

GENERAL STATUTES
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CHAPTER 66

HOMESTEAD EXEMPTION

8336. Dwelling place exempt—Exceptions—The house owned and occupied by a debtor as his dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and his family, and shall be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants. (3452) [6957]

1. Nature—A homestead is the place of residence or dwelling of its owner. It includes the house in which the owner lives and the customary appurtenances of a house (10-154, 124; 15-116, 87; 21-101; 27-156, 6+618; 27-406, 7+824; 29-18, 11+119; 51-360, 53+805). It is not the interest or title of the claimant (27-406, 7+824).

2. Object and policy of statute—2-90, 72; 7-513, 419; 21-101; 27-156, 6+618; 89-247, 94+677.

3. Actual occupancy as home essential—5-333, 264; 7-513, 419; 8-309, 272; 10-154, 124; 15-116, 87; 21-299; 23-435; 25-183; 28-13, 8+830; 47-13, 49+390; 71-108, 73+639.

4. No limit to value—11-475, 354; 21-299; 39-244, 39+321; 41-227, 43+52; 59-415, 61+456; 69-24, 71+919; 112-512, 128+833.

5. No limitations on use—If the property is actually used as a home it may be used for other purposes also (10-154, 124; 26-286, 3+341; 41-227, 43+52; 53-450, 60+23; 69-24, 71+919; 69-292, 72+119). It may be leased in part (10-154, 124; 26-286, 3+341; 41-227, 43+52).

6. Liberal construction—27-156, 6+618; 41-227, 43+52; 41-481, 43+376; 65-491, 67+1031.

7. Liens of mechanics and materialmen—74-366, 77+292; 76-226, 78+1113; 89-150, 94+438.

8. Debts due laborers or servants—93-267, 101+74.

9. Homestead may acquire—An insolvent may acquire a homestead with non-exempt funds (41-227, 43+52; 41-481, 43+376). But a mere intent to occupy property as a homestead will not defeat a creditor's lien attaching prior to actual occupancy (23-435, 26-417, 4+813; 41-481, 43+376; 47-13, 49+390).
123-293, 143+720.

Declaration of mortgagor, since deceased, claiming homestead, as evidence (128-525, 151+416). Extent of homestead rights (134-478, 159+788). Homestead record title conveyed by husband to wife by unrecorded deeds, and by her leased, husband joining to tenant in possession, such possession is notice of her title (142-35, 170+708). Eighty acres of land and dwelling thereon occupied by married man, who had left his wife and children, living unlawfully with another woman, constituted his homestead (143-35, 172+912). Waiver of confession of judgment subjecting homestead to levy under execution (144-404, 175+683). Temporary removal (217 Fed. 168).

8337. Area, how limited—Such homestead may include any quantity of land not exceeding eighty acres, and not included in the laid out or platted portion of any incorporated city, village or borough. If it be within the laid out or platted portion of such incorporated place having five thousand inhabitants or over, its area shall not exceed one-third of an acre, and if it be within the laid out or platted portion of such incorporated place containing fewer than five thousand inhabitants, the area so exempted shall not exceed one-half of an acre. (R. L. § 3453, amended '07 c. 335 § 1) [6958]

Exemption is measured by area, and quantity of land prescribed may be selected as such, notwithstanding part may be devoted to purposes other than that of dwelling place of owner (112-512, 128+833). Two separate 10-acre parcels, touching only at corners, between which is roadway, if owned, occupied, and cultivated as one farm, may constitute homestead, though residence and appurtenances are all on one tract (101-347, 112+273). Effect of enlargement of area by R. L. upon debts created prior thereto (115-508, 133+75; 182 Fed. 439). Divided ownership between husband and wife is not controlling against the right of homestead (136-258, 161+515).

