

Homestead your Property



- 1) Your specific situation may involve factors requiring different procedures or forms.
- 2) Library staff are not qualified to interpret your situation vis-à-vis the law to determine if the procedures described are applicable to your situation.
- 3) If you are unsure of the proper procedure in your situation, you are advised to consult with an attorney.

Step 1: Complete the Required Forms

Evaluate if you qualify for a Homestead Exemption. See attached Requirements. Determine if you are filing as an individual or as spouses.

The Orange County Clerk/Recorder's Office offers forms from various title companies (www.ocrecorder.com/forms) including the following forms, from **Lawyers Title Company, Irvine, CA.**

A blank copy of each form is also attached to this guide

Homestead Declaration

www.occltic.com/Uploads/26/99/12699/Gallery/Forms%20&%20Docs/Homestead_Dec-Indiv_2014.doc

Homestead Declaration-Spouses

www.occltic.com/Uploads/26/99/12699/Gallery/Forms%20&%20Docs/Homestead_Dec-Spouses_2014.doc

Abandonment of Declared Homestead

www.occltic.com/Uploads/26/99/12699/Gallery/Forms%20&%20Docs/Homestead-Abandon_2014.doc

Step 2: Notarize

The Homestead Declaration must be notarized.

Step 3: Record the Homestead Declaration at the Recorders Office

File the Homestead Declaration in the Recorder's Office of the county where the property is located.

Santa Ana:

Hall of Records
12 Civic Center Plaza,
Room 101 and Room 106
Santa Ana, CA 92701
8 am - 4:30 pm Monday - Friday

Laguna Hills Civic Center

24031 El Toro Road, Suite 150
Laguna Hills, CA 92653
9 am - 4:30 pm Monday - Friday

Real property recording services are closed for lunch from 12 to 1 pm
Real property recording services are available until 4 p.m.

Fullerton

201 N. Harbor Blvd.
Fullerton, CA 92832
9 am - 4:30 pm Monday - Friday

Real property recording services are closed for lunch from 12 to 1 pm
Real property recording services are available until 4 p.m.

Clerk/Recorder's telephone: (714) 834-2500.

Requirements:

The homestead exemption applies only when certain requirements are met. These requirements, described in California Code of Civil Procedure (CCP) Section 704.710, are:

1. The residence must be the principal dwelling of the judgment debtor or his or her spouse.
2. The judgment debtor, or their spouse, must reside at the dwelling on the date the judgment creditor's lien attached.
3. The judgment debtor and/or their spouse must reside continuously thereafter until the date of the court determination that the dwelling is a homestead.

Eligible properties:

Homestead exemptions are available for a variety of dwelling types. "Dwelling" means a place where a person resides and may include, but is not limited to, the following:

1. A house or mobile home, together with the outbuildings and the land upon which they are situated.
2. A boat or other waterborne vessel.
3. A condominium, as defined in Section 783 of the Civil Code.
4. A planned development, as defined in Section 11003 of the Business and Professions Code.
5. A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.
6. A community apartment project, as defined in Section 11004 of the Business and Professions Code.

Amount of exemption:

The amount of the exemption varies, depending on the age, marital status, and income of the property owner. Under CCP Sections 704.720 - 704.730, the exemptions are:

1. \$75,000 unless the judgment debtor or their spouse who resides in the homestead is a person described below in (2) or (3).
2. \$100,000 if the judgment debtor or spouse is a member of a family unit, if at least one member of the family unit owns no interest in the homestead, or has only community property interest in the homestead with the judgment debtor.
3. \$175,000 if the judgment debtor who resides in the homestead is at the time of the sale either (a) a person 65 years old, (b) a person physically or mentally disabled and as a result of that disability unable to engage in substantial gainful employment, or (c) a person 55 years old with a gross annual income less than \$15,000, or, if the judgment debtor is married, a gross annual income, including that of the spouse, of not more than \$20,000, and the sale is involuntary.

Abandonment of homestead:

By operation of law: If a homestead declaration is executed or recorded on a different property, the first declared homestead is abandoned. Additionally, abandonment is implied when the debtor establishes another dwelling as his or her personal residence, even when there is no declaration of homestead made. A party may not have two homesteads simultaneously.

By declaration: A property owner can record a "Declaration of Abandonment of Declared Homestead".

