

## **CHAPTER 47-18 HOMESTEAD**

### **47-18-01. Homestead exemption - Area and value.**

The homestead of any individual, whether married or unmarried, residing in this state consists of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed one hundred thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. The homestead may not embrace different lots or tracts of land unless the lots or tracts of land are contiguous. For purposes of this section, "contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.

### **47-18-02. Head of family defined.**

Repealed by S.L. 1979, ch. 488, § 7.

### **47-18-03. Selection of homestead exemption.**

If a homestead claimant is married, the homestead may be selected from the separate property of either spouse with the consent of the other spouse.

### **47-18-04. When homestead subject to execution.**

A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics', construction, or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.
3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of the homestead is more than one hundred thousand dollars over and above liens or encumbrances on the homestead, and then only to the extent of any value in excess of the sum total of the liens and encumbrances plus said one hundred thousand dollars.

### **47-18-05. Homestead - How conveyed.**

The homestead of a married person, without regard to the value thereof, cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both the husband and wife.

#### **47-18-05.1. Waiver of homestead exemption - Notice required - Exemption for platted property.**

1. A mortgage on a homestead which is executed after June 30, 1991, and which is not a purchase money contract must contain the following statement printed in a conspicuous manner:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

This statement must be immediately followed by the date and the signature of the person to indicate that the person is specifically and knowingly waiving the exemption, which must be a separate signature from that person's signature to the entire mortgage contract.

2. This section does not apply to a mortgage on property less than forty acres [16.19 hectares].

**47-18-06. Homestead - When appraised.**

When an execution for the enforcement of a judgment obtained in a case not within any of the classes specified under subsections 1, 2, or 3 of section 47-18-04 is levied upon the homestead, the judgment creditor may apply to the district court in the county in which such homestead is situated for the appointment of persons to appraise the value thereof.

**47-18-07. Application for appraisers.**

An application for appraisers must be made upon a verified petition showing:

1. The fact that an execution has been levied upon the homestead;
2. The name of the claimant; and
3. That the value of the homestead exceeds the amount of the homestead exemption.

**47-18-08. Petition for appraisal - When filed.**

A petition for the appointment of appraisers of a homestead must be filed with the recorder, unless the board of county commissioners designates a different official, and a copy thereof, with notice of the time and place of hearing, served on the claimant at least ten days before the hearing.

**47-18-09. Appointment of appraisers.**

At a hearing, the court, upon proof of the service of the notice and petition provided for in section 47-18-08 and of the facts stated in the petition, may appoint three disinterested residents of the county to appraise the value of the homestead.

**47-18-10. Duties of appraisers.**

The appraisers must perform the following duties:

1. Take an oath impartially to appraise the homestead property.
2. View the premises and appraise the value thereof.
3. If the appraised value exceeds the homestead exemption, determine whether the real property claimed can be divided without material injury.

**47-18-11. Appraisers' report to judge of district court.**

Within fifteen days after their appointment, the appraisers must present to the judge a report in writing which must show the appraised value of the homestead and their determination upon the matter of a division of the real property claimed.

**47-18-12. Division of homestead.**

If from the appraisers' report it appears that the real property claimed as a homestead can be divided without material injury, the court, by an order, shall direct the appraisers to set off to the claimant so much of the real property, including the residence, as will amount in value to the homestead exemption. The execution may be enforced against the remainder of the real property.

**47-18-13. Sale of homestead.**

If from the appraisers' report it appears to the court that the real property claimed as a homestead exceeds in value the amount of the homestead exemption and that it cannot be divided without material injury, the court must make an order directing its sale under the execution. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

**47-18-14. Proceeds of sale exempt - Disposition.**

If the sale of a homestead is made as provided in section 47-18-13, the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to

the satisfaction of the execution. When the execution is against a married claimant whose spouse is living, the court may direct that the one hundred thousand dollars be deposited in court to be paid out only on the joint receipt of the husband and wife, and it shall possess all the protection against legal process and voluntary disposition by either spouse as did the original homestead premises whether paid directly to the claimant or to the husband and wife jointly.

**47-18-15. Fees of appraisers.**

The appraisers of a homestead shall receive the same fees as jurors in civil cases in the district court, which with all other costs of these proceedings must be paid by the execution creditor in the first instance, but in the cases provided for in sections 47-18-13 and 47-18-14, the amount paid must be added as costs on execution and collected accordingly.

