

Colorado Statutes  
TITLE 38 PROPERTY - REAL AND PERSONAL/  
REAL PROPERTY/Limitations - Homestead Exemptions/  
ARTICLE 41 LIMITATIONS - HOMESTEAD EXEMPTIONS/  
PART 2 HOMESTEAD EXEMPTIONS

PART 2  
HOMESTEAD EXEMPTIONS

Annotations

Law reviews: For article, "Homestead Marshalling", see 14 Colo. Law. 1612 (1985).

38-41-201. Homestead exemption.

38-41-201.5. Legislative declaration of homestead exemption for mobile homes.

38-41-201.6. Mobile home, manufactured home, trailer, and trailer coach homestead exemption.

38-41-202. Homestead to be created automatically in certain cases - filing of statement required in other cases.

38-41-203. Exemption only while occupied.

38-41-204. Surviving spouse and minor children entitled.

38-41-205. Of what homestead may consist.

38-41-206. Levy on homestead - excess - costs.

38-41-207. Proceeds exempt - bona fide purchaser.

38-41-208. Survival of exemption.

38-41-209. Insurance proceeds.

38-41-210. Definitions - vendor's rights.

38-41-211. Exemption in addition to allowances.

38-41-212. Waiver.

38-41-201. Homestead exemption.

Every homestead in the state of Colorado occupied as a home by the owner thereof or his or her family shall be exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding in value the sum of forty-five thousand dollars in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon.

History

Source: R.S. p. 385, § 57. G.L. § 1343. G.S. § 1631. R.S. 08: § 2950. C.L. § 5924. CSA: C. 93, § 23. L. 51: p. 522, § 1. CRS 53: § 77-3-1. C.R.S. 1963: § 77-3-1. L. 73: p. 916, § 2. L. 75: Entire section R&RE, p. 1444, § 1, effective July 14. L. 81: Entire section amended, p. 1828, § 1, effective May 21. L. 91: Entire section amended, p. 384, § 6, effective May 1. L. 2000: Entire section amended, p. 717, § 3, effective May 23.

Annotations

Analysis

I. General Consideration.

II. Effect of Exemption.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 37.

C.J.S. See 40 C.J.S., Homesteads, § 35.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "A Discussion of Garnishment and Its Exemptions", see 27 Dicta 453 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 Rocky Mt. L. Rev. 84 (1952). For article, "Trusts and Estates", see 30 Dicta 435 (1953). For note, "The Homestead Rights of Minor Children in Solvent Estates", see 25 Rocky

Mt. L. Rev. 370 (1953). For article, "Marital Property Interests", see 27 Rocky Mt. L. Rev. 180 (1955). For article, "Homestead v. Mechanic's Lien", see 40 Den. L. Ctr. J. 2 (1963). For comment, "The Effect of Certified Realty on Mortgage Foreclosure in Colorado", see 52 U. Colo. L. Rev. 301 (1981). For comment, "The Effect of Certified Realty Corp. v. Smith on Mortgage Foreclosure in Colorado", see 52 U. Colo. L. Rev. 301 (1981). For article, "Election to Sue on a Mortgage Note in Lieu of Foreclosure", which discusses avoidance of judgment liens in bankruptcy, see 13 Colo. Law. 621 (1984). For article, "The Statutory Right of Redemption from Foreclosures", which discusses how the statutory right of redemption from foreclosures is modified by the homestead exemptions, see 13 Colo. Law. 793 (1984). For article, "Colorado Homestead Statutes: Exemption or Allowance?", see 17 Colo. Law. 827 (1988).

Constitutionality. This section does not violate the uniformity clause of § 8 of art. VIII, U.S. Const. or supremacy clause, art. VI, cl. 2, U.S. Const. In re Parrish, 19 Bankr. 331 (Bankr. D. Colo. 1982); In re Robinson, 44 Bankr. 292 (Bankr. D. Colo. 1984).

Primary purpose of article is to place the property designated as a homestead out of the reach of creditors while occupied as a home, and this is so even though the designation of the property as a homestead occurred after the debt was contracted and immediately before the creditor had attached or levied upon the property, and though the debtor had no other property liable for his debt. Haas v. De Laney, 165 F. Supp. 488 (D. Colo. 1958). See Barnett v. Knight, 7 Colo. 365, 3 P. 747 (1884).

The design of this section is to secure to the householder a home for himself and family, regardless of his financial condition, whether solvent or insolvent. Woodward v. People's Nat'l Bank, 2 Colo. App. 369, 31 P. 184 (1892); In re Nye, 133 F. 33 (8th Cir. 1904).

The policy of the state is to preserve the home to the family, even at the sacrifice of just demands, for the reason that the preservation of the home is deemed of paramount importance. McPhee v. O'Rourke, 10 Colo. 301, 15 P. 420 (1887); University Nat. Bank v. Harsh, 833 P.2d 846 (Colo. App. 1992).

Spirit of homestead laws preserves right of occupancy. The spirit and the letter of our homestead laws preserve a right of occupancy for those who stand in the relation of head of the family. In re Wallace's Estate, 125 Colo. 584, 246 P.2d 894 (1952).

