior law, Section 704.730 guarantees a minimum homestead of \$300,000 and maximum of \$600,000 or the median sale price of the houses in the community for the prior calendar year, whichever is less. If the median price of the house is \$500,000, the top end exemption is \$500,000. If the median price of the house is \$1,000,000, the top end exemption is \$600,000. If the median price is \$250,000, the minimum would be \$300,000. Unlike prior law, the number of occupants, family relationships, the age, employment, status or health status of the occupants is irrelevant. A single person, age 25, gets an eight-fold homestead increase.



Let's do the math: Take a high-dollar-value home in Fresno, say, \$1,200,000. The senior deed of trust is \$600,000. The median value for Fresno, i.e., the prior year, is \$600,000. Therefore, the exemption from execution is \$600,000. In the event of a bankruptcy or sheriff's sale, the house is immune from a sheriff's sale because the property lacks any non-exempt equity.

Let's take a drive to San Francisco. The house is appraised at, say, \$3,000,000 and the senior lien is \$2,400,000. The median sale for the prior year exceeds \$600,000 (by a lot). The house is exempt from execution, given the \$2,400,000 for the senior lien and the \$600,000 for the exemption.

## The sheriff's sale 90% rule

Let's visit the 90% rule of a sheriff's sale (Section 704.800(a)) which means that the sheriff can auction the



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property if a buyer pays 90% of the appraised value (set by a judge). Here's the sheriff's exemption math: The \$1,200,000 house escapes the sheriff's sale given a \$600,000 first lien and the \$600,000 homestead. The sheriff can sell the property only if the price is 90% of the appraised value, but must exceed the senior liens and the homestead, i.e., \$1,200,000.00 (Section 704.780(b)).

Who is the immediate winner? Clearly the defendant, whose home is nearly 100% immune from execution save and except homes with a multi-million-dollar equity. High-dollar homes with equity of \$600,000, or less, are exempt from execution dependent upon the county, like Cayman. Nearly all \$1mil homes, with senior debt of \$400,000 or more are probably immune from any execution, i.e., sheriff's 90% floor sale.

The \$300/600k exemption warps the settlement of uninsured or under-insured cases. Expect that you as the plaintiff's attorney will be accepting more policy limit offers no matter how inadequate, given that defendant's home is now execution proof. If plaintiff rejects the policy limits, expect the defendant to file Chapter 7 because bankruptcy exemptions track the \$300/\$600k increase. The debtor will emerge from bankruptcy with their home equity unscathed given the net equity of the \$600,000 tracks the \$600,000 exemption.

### Strategy

What should you do? If you have a pending case which is headed to default or a default judgment already, record the abstract prior to January 1, 2021, to lock in the \$75k/\$100k/\$175,000k exemptions per Section 703.050(b). Consider dismissing the elusive but impecunious defendant to accelerate the case. If you can mount a pre-judgment attachment, you might be able to also lock in the pre-2021 exemptions (Section 703.050(a)). Post COVID-19, some county recorders decline to offer counter service, however private title servicers offer electronic recording of abstracts.

Anything of value? Are big dollar cases going to stumble over execution proof homes and collapse into policy limits offers of \$300,000 and worse, devoured by the medical liens? Answer: Go to trial and win. Record the humongous abstract of judgment. The automatic homestead does not immunize the property from any enforcement in the case of a sale, voluntary transfer, encumbrance, refinance or any title transaction. Abstracts follow every transfer. (Section 697.390, subd. (a).)

### Carry a big stick

Your abstract of judgment craters any credit rating including O.A.C. offers. The defendant can forget getting a home equity line of credit or a second or reverse mortgage. Jobs that require background checks become scarce. The abstract of judgment resides in the recorder's office

for 10 years and can be renewed forever. Abstracts go viral and air out dirty laundry. The defendant might jump into bankruptcy and emerge judgment- and abstract-free, but never escape the taint of bankruptcy much less the trustee capturing other assets. Buy down the homestead? Revisit *Beverly* and progeny.

Granted, the exemption explosion of \$600,000 enables the defendants to retain unfettered possession of the home, but the judgment creditor holds the title hostage where the abstract invades the chain of title. The defendant is the grantor and the plaintiff is the grantee (Civ. Code, §§ 1213-1214). If the risk of the trial fails to encourage a settlement above the policy limits offer, the blighted title in perpetuity might.

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