

Concerns about Arizona HB 2617, especially with the amendments: will allow old and new judgments to attach to homesteads.

What the bill and amendments do: There are three parts to the bill & amendments. First, the bill raised the homestead exemption from \$150,000 to \$250,000. Second, the bill provides that any existing judgment or lien to become an automatic lien on a person's home. This provision is retroactive and reverses the law that has been in place for more than 50 years, protecting the homestead from judgments. Third, the Toma amendment to the bill allows a judgment creditor to seize any funds "from the refinancing of a homestead property ...and the judgment creditor must be paid from those cash proceeds before any remaining cash proceeds are paid to the judgment debtor (the homeowner)."

The homestead exemption has been an essential protection for Arizona residents since nearly the beginning of Statehood. The Courts have concluded that the legislative purpose of the homestead exemption statutes was to allow the family to keep a certain amount of money to provide a shelter for the family. See for example, *Union Oil Co. v. Norton-Morgan Commercial Co.*, 23 Ariz. 236, 202 P. 1077 (1922); *Security Trust & Savings Bank v. McClure*, 29 Ariz. 325, 241 P. 515 (1925); *Wheeler Perry Co. v. Mortgage Bond Co.*, 41 Ariz. 247, 17 P.2d 331 (1932); *Schreiber v. Hill*, 54 Ariz. 345, 95 P.2d 566 (1939); *Seaney v. Molling*, 62 Ariz. 81, 153 P.2d 532 (1944). The present legislation will allow the invasion of the homestead overturning the long-standing legislative protection of the family to the benefit of creditors. It should be noted that the homestead does not extend to obligations for child support or alimony.

The bill and amendments change the existing law. Currently the law (A.R.S. §964 (A)) does not allow judgments to attach to homesteads. Under the new bill, all existing recorded judgments or liens will automatically attach to all property, including a family's homestead. The text of the new bill reads:

"B. A CIVIL JUDGMENT SHALL BECOME A LIEN ON THE REAL PROPERTY OF THE JUDGMENT DEBTOR, INCLUDING THE JUDGMENT CREDITOR'S HOMESTEAD PROPERTY, THAT IS LOCATED IN THE COUNTY IN WHICH THE JUDGMENT IS RECORDED, WHETHER THE PROPERTY IS THEN OWNED BY THE JUDGMENT DEBTOR OR IS LATER ACQUIRED, FROM AND AFTER THE TIME OF RECORDING AS PROVIDED IN SECTION 33-961 UNTIL SATISFIED OR LIFTED. THIS SUBSECTION APPLIED RETROACTIVELY TO ALL JUDGMENTS WITHOUT REGARD TO WHEN THE JUDGMENT WAS RECORDED."

When a bankrupt debtor requests an order stating that a discharged judgment does not attach to their homestead exemption, for decades the judges have refused to issue these orders because of A.R.S. §33-964 (A). Under A.R.S. § 33-964 (A) "a judgment shall become a lien for a period of ten years from the date it is given, on all real property of the judgment debtor **except real property exempt from execution, including homestead property**, (emphasis added)" This proposed bill will cause a deluge of filings in the bankruptcy court, causing thousands of bankruptcy cases to be reopened in order to obtain the order to avoid any existing liens that the judges previously denied.

A bankruptcy discharge eliminates the debt owed to the judgment creditor. A secured lien stays attached to the collateral (the home), if the secured lender is not paid they may foreclose, but may not sue the borrower. This bill will allow all judgment creditor claims to survive the intent of the bankruptcy discharge - to give the debtors an opportunity for a fresh start.

The Livingston amendment and the Toma Floor amendment to the bill allows the judgment creditor to invade the homestead proceeds in the case of a refinance. The homeowner refinances their home for several reasons, but normally to reach the excess equity in their home, which is usually less than their homestead proceeds. For instance, the home is worth \$300,000, with a first mortgage of \$150,000, leaving equity of \$150,000 which is protected as a homestead exemption. The borrower needs to repair their home, replace broken A/C and pay off medical bills so puts a second deed of trust on their home for \$90,000. Resulting in two secured liens: first for \$150,000, a second for \$90,000, leaving the homeowner \$60,000 in a homestead exemption. The Toma floor amendment would allow a judgment creditor to take the refinancing funds (up to \$90,000 - the loan amount) leaving the owner of the home with no proceeds to use for the repairs, broken A/C or to pay off medical expenses, but now to have two loans and only \$60,000 in equity (homestead funds). Prior to signing the loan agreement, there is no warning to the homeowner/borrower the judgment creditor will receive all the funds first. The end result is the homeowner/borrower cannot make the necessary repairs on their home, most likely do not pay the second lender, who ultimately forecloses on the home.

Toma amendment, Page 2, lines 1-3 - makes it very clear that should the borrower refinance their home, the borrower loses their homestead exemption as to the cash proceeds. "THE HOMESTEAD EXEMPTION DOES NOT ATTACH TO THE PERSON'S INTEREST IN IDENTIFIABLE CASH PROCEEDS FROM THE REFINANCING OF THE HOMESTEAD PROPERTY."

HB 2617 is a Trojan horse. This bill is the child of the the AG's office, but then was taken over by the very strong creditor industry. On it's face, the bill appears to be a good thing (like the Trojan Horse). It gives the homeowner additional protection on their homestead.

But, behind their backs the creditor lobby is taking away decades of protection that all Arizona homeowners have cherished. That is the protection of some amount of equity in their home. This bill will allow ALL OLD and new judgments to attach to the cash-strapped homeowner's equity. If the homeowner ever tries to sell, ALL judgments (past and present) will have to be paid after they get their homestead exemption. Well that might not be a bad deal so long as the homeowner understands.

But NOW THE SNEAKY part of the bill. If the homeowner ever REFINANCES their home, and take out any cash as part of the refinance, ALL of these funds go FIRST to their judgment creditors (old and new), before the homeowner sees a penny. So much for using those funds for the badly needed roof, replacement A/C unit, or medical needs.

The bill went through the House without one 'No' vote because the House members were lied to (this comes directly from a House member). Now the bill is in the Senate and quietly sneaking it's way through the back rooms and alleyways of the Legislator, carried by the creditor lobby.

Don't like this? Well then do something about it contact your Senators and say "no to HB2617".

33-1101. Homestead exemptions; persons entitled to hold homesteads

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding one hundred fifty thousand dollars in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed one hundred fifty thousand dollars in value.

C. The homestead exemption, not exceeding the value provided for in subsection A, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under this section.