Two governing principles underlie all homestead legislation: First, the beneficent design of protecting the citizen householder and his family from the dangers and miseries of destitution consequent upon business reverses or upon calamities from other causes; and, second, the sound public policy of securing the permanent habitation of the family, and cultivating the local interest, pride, and affection of the individual, so essential to the stability and prosperity of a government. Weare v. Johnson, 20 Colo. 363, 38 P. 374 (1894); Barnett v. Knight, 7 Colo. 365, 3 P. 747 (1884).

Benefits of this section are extended to every householder, without qualification, except as to the value and occupancy. Dallemand v. Mannon, 4 Colo. App. 262, 35 P. 679 (1894).

This section does not create an interest in land. The Colorado homestead has been referred to as an "exemption," and nothing more. United States v. Morgan, 554 F. Supp. 582 (D. Colo. 1982).

Federal tax lien foreclosure not barred. This section does not operate to bar foreclosure of the federal government's tax lien. *United States v. Morgan*, 554 F. Supp. 582 (D. Colo. 1982).

Scope of protection. This section extends certain protection to the premises set apart by the owner as a homestead for his or her family so long as he or she desires to occupy the same as a home for the family, and it protects the same against proceedings by execution and attachment, but it does not appear that further exemption or protection was intended. *Wright v. Whittick*, 18 Colo. 54, 31 P. 490 (1892).

The words "arising from any debt, contract, or civil obligation" are sufficiently broad and comprehensive to embrace any and all forms of indebtedness, including judgments. *Woodward v. People's Nat'l Bank*, 2 Colo. App. 369, 31 P. 184 (1892).

Section does not rest upon equitable principles. In no way does this section rest upon the principles of equity, nor in any way yield thereto. *McPhee v. O'Rourke*, 10 Colo. 301, 15 P. 420 (1887); *Helkey v. Ashley*, 113 Colo. 175, 155 P.2d 143 (1945).

Exemption statutes are to be liberally construed, so as to promote the humane policy of such legislation, but the courts cannot by construction annex to such statutes consequences not fairly within their purview or intent. *Barnett v. Knight*, 7 Colo. 365, 3 P. 747 (1884); *McPhee v. O'Rourke*, 10 Colo. 301, 15 P. 420 (1887); *Martin v. Bond*, 14 Colo. 466, 24 P. 326 (1890); *Weil v. Nevitt*, 18 Colo. 10, 31 P. 487 (1892); *Wright v. Whittick*, 18 Colo. 54, 31 P. 490 (1892); *Brooks v. Black*, 22 Colo. App. 49, 123 P. 131 (1912); *Haas v. De Laney*, 165 F. Supp. 488 (D. Colo. 1958).

The right to homestead exemption is not given by the bankruptcy law, but exists, if at all, by virtue of state laws, and the bankruptcy court will allow whatever exemption the state law allows. *Edgington v. Taylor*, 270 F. 48 (8th Cir. 1920).

There is only one homestead exemption per a specific piece of real property. In *re Lambert*, 34 Bankr. 41 (Bankr. D. Colo. 1983); In *re Pruitt*, 829 F.2d 1002 (10th Cir. 1987); In *re Bryant*, 221 Bankr. 262 (Bankr. D. Colo. 1998).

And it attaches to the property. In *re Bryant*, 221 Bankr. 262 (Bankr. D. Colo. 1998).

The homestead exemption may not be claimed by one joint owner to the exclusion of the other joint owners. In *re Pruitt*, 829 F.2d 1002 (10th Cir. 1987); In *re Bryant*, 221 Bankr. 262 (Bankr. D. Colo. 1998).

Exemption under this section attaches automatically upon occupancy of real property as a home by the owner or the owner's family. *University Nat. Bank v. Harsh*, 833 P.2d 846 (Colo. App. 1992).

Full homestead exemption is applied before any determination is made with respect to any specific joint owner's equity that may be subject to the claims of creditors in a bankruptcy case. In *re Dickinson*, 185 Bankr. 76 (Bankr. D. Colo. 1995).

Homestead exemption policy applies to leased and owned homes. The public policy of a homestead exemption, to secure to the householder a home for himself and family regardless of financial conditions, whether solvent or insolvent, applies with equal force whether the home is occupied under a lease for a term of years or under a fee ownership. In *re Hellman*, 474 F. Supp. 348 (D. Colo. 1979).

The homestead exemption is available to homeowners and to nonhomeowners alike. In *re Parrish*, 19 Bankr. 331 (Bankr. D. Colo. 1982).

Who may claim exemption. One who does not have title or any claim to real property does not have a right to claim a homestead exemption on such real property. In *re Hambric v. Centennial Glass, Inc.*, 32 Bankr. 49 (Bankr. D. Colo. 1983).

Debtor cannot claim a homestead exemption because he did not own real property. What he received upon the death of his mother was an undivided one-third interest in her probate estate, which happened to include a piece of real property. His rights in the probate estate became the property of the bankruptcy estate and at that time he was not an owner of real property. In addition, neither on the date of the filing of his bankruptcy nor on the date he became entitled to his share of the probate estate did the debtor occupy the real property as his primary residence or home. In *re Meachen*, 217 Bankr. 877 (Bankr. D. Colo. 1998).

Although debtor was part owner of home and persons occupying the home were his family, he was not entitled to claim a homestead exemption since he at no time contributed toward the payment of the mortgage, taxes, insurance, maintenance, or utilities nor did he give any pecuniary consideration for his interest nor did he contribute to living expenses of his family who lived in the home. In *re Rodriguez*, 38 Bankr. 297 (Bankr. D. Colo. 1984).