8338. Existing exemption not affected by changes—As against debts which are not a lien upon such property the area of the homestead shall not be reduced or enlarged by reason of any change in the

population of the place in which it is situated, by extending the limits of an incorporated place so as to include the same, or by the platting of surrounding or adjoining lands or the vacation of existing plats. And as against debts contracted prior to the taking effect of the Revised Laws, the homestead exemptions then established shall be neither enlarged nor diminished by the provisions of this chapter. (3454) [6959]

8339. Title may be in husband or wife—Equitable title exempt—If the debtor be married the homestead title may be vested in either spouse, and the exemption shall extend to the debts of either or of both. Any interest in the land, whether legal or equitable, shall constitute ownership, within the meaning of this chapter, and the dwelling house so owned and occupied shall be exempt, though situated on the land of another. (3455) [6960]

Ownership is essential (8-309, 272; 22-384; 34-258, 25+452). An equitable title is sufficient (21-101; 21-107; 23-454; 27-156, 6+618; 41-412, 43+90; 44-482, 47+53; 89-247, 94+677; 91-482, 98+463). An undivided interest is sufficient (27-406, 7+824. See 36-136, 30+458). A tenant for years has a sufficient interest (58-450, 60+23). No change in title affects the exemption if claimant retains the ownership (27-406, 7+824). House on land of another (see 12-108, 59; 51-360, 53+805). Nature of interest of one spouse in the homestead of the other (56-523, 58+156; 85-83, 88+419; 96-294, 104+969). Wife has interest, though legal title is in husband, and is entitled to quiet enjoyment (97-503, 106+955). Vendee's equitable interest in contract of sale is subject to homestead estate (123-483, 144+222). Ownership of separate parcel within single homestead area (136-258, 161+515). Judgment debtor's existing homestead rights of record in wife's name (139-295, 166+342).

8340. No alienation without consent of spouse—Exceptions—Such homestead exemption shall not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes or assessments, or to any charge arising under the laws relating to laborers or materialmen's liens. But if the owner be married, no mortgage of the homestead, except for purchase money unpaid thereon, nor any sale or other alienation thereof, shall be valid without the signatures of both husband and wife. (3456) [6961]

The consent of both husband and wife is essential to the conveyance of a homestead (96-294, 104+969). A deed, a contract for a deed, or a mortgage other than for the purchase money, of a homestead, without the signature of the wife, is void (21-101; 21-107; 21-299; 23-454; 28-464, 10+775; 31-213, 17+341; 35-280, 28+510; 38-469, 38+370; 39-511, 40+830; 41-412, 43+90; 44-482, 47+53; 55-244, 56+817). It cannot be made the foundation of an action for damages against the husband (55-244, 56+817). Its covenants are not binding (39-511, 40+830). It does not become valid upon the premises ceasing to be a homestead (21-299; 39-511, 40+830; 44-482, 47+53); nor by reason of a subsequent divorce (36-57, 29+674; 39-511, 40+830). A husband cannot waive the exemption without his wife joining (25-183. See 35-280, 28+510; 68-317, 71+393; 96-294, 104+969). A material alteration in a mortgage by the husband after the wife has signed it and without her consent renders the mortgage void (28-464, 10+775). It is sufficient if the wife merely signs the deed. It is not necessary that it be acknowledged and attested. A conveyance without the wife joining is void and no title can be acquired under it even by the subsequent bona fide purchasers (28-464, 48, 10+775). Conveyance without wife joining void, though she has abandoned him and is living in adultery (99-348, 104+593). Grant of perpetual easement for railroad right of way without wife joining void (110-518, 126+276). The consent of a wife is not essential to the assignment of a mortgage given by the husband prior to his marriage (63-269, 65+454). A conveyance of a homestead and other lands without the signature of the wife is not void as to the other lands (31-213, 17+341; 55-244, 56+817). The wife may be estopped by her conduct from asserting her want of assent to a conveyance (28-464, 10+775; 44-482, 47+53; 75-549, 78+242; 78-295, 80+1127. See 67-71, 69+626). After an abandonment of a homestead a husband may mortgage it without his wife joining (35-280, 28+510). If part of a homestead is taken under the power of eminent domain the husband may dispose of

