

## RESOLUTION 04-06-06

### DIGEST

Enforcement of Judgments: Estranged Spouse's Entitlement to Homestead Exemption  
Amends Code of Civil Procedure section 704.710 to allow a judgment debtor to retain a homestead exemption if the debtor's separated or former spouse continues to live in the residence.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Code of Civil Procedure §704.710 to read as follows:

- 1 § 704.710.  
2 As used in this article:  
3 (a) "Dwelling" means a place where a person resides and may include but is not  
4 limited to the following:  
5 (1) A house together with the outbuildings and the land upon which they are situated.  
6 (2) A mobilehome together with the outbuildings and the land upon which they are  
7 situated.  
8 (3) A boat or other waterborne vessel.  
9 (4) A condominium, as defined in Section 783 of the Civil Code.  
10 (5) A planned development, as defined in Section 11003 of the Business and  
11 Professions Code.  
12 (6) A stock cooperative, as defined in Section 11003.2 of the Business and  
13 Professions Code.  
14 (7) A community apartment project, as defined in Section 11004 of the Business and  
15 Professions Code.  
16 (b) "Family unit" means any of the following:  
17 (1) The judgment debtor and the judgment debtor's spouse if the spouses reside  
18 together in the homestead.  
19 (2) The judgment debtor and at least one of the following persons who the judgment  
20 debtor cares for or maintains in the homestead:  
21 (A) The minor child or minor grandchild of the judgment debtor or the judgment  
22 debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.  
23 (B) The minor brother or sister of the judgment debtor or judgment debtor's spouse  
24 or the minor child of a deceased brother or sister of either spouse.  
25 (C) The father, mother, grandfather, or grandmother of the judgment debtor or the  
26 judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased  
27 spouse.  
28 (D) An unmarried relative described in this paragraph who has attained the age of  
29 majority and is unable to take care of or support himself or herself.  
30 (3) The judgment debtor's spouse and at least one of the persons listed in paragraph  
31 (2) who the judgment debtor's spouse cares for or maintains in the homestead.

32 (c) "Homestead" means the principal dwelling (1) in which the judgment debtor or  
33 the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the  
34 dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided  
35 continuously thereafter until the date of the court determination that the dwelling is a  
36 homestead. Where exempt proceeds from the sale or damage or destruction of a homestead  
37 are used toward the acquisition of a dwelling within the six-month period provided by  
38 Section 704.720, "homestead" also means the dwelling so acquired if it is the principal  
39 dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously  
40 from the date of acquisition until the date of the court determination that the dwelling is a  
41 homestead, whether or not an abstract or certified copy of a judgment was recorded to create  
42 a judgment lien before the dwelling was acquired.

43 (d) "Spouse" does not include a married person following entry of a judgment  
44 decreeing legal separation of the parties, unless such married persons reside together in the  
45 same dwelling.

46 (e) Notwithstanding any other provision of this section, a judgment debtor does not  
47 lose his or her entitlement to an exemption under this Article as a result of not physically  
48 living in the subject dwelling so long as the judgment debtor's separated or former spouse  
49 continues to reside in or exercise control over possession of the dwelling. Unless otherwise  
50 extended by court order, the application of this subsection is terminated by entry of a  
51 judgment or legally enforceable agreement dividing the community property of the parties.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

#### STATEMENT OF REASONS

Existing Law: In order to obtain the benefits of the "automatic homestead," Section 704.710(c) requires a judgment debtor to live in a dwelling on the date a creditor's lien attaches and continuously thereafter until a court determines the that the dwelling is a homestead. Courts also consider a bankruptcy filing to be the equivalent of a creditor's lien attaching to a property.

This Resolution: Would amend Section 704.710 by adding subsection (e) which would provide that a judgment debtor does not lose his or her entitlement to an exemption under this Article so long as the judgment debtor's separated or former spouse continues to reside in the property. Unless otherwise ordered by a court, this extension of the law would terminate upon division of community property.

The Problem: In most cases where spouses separate or are in the process of obtaining a divorce, one spouse vacates the family residence and the other spouse continues to occupy the property. Under subsection (d) of this statute, however, the "out-spouse" loses his or her entitlement to an exemption under this Article upon entry of a judgment of legal separation because they are no longer physically living in the dwelling. In many cases, the division of community property does not occur until well after entry of the judgment decreeing legal separation or dissolution of the

marriage. It is unfair to the spouse that is not residing in the property to have their homestead rights terminated even though they continue to have a community property ownership interest in the dwelling. This result is particularly unfair where the judgment debtor has vacated the property in order to avoid physical abuse.

#### IMPACT STATEMENT

This proposal does not affect any other law, statute or rule.

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