Bankruptcy debtor was not entitled to claim the exemption where he had only an undivided one-half interest in the property, and his joint tenant was not a bankruptcy debtor. In *re Robinson*, 44 Bankr. 292 (Bankr. D. Colo. 1984).

Co-defendant entitled to full homestead exemption because the other defendant, a trust, was legally incapable of occupying the residence and claiming the exemption. *University Nat. Bank v. Harsh*, 833 P.2d 846 (Colo. App. 1992).

Former husband, as a co-owner of the property, entitled to half of homestead exemption even though he no longer resided in the property. In *re Dickinson*, 185 Bankr. 76 (Bankr. D. Colo. 1995).

Married individuals living apart in jointly owned properties are each entitled to claim a homestead as exempt. The filing of a joint petition in bankruptcy, however, effected a severance in the joint tenancy of the debtors in each of the properties, with the result that an undivided one-half interest in the husband's estate became the property of the wife, which property became property of the wife's bankruptcy estate, and vice versa. Thus the trustee is entitled to one-half of the homestead exemption and one-half of the remaining equity in each property. In *re Pastrana*, 216 Bankr. 948 (Bankr. D. Colo. 1998).

Exemption need not be prorated among two or more cotenants where there is no danger that full protection will be claimed by one joint owner-occupant to the exclusion of other owner-occupants. *University Nat. Bank v. Harsh*, 833 P.2d 846 (Colo. App. 1992).

Pre-paid rents and security deposits. The homestead exemption applies to pre-paid rents and to security deposits which can be applied to rent. In *re Quintana*, 28 Bankr. 269 (Bankr. D. Colo. 1983).

Liens used to calculate exemption. In determining which liens will be used to calculate a homestead exemption, the court uses only those liens or encumbrances which existed prior to the placement of the homestead right on the property, which exemption is established automatically from the date of the property owner's occupancy (except with respect to liens which arose prior to July 1, 1975), and liens with respect to which the debtor has expressly waived the homestead exemption. *Lincoln v. Cherry Creek Homeowners Ass'n*, 30 Bankr. 905 (Bankr. D. Colo. 1983).

Attorney's liens. Homestead exemption statute includes attorney's liens within its ambit and the attorney's lien does not attach to the homestead. If the debtor has any net equity remaining after the sale of the property in question, the creditor's attorney's lien attaches to that net equity and his claim is unsecured for any amount over that sum. In *re Dickinson*, 185 Bankr. 840 (Bankr. D. Colo. 1995).

Full exemption attached to residence of widow who owned an undivided one-half interest in property where remainder of property was owned by her deceased husband's trust, and trust was legally incapable of occupying the residence and claiming the exemption. *University Nat. Bank v. Harsh*, 833 P.2d 846 (Colo. App. 1992).

Homeowner exemption applies to debtor who owned and occupied the residence at time of filing bankruptcy, despite her simultaneous plans to move from residence. In *re Raymond*, 132 Bankr. 53 (Bankr. D. Colo. 1991).

Equity in duplex. The rental part of a duplex does not impair the owner's right to exempt the equity in the entire structure, and the debtor is entitled to claim any equity in the property considered as a whole. *Wells v. West Greeley Nat. Bank*, 29 Bankr. 688 (Bankr. D. Colo. 1983).

Waiver in deed of trust not waiver to all creditors. The waiver of the homestead right contained in a deed of trust does not constitute a waiver to all creditors. *Frank v. First Nat. Bank*, 653 P.2d 748 (Colo. App. 1982).

Condominium owner waived right to assert homestead exemption prior to a condominium association's assessment lien due to a condominium declaration which was in existence before owner took title. *Whispering Pines W. Condo. v. Treantos*, 780 P.2d 26 (Colo. App. 1989).

Junior lien creditor may redeem from a public trustee's sale without complying with the homestead exemption statute. *Howell v. Farrish*, 725 P.2d 9 (Colo. App. 1986).

Applied in *Drake v. Root*, 2 Colo. 685 (1875); In *re Youngstrom*, 153 F. 98 (8th Cir. 1907); *Jasper v. Bicknell*, 68 Colo. 308, 191 P. 115 (1920); *Whitlock v. Alliance Coal Co.*, 73 Colo. 205, 214 P. 546 (1923); *Vassek v. Moffat County Mercantile Co.*, 87 Colo. 153, 285 P. 939 (1930); *Craig Lumber Co. v. Ramey*, 108 Colo. 516, 119 P.2d 608 (1941); *Wise v. Thomas*, 117 Colo. 376, 188 P.2d 444 (1947); *Michels v. Clemens*, 140 Colo. 82, 342 P.2d 693 (1959); *Thomas v. Hysom*, 167 Colo. 218, 446 P.2d 911 (1968).

## II. EFFECT OF EXEMPTION.

When property exempted from levy of execution. If the property in question has not been subjected specifically to the judgment lien by the levy of an execution before it was withdrawn as a homestead, it was exempted from the levy of the execution. To construe the statute otherwise would defeat its obvious intention. *Woodward v. People's Nat'l Bank*, 2 Colo. App. 369, 31 P. 184 (1892); *Patterson v. Serafini*, 187 Colo. 209, 532 P.2d 965 (1974).

