AB-2463 Enforcement of money judgments: execution: homestead. (2019-2020)

Date Published: 09/30/2020 02:00 PM

Assembly Bill No. 2463

CHAPTER 218

An act to amend Sections 703.150 and 704.760 of, and to add Section 699.730 to, the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 28, 2020. Filed with Secretary of State September 28, 2020.]

LEGISLATIVE COUNCIL'S DIGEST

AB 2463, Wicks. Enforcement of money judgments: execution: homestead.

Existing law authorizes a judgment creditor to enforce a money judgment obtained in a civil action by obtaining a writ of execution that allows the creditor to levy on property of the judgment debtor and obtain satisfaction of the judgment by, among other things, a sale of the property. Existing law generally provides that all property of the judgment debtor is subject to execution, with specified exceptions. Existing law authorizes a judgment debtor to protect a specified amount of the judgment debtor's equity in the debtor's principal dwelling by claiming a homestead exemption in that property. Existing law requires a judgment creditor who has levied on a judgment debtor's dwelling to apply to the court for a sale of the dwelling, and specifies the contents of that application.

This bill would prohibit a sale under execution of a judgment lien of a judgment debtor's principal place of residence based on a consumer debt unless that debt was secured by that principal place of residence at the time it was incurred. The bill would exempt specified forms of debt from this prohibition, including debts owed to financial institutions, as specified, if the amount of the original judgment on which the lien is based, when entered, and the amount owed on the outstanding judgment at the time of execution on the judgment lien, are greater than $75,000, as adjusted for inflation by the Judicial Council. The bill would require a judgment creditor's application for sale of a dwelling to include a statement that the judgment on which the execution sale is based was secured by the debtor's principal place of residence at the time it was incurred or a statement indicating which exemption is applicable.

Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 699.730 is added to the Code of Civil Procedure, to read:

699.730. (a) Notwithstanding any other law, the principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the debtor's principal place of residence at the time it was incurred. As used in this subdivision, "consumer debt" means debt incurred by an individual primarily for personal, family, or household purposes.

(b) Subdivision (a) does not apply to any of the following types of unpaid debts:

(1) Wages or employment benefits.

(2) Taxes.

(3) Child support.

(4) Spousal support.

(5) Fines and fees owed to governmental units.

(6) Tort judgments.

(7) (A) Debts, other than student loan debt, owed to a financial institution at the time of execution on the judgment lien, if both of the following requirements are met:

(i) The amount of the original judgment on which the lien is based, when entered, was greater than seventy-five thousand dollars ($75,000), as adjusted pursuant to Section 703.150.

(ii) The amount owed on the outstanding judgment at the time of execution on the judgment lien is greater than seventy-five thousand dollars ($75,000), as adjusted pursuant to Section 703.150.

(B) As used in this paragraph, the following terms have the following meanings:

(i) “Financial institution” means a financial institution, as defined in Section 680.200.

(ii) “Student loan debt” means debt based on any loan made to finance postsecondary education expenses, including tuition, fees, books, supplies, room and board, transportation, and personal expenses. Student loan debt includes debt based on a loan made to refinance a student loan, but does not include debt secured by the debtor’s principal place of residence at the time it was incurred.

SEC. 2. Section 703.150 of the Code of Civil Procedure is amended to read:

703.150. (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (e).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (e).

(c) On April 1, 2022, and at each three-year interval ending on April 1 thereafter, the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730 in effect immediately before that date shall be adjusted as provided in subdivision (e).

(d) On April 1, 2013, and at each three-year interval ending on April 1 thereafter, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of exemptions provided in subdivision (a) of Section 704.730 in effect immediately before that date may be increased as provided in subdivision (e). Those increases shall not take effect unless they are approved by the Legislature.

(e) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars ($25).

(f) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), and the dollar amount set forth in paragraph (7) of subdivision (b) of Section 699.730, together with the date of the next scheduled adjustment. In any year that the Legislature votes to increase the exemptions provided in subdivision (a) of Section 704.730, the Judicial Council shall publish a list of current dollar amounts of exemptions.

(g) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivisions (b), (c), and (d) is governed by Section 703.050.

SEC. 3. Section 704.760 of the Code of Civil Procedure is amended to read:

704.760. The judgment creditor's application shall be made under oath, shall describe the dwelling, and shall contain all of the following:

(a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption.

(b) A statement, which may be based on information and belief, whether the dwelling is a homestead and the amount of the homestead exemption, if any, and a statement whether or not the records of the county recorder indicate that a homestead declaration under Article 5 (commencing with Section 704.910) that describes the dwelling has been recorded by the judgment debtor or the spouse of the judgment debtor.

(c) A statement of the amount of any liens or encumbrances on the dwelling, the name of each person having a lien or encumbrance on the dwelling, and the address of such person used by the county recorder for the return of the instrument creating such person's lien or encumbrance after recording.

(d) A statement that the judgment is based on a consumer debt, as defined in subdivision (a) of Section 699.730, or that the judgment is not based on a consumer debt, and if the judgment is based on a consumer debt, whether the judgment is based on a consumer debt that was secured by the debtor's principal place of residence at the time it was incurred or a statement indicating which of the exemptions listed in subdivision (b) of Section 699.730 are applicable. If the statement indicates that paragraph (7) of subdivision (b) is applicable, the statement shall also provide the dollar amount of the original judgment on which the lien is based. If there is more than one basis, the statement shall indicate all bases that are applicable.