Explanation:

Under California law, homeowners are entitled to protection of a certain amount of equity in their home. The amount protected varies depending on the age, marital status, and income of the property owner. The homestead exemption does not prohibit the sale of the property. The property can be sold if the sale would produce enough money to:

- ◆ Pay all existing liens on the property
- ◆ Pay off all mortgages and loans secured by the equity in the home
- ◆ Pay the costs of selling the home
- ◆ Allow the homeowner to keep equity in the amount protected by the homestead exemption

Rather than prohibiting the sale, the homestead exemption merely ensures that the homeowner receives the amount of the exemption before the creditors are paid from the sale proceeds. The exempt funds received from the voluntary sale of the property remain exempt from debt collection attempts for six months, and can be used to purchase another residence. The homestead exemption does not apply in the following situations:

- ◆ Judgments obtained prior to the recording of the homestead declaration
- ◆ Debts secured by encumbrances on the premises executed by the owner before the declaration was recorded
- ◆ Obligations secured by mechanics' liens on the premises
- ◆ Voluntary encumbrances on the premises, such as mortgages or deeds of trust
- ◆ Judgments for child, family, or spousal support

There are two types of Homestead Exemptions:

Automatic: applies only upon forced sale of the property. The automatic exemption requires continuous residence from the date the judgment creditor's lien attaches until the date the court determines that the dwelling is a homestead. If a creditor attempts to sell the home, the burden of proof is on the homeowner to prove to the court that an automatic homestead exemption exists.

Declared: applies both to forced and voluntary sales of the property. Exempt proceeds from a voluntary sale are protected if another home is purchased within 6 months. Homeowners must reside in the dwelling on the date the homestead declaration is recorded. If a creditor attempts to sell your home, the burden of proof is on the creditor to prove to the court that your homestead declaration is invalid.

For further research at the Law Library:

California Jurisprudence

KFC 80 .C3 - in Main Reading Room, Floor 3

See: Vol. 37, Homesteads.

Electronic Access: *Westlaw*

California Real Estate, Law and Practice

KFC 140 .B45 - in Main Reading Room, Floor 3

See: Vol. 10, Ch. 344.

Electronic Access: *Lexis Advance*

Miller and Star California Real Estate

KFC 140 .M5 2015 - in Main Reading Room, Floor 3

See: Vol. 12, Ch. 43.

Electronic Access: *Westlaw*

California Legal Forms, Transaction Guide

KFC 68 .C32 - in Main Reading Room, Floor 3

See: Vol. 12, Ch. 27B.

Electronic Access: *Lexis Advance*

California Forms of Pleading & Practice

KFC 1010 .A65 C3 - in Main Reading Room, Floor 3

See: Vol. 25, Ch. 294

Electronic Access: *Lexis Advance*

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF HOMESTEAD
(Individual)**

I, _____, hereby certify and declare as follows:

I hereby claim as a declared homestead the premises described as follows:

I am the owner of the above described homestead.

The above described homestead is my principal dwelling or the principal dwelling of my spouse and I am, or my spouse is, currently residing thereon.

The facts stated in this declaration are known to be true as of my personal knowledge.

Dated: _____

Print Name: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____

FOR NOTARY STAMP

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF HOMESTEAD
(Spouses as Declared Owners)**

We, _____ and _____, hereby certify and declare as follows:

We are husband and wife.

We hereby claim as a declared homestead the premises described as follows:

We are the owners of the above described homestead.

The above described homestead is our principal dwelling and we currently reside thereon.

The facts stated in this declaration are known to be true as of our personal knowledge.

Dated: _____

Print Name: _____

Print Name: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____

FOR NOTARY STAMP

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

Order No.:

Escrow No.:

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF ABANDONMENT OF DECLARED HOMESTEAD

The undersigned declare(s) that he/she/they hereby abandon(s) the homestead previously declared in the Homestead Declaration executed by _____ on _____, _____ and recorded on _____, _____ as Instrument No. _____ in the Official Records of the County Recorder of _____ County, State of California, pertaining to the following real property:

and commonly known as (Street address) _____.