Homestead exempt from judgment lien. This section provides that the homestead shall be exempt from "execution and attachment", and if it is exempt from execution, it must of necessity be exempt from the lien of the judgment, as a judgment lien that cannot be enforced is of no avail. *Weare v. Johnson*, 20 Colo. 363, 38 P. 374 (1884); *Woodward v. People's Nat'l Bank*, 2 Colo. App. 369, 31 P. 184 (1892); *Jones v. Olson*, 17 Colo. App. 144, 67 P. 349 (1902); *White v. Hartman*, 26 Colo. App. 475, 145 P. 716 (1915); *Sterling Nat'l Bank v. Francis*, 78 Colo. 204, 240 P. 945 (1925); *City Center Nat. Bank v. Barone*, 807 P.2d 1251 (Colo. App. 1991).

Section operable against creditor for material used to improve property. There is no proviso in this section against its operating against a creditor for material used in improvements upon the property before it was designated as a homestead. *McPhee v. O'Rourke*, 10 Colo. 301, 15 P. 420, 3 Am. St. R. 579 (1887).

Void deed will not invalidate homestead entry as exemption. That the deed from husband to wife, upon the record of which she makes a homestead entry, was, as to creditors, fraudulent and void, is no defense to, and will not avoid the validity or efficiency of, such homestead entry as an exemption, is forever settled in this state. *McPhee v. O'Rourke*, 10 Colo. 301, 15 P. 420 (1887); *Tibbetts v. Terrill*, 44 Colo. 94, 96 P. 978, 104 P. 605 (1908); *Brooks v. Black*, 22 Colo. App. 49, 123 P. 131 (1912).

Trustee in bankruptcy in same position as creditor. As regards the sale of real property belonging to a bankrupt, the trustee in bankruptcy is in the same position as a creditor, and must comply with state law so far as is necessary to preserve the state exemption which is guaranteed the bankrupt. *Baker v. Allen*, 34 Colo. App. 363, 528 P.2d 922 (1974).

If bank could not assert a lien against the property while party retained title, it cannot assert the same lien against party's grantees, provided the transaction was bona fide. *City Center Nat. Bank v. Barone*, 807 P.2d 1251 (Colo. App. 1991).

38-41-201.5. Legislative declaration of homestead exemption for mobile homes.

The general assembly hereby finds and declares that, as the cost of conventional housing continues to escalate, mobile homes will become an ever larger percentage of the total housing supply, particularly for the elderly and the low-to-moderate income groups; that the purchase of a mobile home is a major investment; that most mobile homes are permanently or semipermanently located; that great improvements have been made in the quality and variety of such homes; and that mobile homes are dwellings which should be accorded a status equivalent to conventional homes. The general assembly recognizes, however, that mobile homes are more readily moved than conventional homes; that they are presently bought and sold as personal property and that there are advantages to both the industry and consumers to continue this practice; and that they presently have a dual nature in the area of taxation and tax collection; therefore mobile homes should be entitled to a homestead exemption.

### History

Source: L. 82: Entire section added, p. 544, § 1, effective January 1, 1983.

38-41-201.6. Mobile home, manufactured home, trailer, and trailer coach homestead exemption.

(1) A manufactured home as defined in section 38-29-102 (6), which includes a mobile home or manufactured home as defined in section 38-12-201.5 (2), 5-1-301 (29), or 42-1-102 (106) (b), C.R.S., that has been purchased by an initial user or subsequent user and for which a certificate of title or registration has been issued in accordance with section 38-29-110 or pursuant to section 38-29-108, is a homestead and is entitled to the same exemption as enumerated in section 38-41-201, except for any loans, debts, or obligations incurred prior to January 1, 1983. For purposes of this homestead exemption, the term "house" as used in section 38-41-205 shall be deemed to include mobile homes or manufactured homes.

(2) A trailer as defined in section 42-1-102 (105), C.R.S., or a trailer coach as defined in section 42-1-102 (106) (a), C.R.S., that has been purchased by an initial user or subsequent user and for which a certificate of title or registration has been issued pursuant to section 42-3-103, C.R.S., is a homestead and is entitled to the same exemption as enumerated in section 38-41-201, except for any loans, debts, or obligations incurred prior to July 1, 2000. For purposes of this homestead exemption, the term "house" as used in section 38-41-205 shall be deemed to include trailers or trailer coaches.

#### History

Source: L. 82: Entire section added, p. 544, § 1, effective January 1, 1983. L. 83: Entire section amended, p. 1462, § 2, effective June 15. L. 94: Entire section amended, p. 707, § 14, effective April 19; entire section amended, p. 2567, § 85, effective January 1, 1995. L. 2000: Entire section amended, p. 717, § 4, effective May 23. L. 2001: (1) amended, p. 1279, § 53, effective June 5.

#### Annotations

Editor's note: Amendments to this section by Senate Bill 94-92 and Senate Bill 94-1 were harmonized.

38-41-202. Homestead to be created automatically in certain cases - filing of statement required in other cases.

(1) The homestead exemptions described in section 38-41-201 shall be deemed created and may be claimed if the occupancy requirement of section 38-41-203 and the requirement of section 38-41-205 relating to the type of property which may be homesteaded are met.

