

ASSEMBLY, No. 1685

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1996

By Assemblyman COHEN

1 AN ACT concerning homestead exemptions and supplementing chapter
2 17 of Title 2A of the New Jersey Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "New Jersey
8 Homestead Exemption Act."

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10 2. As used in this act:

11 "Dwelling house" means any one family building or structure, any
12 unit of a horizontal property regime established pursuant to the
13 "Homestead Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), any
14 unit of a condominium property established pursuant to the
15 "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), any
16 residential unit in a cooperative, the ownership of which is represented
17 by shares or other ownership interest evidenced by stock certificates
18 or other instruments or a leasehold evidenced by a proprietary lease,
19 or both, or any mobile or manufactured home owned by a claimant, a
20 single person or tenants in common and occupied by the claimant or
21 the claimant's spouse, a single person or tenants in common as a legal
22 residence in this State, or where a multiple-family building or structure
23 is owned by a claimant, a single person, or tenants in common, then
24 that portion thereof which is occupied by the claimant or the claimant's
25 spouse, a single person or tenants in common as a legal residence in
26 this State, and includes any outhouses or appurtenances belonging
27 thereto or usually enjoyed therewith;

28 "Homestead" means the dwelling house:

29 (1) in which the claimant or claimant's spouse, or both of them, or
30 a single person, or tenants in common resided and which the claimant
31 or claimant's spouse, or both of them, or a single person, or tenants in
32 common used as a principal residence on the date the judgment
33 creditor's lien attached to the dwelling or, in the case of a cooperative,
34 to shares or other ownership interests evidenced by stock, by stock
35 certificates or other instruments or a leasehold evidenced by a
36 proprietary lease, or both;

37 (2) in which the claimant or the claimant's spouse, or both of them,

1 or a single person, or tenants in common resided continuously
2 thereafter until the date of the court determination that the dwelling
3 house is a homestead. Where exempt proceeds from the sale of a
4 homestead are used toward the acquisition of a subsequent dwelling
5 house, "homestead" also means that subsequent dwelling so acquired
6 if it is the dwelling house and principal residence in which the claimant
7 or the claimant's spouse, or both of them, or a single person, or
8 tenants in common resided continuously from the date of acquisition.
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10 3. A homestead is exempt from sale or execution up to the value
11 of \$150,000 above liens and encumbrances, but the homestead
12 exemption does not extend to an execution order or other process
13 issued in the following cases:

14 a. For an unsecured purchase money mortgage on the homestead
15 property;

16 b. For unsecured debts incurred for the improvement of the
17 homestead property;

18 c. For lawful claim for taxes or assessments;

19 d. For child support or alimony; or

20 f. For debts incurred prior to the recording of the deed of the
21 homestead property, or prior to the purchase of the residential share
22 in a cooperative.
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24 4. The rights acquired under this act are not extinguished by the
25 conveyance of the underlying property in trust for the benefit of the
26 person or persons who claimed it. A trustee may similarly claim
27 property, held by the trustee, as a homestead for the settlor or for one
28 or more beneficiaries of the trust, or both, if the person or persons for
29 whom the claim is made reside on the property.
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31 5. Notwithstanding any other provision of this act to the contrary,
32 the combined homestead exemption of spouses, a single person, or
33 tenants in common on the same judgement shall not exceed \$150,000.
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35 6. The homestead exemption is not impaired by temporary removal
36 with intention to reoccupy the dwelling house as a homestead, nor by
37 the sale thereof, but extends to the proceeds derived from the sale to
38 an amount not to exceed \$150,000.
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40 7. Except as otherwise provided in a premarital agreement between
41 the husband and wife which is enforceable pursuant to the "Uniform
42 Premarital Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.):

43 a. The spouses shall be deemed to hold the homestead as joint
44 tenants with the right of survivorship. Upon the death of either
45 spouse:

46 (1) the exemption of the homestead from execution continues as to

1 any debt or liability existing against the spouses, or either of them,
2 until the death of the survivor and thereafter as to any debt or liability
3 existing against the survivor at the time of the survivor's death.

4 (2) the property vests absolutely in the survivor.

5 b. If the property claimed as a homestead is the separate property
6 of either spouse, the husband and wife shall be deemed to hold the
7 right to exemption of the homestead from execution jointly while both
8 spouses are living. If the property retains its character as separate
9 property until the death of one or the other of the spouses:

10 (1) if it is the separate property of the survivor, the exemption
11 continues.

12 (2) if it is the separate property of the decedent, the exemption of
13 the homestead from execution continues as to any debt or liability
14 existing against the spouses, or either of them, at the time of death of
15 the decedent but ceases as to any subsequent debt or liability of the
16 survivor.

