

## CHAPTER 510

## HOMESTEAD EXEMPTIONS

NOTE: The original State Constitution, Article 1, Section 12, read in part as follows: "A reasonable amount of property shall be exempt from seizure or sale, for the payment of any debt or liability; the amount of such exemption shall be determined by law." An amendment was adopted November 6, 1888, adding the following: "Provided, however, that all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed."

The policy is to preserve the home to the family, even at the sacrifice of just creditor demands. The state is served by the added security, independence, and stability of its citizens. Most states extend the exemption to the head of the family, but Minnesota accords the protection to any citizen of the state. The constitutional provision is not self-executing, but must be implemented by statute. The exemption created by statute is not merely a privilege, but an absolute right, and the provisions of the law must be liberally construed. Likewise, the statutes implementing the 1888 amendment, are liberally construed for the benefit of the creditor.

Chapter 510, relating to homestead exemptions, is based upon G.S. 1866, Chapter 68, as amended and supplemented. The compilers of the consolidated statutes of 1858 unable to harmonize the provisions of Rev. Terr. Statutes 1851, sections 93 to 103, and L. 1858, c. 25, printed both. The revision of 1866 repealed both codes and enacted a new chapter on homesteads, Chapter 58.

**510.01 HOMESTEAD DEFINED; EXEMPT; EXCEPTION.**

The constitutional provision, art. 1, s. 12, subjecting homesteads to liability for "any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commission earned while an employee of the homestead owner. *Fletcher v Scott*, 201 M 609, 277 NW 270.

A duly docketed judgment for a debt for work done or materials furnished in the construction, repair, or improvement upon a homestead is a lien upon a homestead. A judgment of the municipal court of St. Paul for the recovery of money becomes a lien upon the judgment debtor's real estate by filing a transcript thereof with the clerk of the district court of Ramsey county. That a judgment by default for the recovery of money was for a debt or for work done and material furnished in the construction, repair, or improvement of the debtor's homestead may be established by a provision in the judgment incorporating a finding made under an amendment of the allegations in the complaint that the work was done and material was furnished in deepening a well on the premises constituting a homestead. *Keyes v Schultz*, 212 M 109, 2 NW(2d) 549.

Where, because of an exigency endangering the rights of the owners of property given in present and future interests, it is necessary to preserve the property and to protect such interests, courts have inherent equitable jurisdiction to order a judicial sale of the entire fee, and to appoint a trustee to conduct the sale and to reinvest the proceeds of the sale for the benefit of the holders of the respective interests in the property sold. Neither the absence of an express trust in the instrument creating the present and future interests nor of statutory authorization for the judicial creation of a trust in such cases is any obstacle to such relief, and in the instant case even if part of the land was the testator's homestead. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

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From the legislative care which has been taken to provide for, secure, and protect the rights and privileges of homestead exemption it is clear that no one can be deprived of it without clear and convincing proof that the owner has abandoned his property as a homestead; and such abandonment results when the owner removes from his homestead and ceases to occupy it with the intention of never returning, or with no intention of returning thereto to reside. *Hickman v Sutherland*, 222 M 161, 23 NW(2d) 593.

Where the exemption right to the homestead has been lost through abandonment, upon return of the owner the homestead right revives as of the date of the renewed occupancy. *Cysewski v Steingraver*, 222 M 221, 24 NW(2d) 266.

In the absence of a specific appropriation of payments by the parties, the court will apply them to the unsecured or least secured debts in preference to those secured or more adequately secured. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

A note taken in renewal of a prior note secured by a mortgage is presumed to have been accepted as conditional payment only, and the burden is upon one who claims that it discharged and extinguished the original note to prove an expressed or implied agreement to that effect. The mere acceptance of a renewal note, even though it recites a settlement or payment, is only conditional, and does not effect an absolute discharge. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Where neither the creditor, nor the debtor, has seasonably exercised his power to apply a payment to one of several debts and where one of the debts that has matured is secured by a mortgage on the homestead, the court, as an exception to the general rule, will apply the payment to such mortgage debt on homestead in preference to an unsecured debt. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Where a bankrupt, contrary to his previous practice, in order to accumulate the sum of \$13,000, which he placed in a homestead, discontinued his usual custom of making deposits in bank from day to day, and ceased to make further payments on his trade obligations, but retained proceeds of merchandise sold or of bills receivable, and purchased the homestead with nonexempt assets so realized on, and moved his family into the property with intent to defraud his creditors, the homestead exemption must be denied. *Kangas v Robie*, 264 F. 92.

Where property was selected by the bankrupt, with the intention of exempting and using it as a homestead, and the property possessed all of the qualifications of a homestead under the state statutes, the bankrupt was not estopped to claim such property as a homestead by the fact that he had, before bankruptcy, designated other property as his homestead in financial statements, and had procured credit on statements that property sought to be exempted in bankruptcy was not so claimed, where his wife had not joined in such representations. *Fletcher v Kennedy*, 282 F. 622.

Homestead of deceased standing on the land of another descends as "other real estate." OAG Jan. 28, 1944 (521-P-3).

Homestead, acquisition of, 1 MLR 455.

Homestead exemption; homestead in wife's name. 2 MLR 392.

Bankruptcy, purchase of homestead with non-exempt property. 5 MLR 367.

Election of remedies, 6 MLR 508.

Loss of exemption by dissolution of family. 10 MLR 258.

Exemption of crops growing on homestead. 11 MLR 635.

Conflicts of laws as to domicile. 15 MLR 672.

Execution sales, rights of bona fide purchasers. 24 MLR 805.

Minnesota homestead exemption statutes and effect thereof on creditors' rights. 25 MLR 66, 385.