(2) (a) A homestead exemption granted under the provisions of this part 2 shall not be deemed created and may not be claimed if the debt, contract, or civil obligation which is the basis for the execution and attachment was entered into or incurred prior to July 1, 1975, unless the owner of the property (householder) records in the office of the county clerk and recorder of the county where the property is situate an instrument in writing describing such property, setting forth the nature and source of the owner's interest therein, and stating that the owner is homesteading such property, which instrument may be acknowledged as provided by law.

(b) The spouse of the owner of the property may homestead such property in the manner provided in paragraph (a) of this subsection (2) with the same effect as if the owner had done so.

(3) Subject to the provisions of subsection (4) of this section, property homesteaded solely by operation of the automatic provisions of subsection (1) of this section may be conveyed or encumbered by the owner of the property free and clear of all homestead rights, and no

signature other than that of the owner shall be required. The owner of the property shall be determined without regard to the ownership of any homestead rights.

(4) If the owner of the property (householder) or the spouse of such owner records in the office of the county clerk and recorder of the county where the property is situate an instrument in writing describing such property, setting forth the nature and source of the owner's interest therein, and stating that the owner or the owner's spouse is homesteading such property (which instrument may be acknowledged as provided by law), then the signature of both spouses to convey or encumber such property shall be required.

#### History

Source: R.S. p. 385, § 58. G.L. § 1344. G.S. § 1632. L. 03: p. 246, § 1. R.S. 08: § 2951. L. 11: p. 452, § 1. C.L. § 5925. CSA: C. 93, § 24. L. 53: p. 411, § 1. CRS 53: § 77-3-2. C.R.S. 1963: § 77-3-2. L. 73: p. 1157, § 3. L. 75: Entire section R&RE, p. 1444, § 2, effective July 14. L. 77: (3) and (4) added, p. 1719, § 2, effective May 27.

#### Annotations

##### Analysis

I. General Consideration.

II. Title or Interest in Property.

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 80.

C.J.S. See 40 C.J.S., Homesteads, §§ 4-10.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 Rocky Mt. L. Rev. 84 (1952). For article, "Additional Real Estate Standards", see 30 Dicta 431 (1953). For article, "Trusts and Estates", see 30 Dicta 435 (1953). For note, "The Homestead Rights of Minor Children In Solvent Estates", see 25 Rocky Mt. L. Rev. 370 (1953). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den L.J. 82 (1970). For article, "Signatures on Documents Affecting Title to Colorado Real Property -- Part I", see 12 Colo. Law. 61 (1983). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985). For article, "Colorado Homestead Statutes: Exemption or Allowance?", see 17 Colo. Law. 827 (1988).

Valid exemption can be created only by the method provided by this section. Johnson v. Mountain Sav. & Loan Ass'n, 162 Colo. 474, 426 P.2d 962 (1967).

Effect of noncompliance with section. A complaint is fatally defective if it does not show a compliance with this section. Goodwin v. Colorado Mtg. Inv. Co., 110 U.S. 1, 3 S. Ct. 473, 28 L. Ed. 47 (1884); Crawford v. Felkey, 73 Colo. 444, 216 P. 520 (1923).

Right to occupy the homestead for homestead purposes is an inseparable part of the exemption, because its purpose is to protect such occupancy and because when the occupancy is voluntarily discontinued the exemption ceases. In re Nye, 133 F. 33 (8th Cir. 1904).

Property remains exempt until, by a judicial sale had at the instance of a creditor, more than the prescribed amount with costs is realized therefrom; then the excess is to be applied to the demand of the creditor and the prescribed amount is to be paid to the debtor, free of charge or

expense, to enable him to acquire another homestead. In re Nye, 133 F. 33 (8th Cir. 1904).

Creditor is charged with knowledge of homestead claims through recording statute, and his lack of knowledge through inadvertence would be immaterial. American Heritage Bank & Trust Co. v. Trees, 35 Colo. App. 147, 532 P.2d 380 (1974).

Homestead entry on deed technically void is valid. The uniform holding that a homestead entry made upon a deed confessedly void (because executed in fraud of creditors) is sufficient to secure the exemption, would seem to justify the conclusion that an entry upon some other instrument, in form evidence of title, legal or equitable, is also sufficient, although for reasons not appearing upon the face of the instrument, the court might, when properly raised upon trial, hold that said instrument was, in law, something different than it appeared to be, or, for some reasons, was defective or void. Brooks v. Black, 22 Colo. App. 49, 123 P. 131 (1912).

Homestead entry adjudged void cannot be collaterally assailed. Where a homestead entry has been canceled and adjudged null and void by a decree of the district court, that decree cannot be collaterally assailed. Smith v. Smith, 76 Colo. 119, 230 P. 597 (1924).

Effect of void deed executed by one joint tenant. Because a deed affecting homesteaded property executed by one of two joint tenants is void, that deed may not be utilized to defeat the homestead act's policy of protecting both owners of homesteaded property from disenfranchisement by the unilateral conduct of one joint tenant. Knoche v. Morgan, 664 P.2d 258 (Colo. App. 1983).

Formerly, this section allowed creation of exemption by marginal entry on the recorded deed of the word "homestead". Johnson v. Mountain Sav. & Loan Ass'n, 162 Colo. 474, 426 P.2d 962 (1967).

