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Homestead Deed

What is a Homestead Deed?

A Homestead Deed is a list of property that a debtor otherwise would lose to a creditor that the debtor wants to protect from creditors. The Homestead Deed must be in proper legal form and should be prepared by a Virginia licensed attorney. Once the Homestead Deed is filed with the Circuit Court for the city or county where the debtor lives, and other needed steps are taken, the property generally is protected from creditors. There is a \$21 filing fee to file each Homestead Deed.

What is the most you can claim on a Homestead Deed?

During a debtor's lifetime, a Homestead Deed can protect up to \$5,000 worth of property, or up to \$10,000 worth of property for a person 65 years of age or older, plus an additional \$500 worth of property for each dependent. A veteran with a service connected disability of 40% or more, as rated by Veterans Affairs (VA), can protect an additional \$2,000 worth of property. Again, all of these are lifetime limits.

Do you have to claim the entire exemption all at once?

No. A debtor may claim the entire exemption all at once in one Homestead Deed, or over time in several Homestead Deeds, as long as the lifetime limit is not exceeded. Each Homestead Deed must state the number of Homestead Deeds previously filed, the cities or counties where they were filed, and the total Homestead exemption previously claimed.

What items would you not list on a Homestead Deed?

A debtor should not list on a Homestead Deed any property already protected under another law. The Poor Debtor's exemption automatically protects the following property.

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- Up to \$3,000 worth of a firearm.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 "equity" value in a motor vehicle. "Equity" means the fair market value minus the amount you still owe on the vehicle.

- The family Bible, wedding and engagement rings, and up to \$5,000 worth of family portraits and heirlooms.
- A lot in a burial ground and up to \$5,000 worth of a pre-need funeral contract.
- All animals owned as pets which are not kept or raised for sale or profit.

Other laws protect other property such as government benefits, pensions, disability benefits, child support, personal injury and wrongful death awards, and a portion of wages. Wages can't be garnished unless after tax wages are at least \$290.00 per week. (If you support a dependent minor child living with you, and your total household monthly income is no more than \$1,750.00, you can claim an additional exemption of \$34 per week for one child, \$52 per week for two children, and \$66 per week for three or more children.) A judgment-creditor may garnish the smaller of the following amounts.

- The amount by which after tax wages exceed \$290.00 per week, or,
- 25% of after tax wages.

These protections apply even if the funds have been deposited in a bank, as long as the money can be traced to one of these protected sources. Other steps may be needed to claim the protection of these funds in a bank account, but because they are protected by other laws, you would not list them in a Homestead Deed.

What items would you list on a Homestead Deed?

A Homestead Deed usually is used to protect wages currently being garnished, or funds in a bank account currently being garnished, if the wages or funds in the bank account are not protected under another law. Most personal property of a debtor is protected by other laws. Occasionally, a Homestead Deed is used to protect property not protected by the Poor Debtor's exemption, such as the portion of equity in a motor vehicle worth more than \$6,000.

When would you file a Homestead Deed?

Because the Homestead exemption is a lifetime limit, you would not file a Homestead Deed unless your property were currently being garnished or currently being collected by levy, attachment or other lawful collection action. If a bank account is being garnished, you would file the Homestead Deed and a garnishment exemption claim, as soon as possible after funds stop being deposited into the account. You must file these before the garnishment period ends.

A Homestead Deed only protects wages which have been garnished. It does not stop a wage garnishment and does not protect wages which will be garnished in the future. Due to this, if wages are being garnished, you would file the Homestead Deed and a garnishment exemption claim, after your last (or next to last) garnished paycheck and before the garnishment period ends. Again, you must file these before the garnishment period ends.

Do you have to be a homeowner or home buyer to file a Homestead Deed?

No. Any Virginia resident 18 years of age or older may file a Homestead Deed. A married couple each may file a separate Homestead Deed. An adult child living with a parent also may file a separate Homestead Deed. You do not have to be a home owner or home buyer.

When would the Homestead exemption not protect property against creditors?

A Homestead exemption cannot be claimed against debts due for child support, debts due for spousal support (alimony) or debts due for the purchase price of a piece of property (such as a motor vehicle bought from and financed with a dealer).

Can a debtor give up/waive the Homestead exemption with respect to certain debts?

Many sellers and lenders have contracts saying the buyer or borrower gives up or waives the right to claim the Homestead exemption. However, federal regulations make it an unfair credit practice for most creditors to ask for and obtain a waiver of the Homestead exemption, unless the waiver applied only to a debt due for the purchase price of a piece of property. Otherwise, the waiver should not be enforceable.

Does a Homestead Deed affect the underlying judgment being collected or prevent other collection efforts?

No. A Homestead Deed does not affect the underlying judgment being collected. It only protects the exact property listed in the Homestead Deed, such as a specific amount of wages which have been garnished or a precise amount of money in a bank account at a particular time. It does not prevent other collection efforts. It does not prevent additional wage garnishments once additional wages are earned. It does not prevent additional bank account garnishments once additional funds are deposited in a bank account.

Due to this, a Homestead Deed cannot be a permanent solution to debt collection. A Homestead Deed is only a temporary solution to debt collection, and should only be used along with a permanent solution. When people are deep in debt and have no hope of payment to become debt free, bankruptcy may be the option. Otherwise, paying the judgment may be the only other option.

Do you have to file a bankruptcy in order to file a Homestead Deed?

No. Although a Homestead Deed often is filed along with a bankruptcy, you do not have to file a bankruptcy in order to file a Homestead Deed.

Can you file a Homestead Deed without an attorney?

You may be able to do this, but it is not recommended. A Homestead Deed is difficult. You may lose income, property, or other rights if you don't know the law.