



Arizona State Senate Issue Brief

December 19, 2016

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

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 choose to honor federal exemptions or establish laws that prohibit debtors from claiming any exemption provided under federal bankruptcy law. Additionally, states may 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. Further, some states provide exemptions based on total property area while others are based on 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.⁴

¹ United States Code, Title 11, Chapter 5, Subchapter II

² Judicial Conference of United States, dated February 16, 2016, 81 F.R. 8748, effective April 1, 2016

³ Public Law 109-8 Section 256 (Bankruptcy Abuse Prevention and Consumer Protection Act of 2005)

⁴ United States Code, Title 11, Chapter 5, Subchapter II § 522

ARIZONA'S HOMESTEAD EXEMPTION

Arizona law does not recognize federal property exemptions, but establishes exemptions specific to Arizona residents.⁵

Arizona's homestead exemption laws protect up to \$150,000 of a person's equity in their 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.

Arizona law 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.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 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. 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 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 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 residence. This exemption may not exceed

⁵ [A.R.S. § 33-1133](#)

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](#)

\$1,000 or a month and a half of rent, whichever is less.¹¹

ADDITIONAL RESOURCES

- Judgment Liens on Real Property¹²
- Homestead Exemption Statutes¹³
- Condominium Statutes¹⁴
- Planned Community Statutes¹⁵
- Dissolution of Marriage Statutes¹⁶
- Federal Bankruptcy Law¹⁷

¹¹ [A.R.S. § 33-1126\(C\)](#)

¹² [A.R.S. § 33-964](#)

¹³ Arizona Revised Statutes, Title 33, Chapter 8, Article 1

¹⁴ Arizona Revised Statutes, Title 33, Chapter 9

¹⁵ Arizona Revised Statutes, Title 33, Chapter 16

¹⁶ Arizona Revised Statutes, Title 25, Chapter 3

¹⁷ United States Code, Title 11