For cases dealing with marginal entry method of creating homestead exemption. See Drake v. Root, 2 Colo. 685 (1875); Wells v. Caywood, 3 Colo. 487 (1877); Goodwin v. Colorado Mtg. Inv. Co., 110 U.S. 1, 3 S. Ct. 473, 28 L. Ed. 47 (1884); Barnett v. Knight, 7 Colo. 365, 3 P. 747 (1884); Jones v. Olson, 17 Colo. App. 144, 67 P. 349 (1891); Leppel v. Kus, 38 Colo. 292, 88 P. 448 (1907); Runyan v. Snyder, 45 Colo. 156, 100 P. 420 (1909); White v. Hartman, 26 Colo. App. 475, 145 P. 716 (1914); Jasper v. Bicknell, 68 Colo. 308, 191 P. 115 (1920); Bean v. Eves, 92 Colo. 339, 20 P.2d 544 (1933); Farley v. Harvey, 93 Colo. 105, 25 P.2d 185 (1933); Howell v. Burch Whse. & Transf. Co., 100 Colo. 247, 67 P.2d 73 (1937).

Liens used to calculate exemption. In determining which liens will be used to calculate a homestead exemption, the court uses only those liens or encumbrances which existed prior to the placement of the homestead right on the property, which exemption is established automatically from the date of the property owner's occupancy (except with respect to liens which arose prior to July 1, 1975), and liens with respect to which the debtor has expressly waived the homestead exemption. Lincoln v. Cherry Creek Homeowners Ass'n, 30 Bankr. 905 (Bankr. D. Colo. 1983).

Signatures of both joint tenants were not needed to encumber property that was homesteaded solely by operation of automatic provisions of statute, and either of two joint tenants could encumber or convey the interest that he owned upon his signature unless a written declaration of homestead rights was recorded. Comm. Factors of Denver v. Clarke & Waggener, 684 P.2d 261 (Colo. App. 1984).

Filing a homestead claim was not a responsive pleading under C.R.C.P. 8(c). In the matter of Lombard, 739 F.2d 499 (10th Cir. 1984).

Applied in Barnett v. Knight, 7 Colo. 365, 3 P. 747 (1884); Copeland v. Colorado State Bank, 13 Colo. App. 489, 59 P. 70 (1899); Lock v. Berkins, 95 Colo. 135, 33 P.2d 393 (1934); Craig Lumber Co. v. Ramey, 108 Colo. 516, 119 P.2d 608 (1941); Wise v. Thomas, 117 Colo. 376, 188 P.2d 444 (1947); Baker v. Allen, 34 Colo. App. 363, 528 P.2d 922 (1974).

## II. TITLE OR INTEREST IN PROPERTY.

Limitation is on value, not quantity of land. The homestead statutes do not fix the quantity of land which may be held as a homestead; it is the value and not the amount which is limited. Dallemand v. Mannon, 4 Colo. App. 262, 35 P. 679 (1894).

Ownership in fee is not essential. An equitable title, a lease for a term of years, or any title which may be the subject of levy and sale, may also be the subject of a homestead claim. Dallemand v. Mannon, 4 Colo. App. 262, 35 P. 679 (1894).

Any interest with possession is sufficient to support the homestead right. Brooks v. Black, 22 Colo. App. 49, 123 P. 131 (1912).

Possession under executory contract of purchase. One who holds possession of land under an executory contract of purchase may declare a valid homestead therein. Brooks v. Black, 22 Colo. App. 49, 123 P. 131 (1912); Dallemand v. Mannon, 4 Colo. App. 262, 35 P. 679 (1894).

38-41-203. Exemption only while occupied.

Said property, when so homesteaded, shall only be exempt as provided in this part 2 while occupied as a home by the owner thereof or his family.

## History

Source: R.S. p. 385, § 59. G.L. § 1345. G.S. § 1633. R.S. 08: § 2952. C.L. § 5926. CSA: C. 93, § 25. L. 53: p. 411, § 2. CRS 53: § 77-3-3. C.R.S. 1963: § 77-3-3.

## Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, §§ 68-76.

C.J.S. See 40 C.J.S., Homesteads, §§ 14-19.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 Rocky Mt. L. Rev. 84 (1952). For note, "The Homestead Rights of Minor Children in Solvent Estates", see 25 Rocky Mt. L. Rev. 370 (1953).

Occupancy of premises required. Occupancy of the premises by one claiming a homestead exemption is a necessary requirement to enforce such a claim. Helkey v. Ashley, 113 Colo. 175, 155 P.2d 143 (1945).

Actual personal occupation at all times not required. This section cannot be construed as requiring an actual personal occupation at all times and under all circumstances, and it is intended that the place shall be the only home of the family, and shall not be abandoned and another occupied with the intention of making such change permanent. Pierson v. Truax, 15 Colo. 223, 25 P. 183 (1890).

Presumption of abandonment. The cessation of occupancy of a homestead may raise a presumption of abandonment. *Monte Vista Bank & Trust Co. v. Savage*, 75 Colo. 180, 225 P. 219 (1924).

Claimant has burden of overcoming a presumption of abandonment. *Monte Vista Bank & Trust Co. v. Savage*, 75 Colo. 180, 225 P. 219 (1924).

Vague intention to return insufficient to overcome presumption. A vague intention to return perhaps at some future time and reside there again will not preserve the claimant's home, because the intention which is sufficient to rebut the presumption of abandonment must be positive and certain, not conditional or indefinite. *Monte Vista Bank & Trust Co. v. Savage*, 75 Colo. 180, 225 P. 219 (1924).

