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California's New Homestead Exemption

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On October 11, 2009, California enacted Assembly Bill 1046 ("AB 1046"), increasing California's homestead exemption for judgment debtors, their spouses and their families. AB 1046, which amended California Code of Civil Procedure Section 704.730, increased the amount of equity that may be protected by a judgment debtor or a judgment debtor's spouse in a home owned by either, provided that at least one of the two actually has an ownership interest in the home.

AB 1046, which took effect on January 1, 2010, increased the homestead exemptions as follows:

1. If the judgment debtor or his/her spouse resides alone in the homestead, the exemption was increased from \$50,000 to \$75,000;
2. If the judgment debtor or his/her spouse resides in the homestead and is a member of a family unit (husband and wife living together or either residing with a member of a family unit, who is cared for or maintained by the judgment debtor), the exemption was increased from \$75,000 to \$100,000; and
3. If the judgment debtor or his/her spouse who resides in the homestead is over 65 years of age, disabled, or 55 years of age or older with limited income (\$15,000, if single; \$20,000, if married), the exemption was increased from \$150,000 to \$175,000.

In addition, AB 1046 requires the California Judicial Council to determine on or before April 1, 2010, and at each three year interval thereafter, the amount by which the dollar amounts may be increased and to submit this amount to the California Legislature; however, the proposed increases shall not take effect unless they are approved by the Legislature.

California homeowners have seen the value of their homes drop 30% to 40% in the past three years. Given the current depressed real estate market, AB 1046 comes too late for California homeowners, many of whom have either lost their homes to foreclosure, or have little or no equity left. However, when real estate values rise again, the enactment of AB 1046 will provide added protection for California judgment debtors (and related protected parties) from judgment creditors or bankruptcy trustees.