**47-18-16. Proceeds of sale exempt.**

If a homestead is conveyed as provided in section 47-18-05 or sold for the satisfaction of any lien mentioned in section 47-18-04, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, for a period of one year from the date of the conveyance, is entitled thereafter to the same protection against legal process as the law gives to the homestead.

**47-18-17. Who may make declaration of homestead.**

Any person may make a declaration of homestead in the manner provided in sections 47-18-18 and 47-18-19. A failure to make such declaration shall not impair the homestead right.

**47-18-18. Declaration of homestead - How executed and acknowledged.**

In order to select a homestead the claimant shall execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the declaration for record.

A claim of a homestead by a debtor who received a discharge is a declaration of homestead.

Filing for record in the recorder's office of the county where the homestead is located a certified copy with the legal description of the discharge constitutes notice that the property is a homestead and exempt from judgments.

**47-18-19. Contents of declaration of homestead.**

The declaration of a homestead must contain:

1. A statement that the person making it is residing on the premises and claims them as a homestead;
2. A description of the premises; and
3. An estimate of their cash value.

**47-18-20. Recording of declaration of homestead.**

A declaration of homestead must be recorded in the office of the recorder of the county in which the land is situated.

**47-18-21. Effect of sale of homestead.**

The sale and disposition of one homestead shall not be held to prevent the selection or purchase of another as is provided in this chapter.

**47-18-22. Conveyance in case of mental illness.**

If either the husband or wife of the owner of a homestead becomes mentally ill, the district court serving the county in which the homestead is situated may make an order, upon application of the owner, or if the owner is deceased, the administrator or executor or legal representative of the owner, and upon due proof of such mental illness, permitting the owner, or if the owner is deceased, the administrator or executor or legal representative of the owner, to sell and convey or mortgage the homestead.

**47-18-23. Requisites of a petition in case of mental illness.**

An application in connection with the mental illness of the husband or wife of the owner of a homestead for an order permitting the sale, conveyance, lease, including oil and gas leases, or mortgage of the homestead by the owner, shall be made by a petition to the court subscribed and sworn to by the applicant, setting forth:

1. The name and age of the mentally ill husband or wife.
2. The number, age, and sex of the children of such husband or wife.
3. A description of the premises constituting the homestead.
4. The value of the homestead.
5. The county in which the homestead is situated.
6. Such facts, in addition to that of the mental illness of the husband or wife, relating to the circumstances or necessities of the applicant and the applicant's family as the applicant may rely upon in support of the petition.

**47-18-24. Notice of application to convey homestead in case of mental illness - Service.**

Notice of the application for an order to convey the homestead property shall be served upon such persons and in such manner as the court by order shall direct, and in such order the court shall fix a time for the hearing of the application.

**47-18-25. Order of sale or mortgage recorded with recorder.**

A certified copy of an order granting permission to sell and convey or mortgage the homestead shall be filed for record and recorded in the office of the recorder of the county in which the homestead is situated.

**47-18-26. Sale of homestead - Court may direct disposition of funds.**

On granting an order authorizing a sale of homestead, the court may direct that a part of the funds derived from such sale, not to exceed one-third thereof, be set aside, and may direct the investment of such funds for the use and benefit of the mentally ill husband or wife. If such husband or wife dies while mentally ill, the sum so set aside reverts to the surviving husband or wife. If the mentally ill husband or wife survives, then such sum shall descend in accordance with the laws of succession as provided in title 30.1.

**47-18-27. Conveyance of homestead when spouse is mentally ill - Validity.**

A conveyance or mortgage of a homestead made pursuant to the applicable provisions of this chapter shall be as valid and effectual as if the mentally ill husband or wife had been sane and had joined in the execution and acknowledgment of such conveyance or mortgage.

**47-18-28. Appeal from order to district court.**

On the hearing of an application, such as is provided in section 47-18-23, any of the kindred of the mentally ill person may appear and be heard in the premises and may appeal from any order made on the subject to the district court for the county in which the land is situated.

**47-18-29. Homestead may be devised subject to homestead estate.**

Subject to the homestead estate as defined by law and the payment of decedent's debts, the homestead may be devised to persons other than those mentioned in section 30-16-04 like other real property of the testator.