When There Is A Financial Crisis, Every Property Owner Should Consider Homesteading

April 13, 2020 - It's been nearly five years since our last article on homesteading. For those who think that's something from a bygone era, think again. Homesteading can protect some or all of your property from foreclosure and creditors. But the amount of protection you can receive is highly dependent upon which state you live in. Here's a little history and the information that you'll need to file for a homestead.

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The federal Homestead Act was passed in 1862. The law specifically allowed people outside of the original 13 states to make claims for federal land. Families were allowed to claim up to 160 acres of federally owned land. They had to live on their claim and make improvements to it. After several years, the title to the land transferred to the person who made the original claim.

The law was specifically designed to protect the person filing the claim from creditors who were forbidden from placing liens against homesteaded land. The law served several purposes. Among other things, it encouraged settlers to migrate to the western United States and thus encouraged economic development in that region. It also gave debtors a chance to get a fresh start, keeping them off of any form of public assistance.

Because much of the supply of federal land was exhausted by the early portion of the 20th century, Congress largely ended the practice of federal homesteading in 1935. There have been some periodic exceptions since then, but these have been limited to specific areas.

It wasnâ€™t just the federal government that had homestead laws however. Many states also had them, and these laws are still in effect. According to an article published last week by Kiplinger, there are still 27 states with homestead laws on the books. Like the federal law, these laws are designed to protect certain assets from creditors in the event of bankruptcy or other financial problems.

State laws differ greatly, and they do have certain exceptions. For instance, homestead laws canâ€™t be used to protect your assets from the IRS. Many states will not allow you to use these laws to protect your assets, even in the case of bankruptcy, if you stop making child support or alimony payments.

In some states, homesteading takes place as soon as you move into your home and without a need to file any paperwork. In other states, you may need to live in your home for six months, and you may have to file a homestead claim with your county recorder.

The dollar amount of protection also differs greatly from state to state. Florida allows you to protect the entire value of your home. Arkansas is on the opposite end of this spectrum, offering only $2,500 worth of protection. Many of these laws will not protect you from debts incurred prior to the time the homestead was filed. This means that the sooner you file a homestead, the more protection you will receive.

One thing that is common to homestead laws is that they only protect your principle residence. In most cases, this means a permanent building that is a single family residence. Some states will also cover trailer homes. And some state laws also cover the contents of the home (i.e.: your furniture and other belongings).

Most homeowners are not aware that they can homestead their principle residence. This means that unless you live in a state that automatically offers homesteading, you may be needlessly exposed to debt collectors.

On the other hand, homesteading in states that offer little or no protection may be more trouble than it is worth. For example, if you are applying to refinance your home, you may be required to lift your homestead prior to getting that new loan you want.

To assist you in determining what kind of homestead protection is available to you, click on the links for your state below.

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by Jim Malmberg
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