17 c. If the homestead is the property of a single person, upon that
18 person's death:

19 (1) the exemption of the homestead from execution continues as to
20 any debt or liability existing against that person at the time of that
21 person's death and as to any subsequent debt or liability against a
22 person who was living in the dwelling house at the time of that
23 person's death, if that person continues to reside on the homestead
24 property and is related to the decedent by consanguinity or affinity;

25 (2) the right of enjoyment of the property belongs to each person
26 described in paragraph (1) until that person no longer qualifies under
27 that paragraph.

28 d. If two or more persons who are not related by consanguinity or
29 affinity have as a homestead their respective undivided interests in a
30 single parcel of land or a mobile home, upon the death of one the
31 exemption of the entire property from execution continues as to any
32 debt or liability of the decedent and the other persons until the death
33 of the last person to die, but only for the benefit of the person who
34 continues to reside on or in the property.

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36 8. No release or waiver of the homestead exemption granted by
37 section 3 of this act is valid.

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39 9. Any levy which is made upon the homestead of a claimant,
40 claimant's spouse, or both of them, a single person or tenants in
41 common, shall be subject to the provisions of this act.

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43 10. If the sheriff or other officer holding a levy of execution against
44 the homestead of a claimant, claimant's spouse, or both of them, a
45 single person or tenants in common believes that the property is
46 worth more than the homestead exemption amount to which a

1 claimant, claimant's spouse, or both of them, a single person or
2 tenants in common is or are entitled under this act, the sheriff or
3 officer shall appoint a qualified appraiser to determine the fair market
4 value of the homestead. The expenses of the appraisal shall be
5 collected upon the execution.

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7 11. If the appraised value of the homestead other than a
8 cooperative unit is more than the homestead exemption amount to
9 which a claimant, claimant's spouse, or both of them, a single person
10 or tenants in common is or are entitled under this act, the court shall
11 determine if the homestead property may be divided without injury to
12 the interests of the parties. If the court so determines, it shall set off
13 so much of the homestead property, including the homestead dwelling,
14 which is worth the homestead exemption amount to which the
15 claimant, claimant's spouse, or both of them, a single person or
16 tenants in common is or are entitled under this act, and the residue of
17 the homestead property may be advertised and sold by the sheriff or
18 other person holding the execution.

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20 12. If the appraised value of the homestead property is more than
21 the homestead exemption amount to which the claimant, claimant's
22 spouse, or both of them, a single person or tenants in common is or
23 are entitled under this act, and the homestead property cannot be
24 divided as provided by section 11 of this act, the sheriff or officer shall
25 advertise and sell the property, or residential share therein in the case
26 of a cooperative, subject to the provisions of section 13 of this act,
27 and out of the proceeds of the sale, pay the claimant, claimant's
28 spouse, or both of them, a single person or tenants in common the
29 homestead exemption amount to which the claimant, claimant's
30 spouse, or both of them, a single person or tenants in common is or
31 are entitled under this act. The homestead exemption amount shall be
32 exempt from execution for 18 months thereafter, provided that it is
33 used to purchase a subsequent homestead.

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35 13. No sale pursuant to section 12 of this act shall be made unless
36 more than the homestead amount to which the claimant, claimant's
37 spouse, or both of them, a single person or tenants in common is or
38 are entitled under this act is bid for the homestead property, or
39 residential share therein, exposed to sale. If no bid is received at a sale
40 that exceeds the homestead exemption, the sheriff or other office may
41 return the execution for want of property.

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43 14. This act shall take effect on the 120th day following enactment.

STATEMENT

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This bill establishes the "New Jersey Homestead Exemption Act," and provides that a homestead is exempt from sale or execution up to \$150,000 above liens and encumbrances. This exemption does not extend to debts (1) incurred under a purchase money mortgage or cooperative loan, (2) for home improvements, (3) for taxes or assessments, (4) for child support or alimony, or (5) incurred prior to the acquisition of the property.

Any levy which is made upon the real estate or proprietary interests or share therein of any claimant, claimant's spouse, or both of them, a single person or tenants in common is subject to the provisions of this act.

The sheriff may appoint an appraiser to determine the fair market value of the property. If the appraised value is more than the exemption and the court determines that the property can be divided without injury to the parties at interest, the court is to set off property which is equal to the homestead exemption amount and the sheriff or other person holding the execution may advertise and sell the residue. If the appraised value is more than the exemption and the property cannot be divided, the property shall be sold and the claimant, claimant's spouse, or both of them, a single person or tenants in common will be paid the amount of the exemption from the proceeds of the sale. This sum shall be exempt from execution for 18 months, provided it is used to purchase another homestead.

Establishes the "New Jersey Homestead Exemption Act."