## 510.02 AREA, HOW LIMITED.

Blocks in the platted and laid out part of an incorporated city were generally subdivided on the plat into lots of various sizes, but one block was not thus sub-

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divided. The property was urban in character. The owner of a part of the undivided block was entitled to hold as a homestead only a plat equal in area to the average size of the platted lots in that part of the city. *Heidl v Benedict*, 61 M 170, 63 NW 490.

Transfer by the owner of property exempt as a homestead in the belief that such transfer would place it beyond the reach of creditors of the transferor, did not change the exempt character of the premises, nor subject it to judgment lien. *Cysewski v Steingraber*, 222 M 221, 24 NW(2d) 267.

Platted portion of city. 1 MLR 90.

Acquisition of homestead. 1 MLR 455.

Exemption of crops growing on homestead. 11 MLR 635.

Inheritance tax procedure. 23 MLR 121.

Scope of the homestead exemption. 25 MLR 67.

### 510.03 EXISTING EXEMPTION NOT AFFECTED BY CHANGES.

Scope of homestead exemption. 25 MLR 67.

### 510.04 TITLE MAY BE IN HUSBAND OR WIFE; EQUITABLE TITLE EXEMPT.

See, *Hickman v Sutherland*, 222 M 161, 23 NW(2d) 593; *Cysewski v Steingraber*, 222 M 221, 24 NW(2d) 266, under section 510.01.

Homestead in wife's name. 2 MLR 392.

Scope of homestead exemption. 25 MLR 68.

### 510.05 NO ALIENATION WITHOUT CONSENT OF SPOUSE.

Erecting a second dwelling, together with grading and sodding, is an improvement for which a mechanic's lien may be filed and to which the homestead will be subject. *Gale v Hopkins*, 165 M 177, 206 NW 164.

The plaintiff William Stibal was indebted to defendant bank. A note secured by a mortgage upon their homestead, running from plaintiffs to one S, was, together with the mortgage, placed with defendant bank by plaintiffs to be delivered to S by the bank upon receipt of the consideration. S never paid the consideration but subsequently assigned the mortgage and note to the bank, which sought foreclosure. The note and mortgage were in effect placed in escrow with the bank and were never legally delivered and that consequently S could pass no title to the mortgage to the bank. Plaintiffs are entitled to a cancellation of the note and mortgage and vacation of the sale thereunder. *Stibal v First National Bank*, 190 M 1, 250 NW 718.

The wife having joined with her husband in an application for a loan under the national housing act, and a part of the proceeds having been used toward homestead improvement, the wife is estopped from claiming exemption even though a large part of the proceeds of the loan was squandered by the husband. *U.S. v Lucas*, 66 F. Supp. 7.

Homestead; conveyance by husband and wife. 2 MLR 63.

Homestead; in wife's name. 2 MLR 392.

Homestead; necessity of consent of insane spouse. 10 MLR 350.

Homestead; abandonment of. 10 MLR 439.

Homestead; effect of conveyances by the owner. 25 MLR 71.

Homestead; scope of exemption. 25 MLR 66.

Homestead; old age pension liens. 25 MLR 520.

### 510.06 EXEMPTION NOT LOST BY DEATH OR DESERTION.

A person imprisoned under operation of law does not thereby change his residence and such imprisonment does not constitute an abandonment of his homestead rights. *Millett v Pearson*, 143 M 187, 173 NW 411.

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Abandonment of homestead. 10 MLR 439.

Scope of the homestead exemptions; effect on conveyance by owner. 25 MLR 66, 71.

## **510.07 SALE OR REMOVAL PERMITTED; NOTICE.**

Upon a person claiming exemptions under sections 510.01 or 510.07 rests the burden of proving compliance with the provisions of those sections. *Judsen v Christensen*, 216 M 92, 11 NW(2d) 798.

Where land is conveyed by deed of general warranty, any superior outstanding title acquired by the grantor inures to the benefit of his grantee and the latter's assigns. So where a judgment against one of the owners of the homestead was docketed, and thereafter the state acquired title by forfeiture, and the 1941 repurchase act was passed, and the parties were forced to remove temporarily from the home, and the owner conveyed the property by deed and later repurchased from the state, the appellant's judgment never became a lien upon the homestead. In *re Hickman*, 222 M 161, 23 NW(2d) 595.

Where property was actually occupied as a homestead prior to the docketing of a judgment against the owner thereof, and where thereafter such owner during a temporary absence therefrom in connection with his employment filed the statutory notice prescribed in section 510.07, thus preserving the exempt status for five years, though there were subsequent repeated temporary absences of considerable duration. *Cysewski v Steingraber*, 222 M 221, 24 NW(2d) 267.

In the instant case property was purchased by the wife from proceeds of land acquired by her bankrupt husband under the federal homestead laws. The bankrupt had for years claimed the land sold as his homestead under the state law. Notwithstanding these facts, the federal court will not issue a summary order requiring the wife to turn over the above cited property to the trustee and, held, that her rights in the property could not be determined without her consent except in a plenary suit. *Shay v Lewis*, 206 F. 877.

As to crops growing upon the homestead. 11 MLR 640.

Operation of judgment lien after termination of homestead exemption. 23 MLR 979.

Operation and determination of homestead exemption. 25 MLR 70.

## **510.08 SELECTION AFTER LEVY.**

Duration and termination of homestead rights. 25 MLR 66.

Creditors' rights. 25 MLR 78.

## **510.09 SELECTION, HOW MADE.**

The trial court did not err when it determined that a tract of land in controversy, 50 feet in width from front to rear, the same being part of a lot over 111 feet wide by more than 147 feet in depth as platted, was not exempt as a homestead. *Ford v Clement*, 68 M 484, 71 NW 672.