8336 10-NW 889
8336-44 173m 576
174m 161
218nw 108
220nw 421
4269
8336 241nw 583
See 8339-40

8339-40 241nw 583
See 8336

8340 214-NW 793

8340 205-NW 6

8340 165-M 3
166-M 15
207-NW 31

the award without the consent of his wife (31-239, 17+385). Where the signature of one of the spouses is obtained by fraud the conveyance may be set aside unless the grantee is innocent (36-437, 31+858; 75-279, 77+961). Where a wife joins her husband in a deed which is put in escrow to be delivered on the performance of certain conditions by the grantee she waives her homestead right (37-215, 33+781. See 75-549, 78+242). It is not necessary for the wife to join in the covenants of her husband's deed in order to bar her homestead interest (48-408, 51+379). The signature of the wife is not essential to the validity of a purchase money mortgage (15-512, 423; 23-454). Where A mortgaged his homestead to B, his wife not joining, and later, after a divorce, deeded the same to C, who agreed to assume the mortgage. It was held that C was estopped to question the validity of the mortgage (36-57, 29+674). A wife abandoning a homestead, cannot have partition thereof against her husband (96-294, 104+969).

G. S. 1894 § 5521 cited (97-484, 107+159). Deed, reserving life estate, unsigned by wife, as to homestead, is void (124-335, 144+1094). As to mortgage not joined in by wife to homestead, prior judgment on issue of marriage, is inadmissible (128-525, 151+416). Wife joining husband in deeding his homestead as security for loan (122-419, 142+721). Agreement without wife's consent with town for road across homestead is void (133-128, 157+1089). Misdescription due to mutual mistake in deed to homestead joined in by both husband and wife may be reformed (129-290, 152+648). Estoppel to asserting invalidity of separate conveyances of homestead (133-261, 158+244). Contract for sale of homestead, jointly owned by husband and wife, made by wife alone, and thereafter confirmed by husband, is not invalid (138-171, 164+899; 142-36, 170+708; 143-38, 172+914). Six month lease is not an alienation (148-269, 181+579). Mortgagor fraudulently representing himself as unmarried is estopped from asserting invalidity (150-242, 184+1021). Trust deed including homestead executed by husband and wife wherein was a latent ambiguity, parol evidence admissible (244 Fed. 914).

8341. Exemption not lost by death or desertion—If the owner shall die leaving a spouse or minor children constituting his family surviving, the homestead exemption shall not be affected by such death. And if a husband shall abscond, or otherwise desert his family, his wife and the minor children comprising such family may retain the homestead, with all the rights of owners therein. But they shall not have power to sell or mortgage the same, except in cases expressly provided for by law. (3457) [6962] -

8342. Sale or removal permitted—Notice—The owner may sell and convey the homestead 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. And he may remove therefrom without affecting such exemption, if he do not thereby abandon the same as his place of abode. But if he shall cease to occupy such homestead for more than six consecutive months he shall be deemed to have abandoned the same unless, within such period, he shall file with the register of deeds of the county in which it is situated a notice, executed, witnessed, and acknowledged as in the case of a deed, describing the premises and claiming the same as his homestead. But in no case shall the exemption continue more than five years after such filing, unless during some part of said term the premises shall have been occupied as the actual dwelling place of the debtor or his family. (3458) [6963]

1. Sale and removal—The statute does not have the effect of rendering actual occupancy as a home unnecessary; it simply authorizes temporary removal after a homestead has been acquired by actual occupancy as a home (15-116, 87; 29-18, 11+119; 35-280, 28+510; 47-13, 49+390). A conveyance of a homestead vests a good title in the grantee (25-305; 71-108, 73+639), even though it was made with a fraudulent intent (27-116, 6+455; 27-156, 6+618; 28-77, 9+172; 28-844, 11+77; 40-193, 41+1031; 89-247, 94+677). Prior to Revised Laws, garnishment reached money owing by garnishee derived from sale of homestead of defendants, and which defendants in-

tended at time of service of garnishee summons to use in purchase of another homestead within one year from time premises were sold (97-484, 107+159).