Removal of family from homestead makes prima facie case of abandonment. To rebut this presumption, it must appear that the removal was temporary in its nature, made for a specific purpose, with the intention of reoccupying the premises. *Monte Vista Bank & Trust Co. v. Savage*, 75 Colo. 180, 225 P. 219 (1924); *Reed v. State Sav. Bank*, 93 Colo. 325, 25 P.2d 739 (1933).

Fact that debtors were not residing in the home on the bankruptcy petition date created a presumption of abandonment; however, debtors rebutted the presumption through testimony that their absence was temporary and made for the specific purposes of renovating the home and avoiding the proximity of debtor husband's former spouse. In re *Patterson*, 275 B.R. 578 (Bankr. D. Colo. 2002).

Lease of portion of estate not abandonment. The lease of a portion of the estate, or even of the whole of it, does not of itself work an abandonment of the homestead, because the question of abandonment is very largely one of intention. *Dallemand v. Mannon*, 4 Colo. App. 262, 35 P. 679 (1894).

When homestead terminates. The right to homestead terminates when the debtor ceases to be the head of a family, by death or permanent removal from the premises of all the dependent members, or by their reaching the age of majority. *Monte Vista Bank & Trust Co. v. Savage*, 75 Colo. 180, 225 P. 219 (1924).

38-41-204. Surviving spouse and minor children entitled.

When any person dies seized of a homestead leaving a surviving spouse or minor children, such surviving spouse or minor children are entitled to the homestead exemption. In cases where there is neither surviving spouse nor minor children, the homestead shall be liable for the debts of the deceased.

#### History

Source: R.S. p. 385, § 60. G.L. § 1346. G.S. § 1634. R.S. 08: § 2953. C.L. § 5927. CSA: C. 93, § 26. CRS 53: § 77-3-4. C.R.S. 1963: § 77-3-4. L. 94: Entire section amended, p. 1041, § 20, effective July 1, 1995.

#### Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 148.  
C.J.S. See 40 C.J.S., Homesteads, §§ 141, 170.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 *Dicta* 143 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 *Rocky Mt. L. Rev.* 84 (1952). For note, "The Homestead Rights of Minor Children in Solvent Estates", see 25 *Rocky Mt. L. Rev.* 370 (1953). For article, "Family Protection Under the

Uniform Probate Code", see 50 *Den. L.J.* 137 (1973). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 *U. Colo. L. Rev.* 175 (1985). For article, "Colorado Homestead Statutes: Exemption or Allowance?", see 17 *Colo. Law.* 827 (1988). For article, "The Surviving Spouse Elective Share and the Augmented Estate", see 17 *Colo. Law.* 1985 (1988).

This section should be given a liberal construction, to the end that its purposes will be fulfilled. *Chapin Lumber Co. v. Day*, 106 Colo. 194, 103 P.2d 14 (1940).

Construction of section. The proper construction of this section is that where a husband and wife occupy a homestead, the death of either does not destroy the homestead right so long as the survivor shall reside upon the property. *Chapin Lumber Co. v. Day*, 106 Colo. 194, 103 P.2d 14 (1940).

"Seized" construed. "Seized", as used in this section, must be taken to mean simply the right of possession which inheres in both husband and wife in a homestead. It has no reference to which spouse has the title to the land. *Chapin Lumber Co. v. Day*, 106 Colo. 194, 103 P.2d 14 (1940).

"Or" construed. Where the General Assembly used the word "or" immediately preceding both occurrences of the phrase "minor children", the intent was to be inclusive. In re *Estate of Dodge*, 685 P.2d 260 (Colo. App. 1984).

Homestead right not governed by descent and distribution. A homestead right is not governed by the law of descent and distribution, and it is not a part of an estate, but insofar as it may appear in the administration of an estate, it is more in the nature of a lien that has attached to the home property, and the heir or devisee who succeeds to the title of the home property takes it subject to that limitation or qualification. In re *Wallace's Estate*, 125 Colo. 584, 246 P.2d 894 (1952).

Estate has no interest in exemption of surviving spouse. The estate of a deceased person has no interest in the homestead exemption of a surviving husband or wife. *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 P. 54 (1925); In re *Wallace's Estate*, 125 Colo. 584, 246 P.2d 894 (1952).

Rights of survivors unaffected. The rights of a surviving widow or husband or minor children of a person, who dies seized of a homestead, are not enlarged or diminished merely by the fact of such death. *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 P. 54 (1925).

Payment of surviving spouse in lieu of homestead right. Where it became necessary to sell real property of an estate, covered by a homestead, to pay debts, an order of court directing the sale and requiring that \$2,000 be retained out of the proceeds to be paid the surviving husband in lieu of his homestead right in the property, was approved. *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 P. 54 (1925).

38-41-205. Of what homestead may consist.

The homestead mentioned in this part 2 may consist of a house and lot or lots or of a farm consisting of any number of acres.

#### History

Source: R.S. p. 386, § 61. G.L. § 1347. G.S. § 1635. R.S. 08: § 2954. C.L. § 5928. CSA: C. 93, § 27. L. 53: p. 412, § 3. CRS 53: § 77-3-5. C.R.S. 1963: § 77-3-5. L. 82: Entire section amended, p. 552, § 1, effective March 11.

## Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 1.

