

## California Assembly Bill 1885 and Future Chapter 7 Bankruptcy Claims

On September 18th 2020, California Governor Gavin Newsom and the California assembly approved Assembly Bill 1885 (AB1885). This new assembly bill increased the homestead exemption to a maximum of six hundred thousand dollars. It brings good news for homeowners who will be filing or plan to file for chapter 7 bankruptcy. Now they can file for chapter 7 bankruptcy without fear of losing their homes.

### **An increase in bankruptcy claims**

By now it is apparent that the current state of the economy is not stable. Ever since the onset of the covid-19 pandemic, the U.S. has been in quarantine. Though necessary, quarantine disrupted a lot of businesses and left them in jeopardy. Since then, many businesses big and small have filed for bankruptcy due to loss of customers. As businesses shut down, many more workers were laid off and left with no income or savings.

A lack of income coupled with bills to pay left many individuals with few options for financial freedom. With the ongoing pandemic and a decrease in jobs, budgeting can only go so far.

This is where bankruptcy comes in.

With individuals unable to pay their debts due to loss of income, they are having to file for bankruptcy. More specifically they are having to file for either chapter 7 or chapter 13 bankruptcy. Chapter 7 bankruptcy is the bankruptcy chapter that most people tend to file for as it dismisses unsecured debts. However, though it is the most common chapter of bankruptcy filed for, there are barriers that prevent individuals from filing. Enter in the homestead exemption.

Depending on the severity of the filers' debts and certain other factors, individuals can lose their homes when they file. One reason is because as it currently stands the homestead exemption set at \$75000 is considerably low, especially in California. However, with this homestead exemption increase in AB1885, filers can now keep their homes when they file for chapter 7 bankruptcy.

With more people struggling financially due to the covid-19 pandemic, this homestead exemption increase provides them with options. Though not everyone will get approved for chapter 7 bankruptcy, now more people have the chance to apply for it.

### **AB1885 Then vs. Now**

Previously, bankruptcy filers were more at risk of losing their homes to creditors to settle their debts. With the new assembly bill 1885, the risk is significantly reduced. Prior to AB1885, the homestead exemption ranged from seventy-five thousand to one hundred and seventy-five thousand dollars depending on certain factors. The low homestead exemption prevented people from filing for bankruptcy because they would be at risk of losing their homes.

The bill increased the homestead exemption to six hundred thousand dollars thus allowing for more people to file. Now individuals who fall under the limit can file for bankruptcy without losing their homes to creditors.

Seeing as this homestead exemption increase comes towards the end of an already traumatic year, some are wondering why now? Why is the increase in homestead exemption happening now and is there a catch? Well that is a good question and the skepticism is well placed given that people's homes are at risk. San Diego bankruptcy attorney Tristan Brown provides some insight as to why the increase is happening now. "Given the soaring property values in California, \$75000 is not enough to protect California homeowners that seek to file chapter 7 bankruptcy."

Given the state of the economy and the increase of bankruptcy applicants, this exemption increase was bound to happen. San Diego bankruptcy attorney Tristan Brown states, "the old California homestead exemption was not sufficient in 2020." There are other barriers that prevent people from filing for bankruptcy however the homestead exemption should not be one. With this increase, more people can consider chapter 7 bankruptcy a viable solution to their financial problem. If you are considering filing for chapter 7 bankruptcy, you can now do so without losing your home.

### **Homestead Exemption**

A homestead exemption protects the homeowner from having to sell their property to benefit creditors. Depending on the equity the homeowner has in their home, they are protected if the value falls within the limit. So under AB1885, a homeowner with an equity of over six hundred thousand dollars is at risk. It is important to note that the exemption only protects against unsecured debts. This means if the house is used as collateral for any debts, it will be exchanged for debt relief.

As a homeowner, it is important to know the value of your home as it shows good financial literacy. It should be good practice to keep track of your finances which includes all properties and investments. These all tend to come in handy especially when considering filing for bankruptcy. A person's assets are one of the main things creditors look into when they file bankruptcy. Assets can be sold or exchanged for debt dismissal and is why homeowners are usually at risk when they file.

It is important to note that homestead exemptions vary by state. Before the homestead exemption increase in California, the limit was seventy-five thousand dollars. In some states, the homestead exemption limit is lower and in others they are higher. You can find the different homestead limits and restrictions by looking them up depending on where you reside. The homestead exemption can also change depending on your marital status and thus should be taken into account.

### **AB1885 and Chapter 7 bankruptcy**

As mentioned earlier, chapter 7 bankruptcy is the most filed for chapter of bankruptcy. This is because it dismisses most unsecured debts instead of reorganizing it like chapter 13. There are

certain factors and criteria people need to meet to file for chapter 7 bankruptcy. This is done through a means test that closely examines your financial records. Though the means test is done when you file a chapter 7 bankruptcy claim, you should ensure you will pass.

