

Appreciation Damages Awarded

Q82A

ASK AN ATTORNEY

Q. What is the amount of a declared homestead exemption and where can I find the form?

A. According to California Code of Civil Procedure Section 704.730, the homestead exemption amount is \$50,000 (resident judgment debtor or resident judgment debtor and spouse both own property), \$75,000 (resident judgment debtor is a member of a family unit and at least one member of the family unit owns no interest in the homestead or the only interest is a community property interest), or \$150,000 (resident judgment debtor or resident spouse is 65 years of age or older; or is physically or mentally disabled; or is 55. years of age or older with a gross annual income of \$15,000 or less (single) of \$20,000 or less (couple).

The homestead exemption form is available either from your local county recorders office or may be obtained from a title company. The form needs to be completed, notarized, and then recorded.

n Strebel v. Brenlar Investments, Inc. (2006), the buyer, Strebel, entered into a contract to buy a house in Sonoma County. The sellers, the Steels, and the dual agent, Smith of Brenlar Investments, were aware that the property was encumbered with tax liens and judgments that exceeded the agreed upon purchase price of the property. This information was not disclosed to Strebel, the buyer. During escrow, Strebel sold his San Bruno property contingent on the Sonoma escrow proceeding. Strebel informed Smith that escrow on the San-Bruno property was set to close and after receiving assurances from Smith that the Sonoma purchase was "on track," closed escrow on the San Bruno house and moved his personal property into a storage unit.

The Steels were unable to resolve their liens and finally told Strebel that they couldn't sell him the Sonoma house free of the liens. Strebel placed the proceeds from the sale of his San Bruno house into a bank account and searched for a replacement property. Unfortunately, the market changed so drastically that Strebel was priced out of the Sonoma County real estate market. Strebel sued Brenlar and Smith alleging unfair business practices, fraud, negligence, and breach of fiduciary duty. Strebel's claim for economic damages consisted of several components: the lost appreciation of his San Bruno house between its sale and the trial, the lost use of the property during that period, and other components that were not in dispute.

The former California rule for damages awarded to defrauded parties was known as "benefit of the bargain"-the difference between the actual value of the property and the value it would have been if the property would have been as actually represented. The law changed and now a defrauded party, with some exceptions, is entitled to only his or her "out-of-pocket loss"-not the amount of anticipated profits from the transactionand also under certain conditions reasonable consequential damages. The "out-of-pocket loss" and "consequential damages" rule can be found in California Civil Code Section 3343. Consequential damages are any additional expenses resulting from the injured party's reliance on the defendant's fraud; however, an appellate court in Channell v. Anthony held that consequential damages under section 3343 are available only in conjunction with a claim for rescission.

Thus, under the "out-of-pocket rule," it's possible for a plaintiff to prove fraud and yet recover nothing if a jury or trial court finds that the plaintiff received property equivalent in value to what the plaintiff paid. In such a case, plaintiff's only real remedy may be to rescind the transaction and get back his or her money.

When the defrauding party is a fiduciary such as a real estate agent, there is a split of authority among appellate courts as to the proper measure of damages—the "out-of-pocket rule" or the much more inclusive tort damages rule found in California Civil Code Sections

3333 and 1709—the measure of damages that would most appropriately compensate the injured party.

In the Strebel case, the First District California Court of Appeal chose the more inclusive measure of damages. What makes this case unique is that the claimed damages were not related to the Sonoma property being purchased, but the San Bruno property that Strebel sold in anticipation of purchasing the Sonoma property. As noted by the appellate court in Strebel, "neither the out-of-pocket nor benefit-of-the-bargain measure is particularly helpful or appropriate" in this case. There is no fixed rule for measuring tort damages according to Civil Code Sections 3333 and 1709. The appellate court permitted the award of both the "appreciation damages" as well as the "lost use damages."

Homestead Exemption Protects Owner's Trustee's Sale Proceeds

he homestead exemption lawsfound in California Code of Civil Procedure Sections 704.710 et seq.-were created to protect the sanctity of a family home against a loss caused by a forced sale by nonsecured creditors. In the 1991 case Spencer v. Lowery, the court held that the automatic homestead (i.e., those not recorded in a county recorder's office) does not apply to the proceeds of a trustee's sale under a power of sale in a deed of trust. In Title Trust Deed Service Co. v. Pearson (2005), the court noted that declared homesteads (i.e., those recorded in a county recorder's office) provide greater rights than the automatic homestead. Since the judgment lien was recorded after the declared homestead, the court held that the homeowners were entitled to their homestead exemption from the trustee's sale excess proceeds.

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