

**CHAPTER 509**

**REGISTRATION; MARKS, BRANDS**

**NAMES, MARKS, DEVICES**

**509.01 RECORDING NAME, MARK, OR DEVICE**

HISTORY. 1895 c 124 s 1; 1905 c 340 s 1; GS 1913 s 6851.

Right to use a personal name on non-competing goods under the Langham Act. 34 MLR 77.

**509.04 RECOVERY OF RECEPTACLES; SEARCH WARRANT**

HISTORY. 1895 c 124 s 4; 1899 c 306 s 1; 1905 c 340 s 4; GS 1913 s 6954.

**509.05 RECEPTACLE AND OTHER TERMS DEFINED**

Where parties to interference stipulated that the applicant was the prior user of trade-mark "Windbreaker" as applied to leather garments and thereafter registrant used the trade-mark with reference to cloth garments and applicant used it with regard to leather garments, successors in interest of the parties are bound by the agreement in the interest of eliminating in fair competition and public confusion. *Rissman v Gordon & Ferguson*, 78 F. Supp. 175.

**CHAPTER 510**

**HOMESTEAD EXEMPTIONS**

**510.01 HOMESTEAD DEFINED; EXEMPT; EXCEPTION**

Extent to which the common law concept of the unity of husband and wife and its consequences have been abrogated in Minnesota. 32 MLR 262.

State inheritance tax; homestead exemption; applicability of equitable conversion by contract. 33 MLR 209.

Interest necessary to support an examination claim. 34 MLR 350.

The homestead right is favored in law, and when it is made security for debt by the signature and consent of the wife, it is favored even more than a surety or the security given to a third person. The statutes evidence a policy to protect the homestead, right, and preserve the homestead of the family even at a sacrifice of just demands. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

The right to sell and convey the homestead is absolute and the purpose of the transfer is immaterial, as is the amount of consideration paid. A conveyance of the homestead cannot be set aside by a creditor as fraudulent even though debtor conveying the property intends thereby to defraud his creditors. *First National Bank of Mankato v Wilson*, 234 M 160, 47 NW(2d) 764.

Defendants, having leased their homestead property for a year, removed themselves from the property and did not occupy it until just before the expiration of the year. Nine months after moving out they filed with the register of deeds a notice claiming the property as their homestead. Since defendant failed to file the notice

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## 510.03 HOMESTEAD EXEMPTIONS

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claiming the property as their homestead within the six months fixed by section 510.07, their homestead rights were lost and the lien of plaintiff, a judgment creditor, attached. *First National Bank of Mankato v Wilson*, 234 M 160, 47 NW(2d) 764.

The owner of homestead property while occupying portions of it may rent other portions thereof and rentals derived from this source are exempt from process. *Wilson v First National Bank of Mankato*, ..... M ....., 60 NW(2d) 69.

An automobile house trailer parked on land belonging to the owner's father with his permission and used as a family home by the owner is not exempt from execution as a homestead. *Gann v Montgomery*, 210 SW(2d) 255.

Where a homestead occupied by husband and wife as joint tenants was, on April 22, 1947, sold for \$10,500, possession to be reserved until July 1, 1947, and where at the time of the death of the husband on June 22, 1947, \$5,000 was paid and the cash reserved to purchase a new homestead, and the remaining \$5,500 due on the contract, the order of the commissioner of taxation is amended to show joint tenancy in property in the gross amount of \$10,338.73. Minnesota adheres to the doctrine of equitable conversion whereby a vendee under a contract for deed is deemed in equity to be the owner of the land, and the vendor is deemed in equity to be the owner of the money. Ownership of the legal title which at all times remains in the vendor provides ample justification for the claim of homestead when advanced by a vendor. Since the \$5,500 balance due on the contract for deed covers the homestead of decedent, it partakes of the inheritance tax immunity of the homestead and should be excluded from the property upon which an inheritance tax is levied. *Boldt v Commissioner, MBTA*, July 8, 1948 (316).

Where minor children, whose parents are dead, inherit the homestead but, because of their youth, do not occupy the homestead but have been placed in other homes by their guardian, the former homestead may not be classified as a homestead for the purposes of taxation because the property is not being occupied by the children as their homestead. OAG Oct. 21, 1948 (232-D).

A life tenant who occupies property as a homestead has sufficient interest in the property to entitle it to classification as property "used for the purposes of a homestead." Where the sole remainderman occupies the property during the life of the life tenant the property cannot be classified as a homestead. OAG June 18, 1952 (232-D).