2. Notice of claim—Abandonment—If an owner removes from and ceases to occupy his homestead for more than six months without filing the notice required by this section his homestead right ceases although he may have removed with the intention of returning and resuming his occupancy at some future time. To recover the right there must be a resumption of actual occupancy. Filing notice is effective to preserve the right only when there is an intention to return and occupy as a home (38-308, 37+340; 40-172, 41+1059; 47-13, 49+390; 50-264, 52+862). This section does not preserve the right for six months absolutely. If a party leaves his homestead with the intention of never returning his exemption right ceases at once regardless of whether he has filed a claim or not (29-18, 11+119; 35-280, 28+510; 71-108, 73+639; 84-468, 87+1024). A party may remove from his homestead for a period of six months with impunity although he does not file the statutory notice, if he intends to return (38-303, 37+340). Evidence of an abandonment must be clear and convincing (31-197, 17+336; 39-193, 39+141; 71-108, 73+639). Held insufficient (106-442, 119+60). The burden of proving a filing of notice rests on the claimant (50-264, 52+862). The domicile of the husband is the domicile of the wife. If he leaves the homestead with the intention of not returning there is an abandonment regardless of the intention of the wife (35-280, 28+510; 84-468, 87+1024. See 25-183; 40-172, 41+1059). To constitute an abandonment there must be an actual removal from the premises. An intention to remove is insufficient (31-197, 17+336). The acquisition of a new homestead works a forfeiture of the old one (29-18, 11+119). Where there has been a loss of exemption by abandonment a resumption of occupancy as a home does not have a retroactive effect, but merely gives a new right as of the date of the resumption (71-108, 73+639). Where a homestead right is lost by removal and failure to file the statutory notice the premises do not pass to the surviving spouse under ch. 74 (40-172, 41+1059). An outstanding interest is not a thing separate from the land so that its acquisition by the claimant affects the exemption (27-406, 7+824). Removal without abandonment (217 Fed. 168). Failure to file notice (138-405, 165+235; 142-36, 170+708). Not a homestead (152-163, 188+316; 217 Fed. 169; 206 Fed. 877).

8343. Selection after levy—If the premises so owned and occupied by the debtor or claimed under him by another as exempt shall exceed the area herein prescribed, and the homestead shall not have been set apart as such and its boundaries defined, an attachment or execution may be levied upon the whole. Thereupon the person entitled to the benefits of such exemption shall deliver to the officer making said levy a description of the part claimed as exempt, and the remainder only shall be subject to the levy so made. (3459) [6964]

A sale of the whole of a tract including a homestead is void as to the whole if no selection is made, either by the officer or the claimant (25-183; 27-156, 6+618; 30-84, 14+364; 30-259, 15+118; 31-213, 17+341; 36-388, 31+353; 37-208, 34+23; 91-482, 98+463). A selection is conclusive if voluntarily made by the claimant (see 78-295, 80+1127).

8344. Selection, how made—Such selection shall embrace the site of the dwelling and its appurtenances, shall be compact in form, and shall be so made as not unreasonably to affect the value of the remaining part. If the selection be not made within twenty days after notice of the levy, or if, when made, it be not satisfactory to the creditor procuring such levy, the sheriff shall cause such homestead to be set apart by a survey, beginning at a point designated by the claimant, or, if no such designation be made, at such point as the sheriff shall direct, and the cost of such survey shall be added to the debt and paid out of the proceeds of sale. (3460) [6965]

The selection must be reasonable and the tract carved out regular and compact in shape. The dwelling-house and appurtenances must be included (61-238, 63+632. See 70-546, 73+842). It will be presumed that an officer making a selection discharged his duty (91-482, 92+463).

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168-M 338
171-M 176
213-NW 537
214-NW 793

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4-NW 38

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163-M 294
10-NW 87

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