Dated: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____

FOR NOTARY STAMP



First American

4 First American Way
Santa Ana, CA. 92707
(714)250-7566
EMAIL Main Office

Customer Service: (714) 250-4500

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Description	Actions
Abandonment of Homestead	Download Blank Doc
Affidavit - Death of Joint Tenant - Person Who is Not the Surviving Joint Tenant	Download Blank Doc
Affidavit - Death of Joint Tenant - Surviving Domestic Partner	Download Blank Doc
Affidavit - Death of Joint Tenant - Surviving Spouse	Download Blank Doc
Affidavit - Death of Trustee	Download Blank Doc
Affidavit Change of Trustee	Download Blank Doc
Affidavit for Uninsured Transfers	Download Blank Doc
Certification of Trust	Download Blank Doc
Declaration of Homestead - Individual	Download Blank Doc
Declaration of Homestead - Spouses	Download Blank Doc
Deed of Trust and Assignment of Rents - Short Form	Download Blank Doc
Deed of Trust - Assignment	Download Blank Doc
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Grant Deed	Download Blank Doc
Grant Deed - Gift	Download Blank Doc
Grant Deed - Into or Out of Trust	Download Blank Doc
Interspousal Transfer Grant Deed	Download Blank Doc

Notary - All Purpose Acknowledgement 2015

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Notary - Jurat 2015

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Notice of Completion

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Power of Attorney - Special

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Preliminary Change of Ownership - Los Angeles County

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Quitclaim Deed

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Reconveyance - Full

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Release of Mechanics Lien

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Request for Full Reconveyance

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Request for Notice of Default

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Revocable Transfer on Death

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Statement of Information

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Substitution of Trustee

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Substitution of Trustee - Full Recon

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Transfer Tax Affidavit - Riverside County

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Transfer Tax Affidavit - Santa Barbara County

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Fidelity National Title

Fidelity National Title

| Orange County

(949) 788-2800

Forms & Documents

FORMS TO COMPLETE ONLINE AND PRINT OUT

Welcome	Affidavit Confirming Authority Under Power of Attorney	Note Secured by Deed of Trust - Interest Extra
LIMITED LIABILITY AGREEMENT	Affidavit of Death	Note Secured by Deed of Trust - Interest Included
	Affidavit of Death - Domestic Partner - Community Property with Right of Survivorship	Note Secured by Deed of Trust - Interest Extra
Our Office	Affidavit of Death - Joint Tenant	Note Secured by Deed of Trust - Interest Included
	Affidavit of Death - Spouse - Community Property with Right of Survivorship	Note Secured by Deed of Trust - Straight Note
Meet Our Staff	Affidavit of Death - Surviving Domestic Partner - Succeeding to Community Property	Note of Cessation
SoCal Comps	Affidavit of Death - Surviving Spouse - Succeeding to Community Property	Notice of Completion
Fidelity VIP	Affidavit of Death of Trustee	Parent - Child Exclusion
Good Faith Estimate	All Purpose Acknowledgment	PCOR (Preliminary Change of Ownership Report) - LA
	Corrective Affidavit	PCOR - Orange County
Technology Corner	Certification of Trustees Under Trust	PCOR - Riverside County
	Documentary Transfer Tax Exemptions	PCOR - San Bernardino County
Consumer Info	Deed of Trust	PCOR - San Diego County
	Deed of Trust & Assignment of Rents	PCOR - Ventura County
Fast Facts	Deed of Trust & Assignment Rents & Request for Special Notice	Power of Attorney - Statutory
	Estoppel Affidavit - Deed in Lieu of Foreclosure	Power of Attorney - Revocation
Money Matters	Full Reconveyance	Power of Attorney - Special
	Grant Deed	Quitclaim Deed
Orange County		Release of Mechanic's Lien
		Request for Full Reconveyance
		Request for Notice of Delinquency
		Request for Notice

Smart Links

[Grant Deed - Community Property with Right of Survivorship](#)

[Revocable Transfer on Death \(TOD\) Deed](#)

Newsdesk

[Grant Deed - Joint Tenancy](#)

[Revocation of Revocable Transfer on Death \(TOD\) Deed](#)

[Grant Deed - Partnership](#)

[Statement of Information](#)

Multicultural Resources

[Grant Deed - Corporation](#)

[Subordination Agreement - CLTA Subordination Form A](#)

[Homestead Abandonment](#)

[Homestead Declaration](#)

[Subordination Agreement - CLTA Subordination Form D](#)

Forms & Documents

[Homestead Declaration Spouse](#)

[Inter-Domestic Partner Deed](#)

[Interspousal Deed](#)

[Jurat](#)

[Substitution of Trustee](#)

[Mechanics Lien Claim](#)

[Substitution of Trustee and Full Reconveyance](#)

[Note Payment Schedule](#)

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DISCLAIMER: Forms available through this site are not a substitute for the advice of an attorney. Legal advice of any nature should be sought from competent, independent, legal counsel in the relevant jurisdiction. No warranties are made regarding the use or suitability of these Forms. If you have any questions concerning which form is appropriate for your transaction, or need help in the preparation of that document, please consult an attorney or obtain other professional advice.