This should be done before making a claim because if not correctly assessed will result in denial of the claim. Furthermore, poor assessment of the criteria can also put filers at risk of losing their property and other assets.

If you are having financial troubles and unsure if bankruptcy is the right fit for you, consult a bankruptcy attorney. A bankruptcy lawyer is the best person to talk to when considering bankruptcy. They have a lot of knowledge at their disposal and will help you in the best way possible. When it comes to bankruptcy, there is no cookie cutter method so be open and consult with an attorney. A bankruptcy attorney will provide you with the best options for your case, some which will not include bankruptcy.

Here are some things to note about bankruptcy if you are considering it as an option. First, there are different types of bankruptcies to file for. Out of the six bankruptcy chapters, there are two that individuals can file for which are chapters 7 and 13. Oddly enough, these two chapters are also the most commonly filed for chapters with a higher affinity for chapter 7. This chapter of bankruptcy dismisses most unsecured debts which is why AB1885 is important to this chapter as well.

When you file for bankruptcy especially chapter 7, creditors will attempt to collect their payment through other means. These include selling your house, jewelry, or other assets that can be exchanged for money. That is why keeping track of your assets and speaking to an attorney when you're in financial trouble is imperative. A bankruptcy lawyer will guide you by telling you which assets are at risk and what to do.

### **AB1885 and Chapter 13 Bankruptcy**

Unlike chapter 7 bankruptcy, chapter 13 bankruptcy rearranges your debt and ensures you can pay it off under new guidelines. Given this, AB1885 does not really affect your ability to file for this chapter of bankruptcy. Since you still have to pay your debts off to creditors, they cannot force you to sell your home. Some creditors can attempt to make you sell your home, but since your debts aren't dismissed under chapter 13 they cannot. Under chapter 13, you will have sometime to pay off your debts and keep your home in the process.

You may be wondering if AB1885 and the new homestead exemption increase is important to other chapters of bankruptcy. The short answer is no since other chapters of bankruptcy deal with corporations or businesses. The best person however to answer the question is a bankruptcy attorney. If you are considering filing for another chapter of bankruptcy aside from chapter 7, be sure to consult with one. Not only will they discuss other financial options available to you, they will also inform you if AB1885 affects you.

### **Additional information to make an informed decision**

Now that you know how the homestead exemption increase affects chapter 7 bankruptcy, you can make an informed financial decision. Consult with a bankruptcy lawyer should you have any questions about your specific situation. While AB1885 is helpful and improves your chances of getting approved for a chapter 7 bankruptcy, there are other barriers. As mentioned earlier, there is a means test that determines an individual's eligibility for chapter 7 bankruptcy.

All the information provided here about both chapter 7 bankruptcy and AB1885 are not all inclusive. This means that this article does not cover every single thing you need to know or should know about bankruptcy. Instead, this article highlights important information and provides you with a general overview. The only person who can provide you with all information you actually need is a bankruptcy attorney. However, to ensure that you have some information at your disposal, here are a few things to note about bankruptcy.

When you are ready to file your bankruptcy claim, or merely considering it, you should meet with a lawyer. It is always advised to go in prepared by being well informed and with the appropriate documents. Before your visit with your bankruptcy attorney, it is important to know the state of your finances. You do not need to have your whole financial history memorized, but having some information is useful. It is one thing to know you are having financial problems, however it is always good to know the reason.

Understanding the state of your finances and the problem, makes it easier for you and your attorney to find solutions. To be clear, you do not need to know every single thing and it is certainly not your job to have all the answers. However, having a basic understanding gives you a chance to explore potential solutions which will be discussed with your attorney. This will also give you a chance to clear up any questions that arise as you go through your search. If you have any doubts or concerns, share them with your attorney so they can ease them.

As mentioned before, it is also important to keep an open mind when speaking to your bankruptcy attorney. Though you are going in prepared, this knowledge should add-on to what your bankruptcy lawyer tells you. Should chapter 7 bankruptcy be the best financial option for you, your attorney will also guide you through the process. Regardless of the outcome, you can rest assured that your attorney will provide you with the best options for you.

## **Conclusion**

The California homestead exemption increase now allows more people to file for chapter 7 bankruptcy without losing their homes. This homestead exemption increase is great for California homeowners who plan to file for chapter 7 bankruptcy. It gives them a chance to relieve their debt during a very tough time, providing them with a clean slate. If you have been considering filing a chapter 7 bankruptcy claim, then this is the time to do so. Of course be sure to cover all your bases and schedule an appointment with a bankruptcy lawyer first.

Bankruptcy attorneys are in favor of this new homestead exemption increase. "Governor Newsom and the California assembly have outdone themselves. AB1885 is sorely needed to help California residents maneuver and survive a post-Covid world." - San Diego bankruptcy

attorney Tristan Brown. With the approval of bankruptcy attorneys, it is clear that now is the time to fully explore your bankruptcy options.