An oral declaration of ownership is not sufficient on which to grant a homestead exemption. To constitute a homestead classification, ownership and occupancy must concur. OAG March 11, 1953 (232-D).

The guardian of an insane person receiving cash rental from homestead and other agricultural land has no defense against the state's claim for reimbursement for care of the insane person. The claim on the ground that such funds are exempt from execution and attachment is ineffective to resist the state's claim. OAG May 12, 1948 (248-A-1).

Because of infirmity brought on by age, an aged couple were unable to carry on activities incident to housekeeping and they stored their household provisions in one part of the building and the children rented out the remaining rooms. The old folks lived out their life in a rest home. Such state of facts imposes no duty on the county welfare board to object to the assignment by the probate court to the children of this property as the homestead subject only to the old age lien imposed by law. OAG Nov. 7, 1947 (521-P-4).

## 510.03 EXISTING EXEMPTION, NOT AFFECTED BY CHANGES

HISTORY. Amended, 1951 c 346 s 1.

## 510.06 EXEMPTION NOT LOST BY DEATH OR DESERTION

The father of an illegitimate child may be prosecuted for child abandonment in the county in which the mother resides. OAG Feb. 6, 1948 (133-B-1).

**510.07 SALE OR REMOVAL PERMITTED; NOTICE**

The owner of a homestead may sell and convey it without subjecting it, or the proceeds of such sale for the period of one year after sale, to any judgment or debt from which it was exempt in his hands. *Johnson v Brajkovich*, 229 M 529, 40 NW(2d) 273.

In proceedings supplementary to execution, the evidence must be clear, direct and convincing that the judgment debtor has property in the hands of himself, or any other person, or due him, not exempt from execution at the time of disclosure. *Johnson v Brajkovich*, 229 M 529, 40 NW(2d) 273.

The grantee of the homestead property acquired title to the property exempt from the claims of the grantor's creditors since the grantor could sell and convey the homestead without subjecting it to any judgment or debt from which it was exempt in the grantor's hands. The owner's authority to sell or convey the homestead without subjecting it to any judgment or debt to which it was exempt in the owner's hands was unlimited and hence such authority could not be defeated by a prior judgment creditor of the grantor by mere failure of grantee to record the debt within lifetime, or within any certain time. An agreement to compromise a baseless claim lacks consideration. *Sisco v Paulson*, 232 M 250, 45 NW(2d) 385.

Defendants, having leased their homestead property for a year, removed themselves from the property and did not occupy it until just before the expiration of the year. Nine months after moving out they filed with the register of deeds a notice claiming the property as their homestead. Since defendant failed to file the notice claiming the property as their homestead within the six months fixed by section 510.07, their homestead rights were lost and the lien of plaintiff, a judgment creditor, attached. *First National Bank of Mankato v Wilson*, 234 M 160, 47 NW(2d) 764.

The right to sell and convey the homestead is absolute and the purpose of the transfer is immaterial, as is the amount of consideration paid. A conveyance of the homestead cannot be set aside by a creditor as fraudulent even though debtor conveying the property intends thereby to defraud his creditors. *First National Bank of Mankato v Wilson*, 234 M 160, 47 NW(2d) 764.

The provisions of the homestead statute for a continuance of homestead rights for six months after occupancy, and authorizing the filing of notice or claim of homestead with the register of deeds within six months after termination of occupancy, and continuance of the exemption rights for five years thereafter manifests legislative intent that actual occupancy of a homestead may be temporarily suspended without loss of homestead rights. *Wilson v First National Bank of Mankato*, ..... M ....., 60 NW(2d) 69.

The taxpayer and her husband were the owners of a residence in joint tenancy which they sold on Dec. 27, 1948. At the same time plans were laid, although there was no contract, for the purchase of a new homestead. The taxpayer and her husband did not cash the drafts amounting to \$9,000 which they received for their homestead. In the sale of their homestead they were authorized to occupy the premises until March 1, 1949. The husband died on Jan. 3, 1949. The taxpayer withdrew the \$9,000 in checks from the safety deposit vault and purchased a new homestead on Jan. 17, 1949. The taxpayer contended that the \$9,000 represented proceeds from the sale of a homestead and as such should be exempt from the taxation and asks that the \$9,000 be included in the inheritance tax computation. The board finds that the taxpayer and her husband lost their homestead exemption when they sold their property on Dec. 27, 1948, and received full payment from the same. The \$9,000 on hand at the time of the death of the husband does not constitute a homestead and is therefore not exempt and the commissioner clearly included the amount of \$9,000 in determining the inheritance tax. *Goodrich v Commissioner, MBTA*, March 16, 1950, (340).