



## DO YOU REALLY NEED TO RECORD A HOMESTEAD?

In the state of California the law automatically provides Homestead Protection regardless of whether you actually record a Homestead against your primary residence. The following is some additional information that may help you decide if recording a Homestead is right for you.

The filing of a declared homestead does add to the homestead protection that the law automatically provides to all homeowners. Similar protections of a home, or the equity in a property, are enjoyed by homeowners who have not recorded a homestead declaration, but those protections are not quite as extensive as those provided by a properly recorded written homestead declaration. The following are some of the reasons that a homeowner who is or expects to be in financial trouble should file a declared homestead and not rely exclusively on the automatic homestead:

- The owner who files a declared homestead can choose which of several different dwellings will be protected as the person's home.
- The protection that is provided by a declared homestead will continue to apply to that homestead even if the owner moves. If a declared homestead has not been recorded, the automatic homestead protection may be lost if the owner moves.
- The protection that is provided by a declared homestead will apply to the proceeds of a voluntary sale. If no declared homestead has been recorded, the protection of the owner's equity in a home may be lost in the event of a voluntary sale of the home. (This means that the proceeds of the voluntary sale of the home will go to the judgment creditor or creditors rather than the owner.)
- If a declared homestead has been recorded, the law is clear that the proceeds of sale (up to the dollar limits of the homestead law) can be used to purchase another home.

Only if a declared homestead has been recorded will the proceeds of a voluntary sale assuredly be protected after they are used to purchase another home; only then will the protection given to the first home be carried over to the second home.

However, neither the automatic homestead nor the declared homestead will protect a homeowner against the loss of his or her home to a secured creditor-- such as the lender who has financed the original purchase, or a lender who extended a second mortgage loan, or to a contractor, subcontractor or laborer who has filed a valid claim of mechanic's lien. The protections of both the declared and automatic homesteads, however, extend to most other kinds of creditors.

Title companies take the position that only the courts can determine the validity of a Homestead and typically will not ignore liens and judgments based on a Homestead.

A homeowner who is in financial trouble, or one who expects to encounter financial trouble, should consult an attorney for advice on the need for filing a homestead declaration and how to protect their home.

