

Homestead Laws, Debts and Bankruptcy – What You Need to Know - Updated July, 2014

April 28, 2005 - If you own your home, depending upon where you live, you may want to homestead it. That is because homesteading can protect a portion, or even all of your home's equity from creditors. But how protected you are is largely dependent on what state you live in and on what kind of debts you have.

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var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
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})();
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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 wasn't just the federal government that had homestead laws however. Many states also had them, and these laws are still in effect. 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 can'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, ACCESS has prepared the following list of links. Just click on your state and see what the law says.

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byJim Malmberg

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Comments

Help!!!

Written by Guest on 2006-06-26 Can anyone answer this. My spouse has a 30 year debt of back child support, we have been married for 22 years. Two years ago he signed and recorded a "quit deed claim" on our home, giving it to me. The house is in my name only. We did homestead it when we moved here (New Mexico). Is my home protected from the State of Texas/State of New Mexico for this debt? Please respond to nathanwayne9@yahoo.com. Thank you very much! DR

RE: Help

Written by jmalmborg on 2006-06-26 Please register with our site.

The answer to your question is that it probably depends on a three things. First, what was the reason for the quit claim? Second, where would the court case be heard. And third, what do the homestead laws in New Mexico say?

I'm not an attorney but the biggest issue that you face is probably the quit claim deed. If your husband signed a quit claim with a reasonable suspicion that he could be held accountable for child support (and I think this would be a pretty easy argument to make), then you may very well have a problem. All states have laws against this kind of property transfer. It is a practice that is known as either "unlawful conveyance" or "fraudulent conveyance".

In addition to civil penalties, which would most likely nullify the quit claim deed, if it can be shown that the conveyance occurred in an effort to avoid a court judgement such as child support, there may also be criminal penalties. Courts tend to frown on people that try to avoid their judgements.

You need to speak with an attorney to find out if you have real problem here.

New Mexico's law allows you (as a couple) to homestead \$60,000 in value. But as the sole owner of the property, you can only homestead \$30,000. That is not very much. If you have more than \$30,000 in equity, you may be exposed.

Finally, unlike Florida (and to a lesser extent Texas) the type of homestead law that New Mexico does not guarantee you that you can keep your home no matter what.

Again, I think you need to speak with an attorney on this.

Worried

Written by Guest on 2006-07-19 We have several loans, including a home loan, at one bank. My husband had surgery and was unable to work for a few months. Two of our loans got behind and even though we were never behind on our house, the bank said that if we defaulted on even one of our loans, we would lose our house also. Can they do that?

RE: Worried

Written by cat101 on 2006-07-20 The only way that you could lose your home is -- first, the two loans that are behind are secured by your home.

Second, if they ARE secured by your home, then you need to see about redoing your mortgage so that you have only one payment.

Third, if they ARE secured by your home, then the lender needs to jump through hoops prior to foreclosing on the home -- it doesn't happen over night.

Fourth, if they ARE NOT secured by your home, then the process to take your home is even more complex. Like first they have to have a judgment against you, then they have to file a lien on your home, then they have to force a sale & notify the primary lender, and on...

Regretfully, you didn't register with our site. If you had of, we would of been able to provide a better, more complete answer.