C.J.S. See 40 C.J.S., Homesteads, §§ 1-4.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 Rocky Mt. L. Rev. 84 (1952). For note, "The Homestead Rights of Minor Children in Solvent Estates", see 25 Rocky Mt. L. Rev. 370 (1953). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985).

Pickup camper shell qualifies as homestead exemption. Although not a traditional house, a camper shell was the home and dwelling of the debtor and qualified for the homestead exemption allowed in § 38-41-201. In re Lepka, 105 Bankr. 638 (Bankr. D. Colo. 1989).

Applied in Wells v. West Greeley Nat'l Bank, 29 Bankr. 688 (Bankr. D. Colo. 1983).

38-41-206. Levy on homestead - excess - costs.

(1) Before any creditor of the owner of the homesteaded property may proceed against said property, such creditor shall file with the county clerk and recorder of the proper county and the sheriff or other proper officer authorized to levy on said property:

(a) His affidavit showing:

(I) A description of the homesteaded property and the name of the claimant of the homestead exemption;

(II) The fair market value of said property;

(III) That the fair market value of said property less any prior liens or encumbrances thereon exceeds the amount of the homestead exemption fixed in section 38-41-201 for which the claimant qualifies; and

(IV) That no previous execution arising out of the same judgment has been levied upon said property;

(b) The affidavit of a professionally qualified independent appraiser showing the same information required by subparagraphs (I) to (III) of paragraph (a) of this subsection (1).

(2) If the amount offered at the sale of the homesteaded property does not exceed seventy percent of the fair market value shown in the affidavit of the independent appraiser filed pursuant to paragraph (b) of subsection (1) of this section, all proceedings to sell said property shall terminate. The sheriff or the proper officer shall then file for record in the office of the county clerk and recorder of the proper county an instrument releasing all levies on said property in connection with such sale, and the person instituting the proceedings shall pay the costs of such proceedings, and the title of the owner to said property shall not be impaired or affected.

(3) If the successful bidder at such sale is a judgment creditor, he shall be required to pay in cash to the sheriff or other proper officer making the sale an amount sufficient to pay the exemption plus the proper costs and expenses and shall not have the right to have such exempt amount applied toward the satisfaction of his judgment.

(4) If a sale is made, the proceeds thereof shall be applied in the following order:

(a) First, to the discharge of all prior liens and encumbrances, if any, on said property;

(b) Second, to the homestead claimant in the amount of the homestead exemption for which he qualifies;

(c) Third, to the sheriff or other proper officer making the sale in an amount sufficient to pay the proper costs and expenses of the sale;

(d) Fourth, to the satisfaction of the judgment; and

(e) Fifth, the balance, if any, to the homestead claimant.

## History

Source: R.S. p. 386, § 63. G.L. § 1349. G.S. § 1637. R.S. 08: § 2956. C.L. § 5930. CSA: C. 93, § 28. L. 53: p. 412, § 4. CRS 53: § 77-3-6. C.R.S. 1963: § 77-3-6. L. 75: Entire section R&RE, p. 1445, § 3, effective July 14. L. 83: (1)(a)(III) amended, p. 1478, § 1, effective July 1.

## Annotations

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 Dicta 143 (1950). For note, "Colorado Homestead Now Assertable Against Heirs", see 25 Rocky Mt. L. Rev. 84 (1952). For note, "The Homestead Rights of Minor Children in Solvent Estates", see 25 Rocky Mt. L. Rev. 370 (1953). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985).

Levy cannot be made without filing of affidavit. No levy can lawfully be made without the previous filing of the affidavit required by subsection (1). Copeland v. Colorado State Bank, 13 Colo. App. 489, 59 P. 70 (1899); Whitlock v. Alliance Coal Co., 73 Colo. 205, 214 P. 546 (1923).

Sale may be enjoined. If a levy is made without such affidavit, the debtor is entitled to an injunction restraining the sale. Whitlock v. Alliance Coal Co., 73 Colo. 205, 214 P. 546 (1923).

Even though the legislature changed the law from a declared exemption practice to an automatic exemption practice, an affidavit must still be filed prior to the levy of homestead property and any levy made prior to the filing of the required affidavit is void. Estes Park Bank v. Shanks, 794 P.2d 1108 (Colo. App. 1990).

Homestead exceeding value of exemption may be subjected to payment of debt. To the extent that an indivisible homestead exceeds the value of the exemption, it may be subjected to the payment of the debts of the deceased where there are no other available assets. Union Nat'l Bank v. Wright, 78 Colo. 346, 242 P. 54 (1925).

Wife's valid exemption does not defeat creditor's right. The fact that the wife has a valid exemption by a proper entry does not defeat the right of the creditor to subject such property to his claim where the property was worth more than the homestead, since a property may be sold and the excess charged with the creditor's claim. Tibbetts v. Terrill, 44 Colo. 94, 96 P. 978 (1908).

Amount of homestead exemption set aside to bankrupt when sale held. If a bankrupt's interest in the real estate involved exceeds the amount of valid liens plus the homestead exemption, then the trustee in bankruptcy may sell the property for the purpose of obtaining the excess value to

satisfy claims of creditors, and if such a sale is held, the amount of the homestead exemption must be set aside to the bankrupt and he shall receive the amount in cash. *Baker v. Allen*, 34 Colo. App. 363, 528 P.2d 922 (1974).

Public trustee's sale of homesteaded property. When a public trustee conducts a sale of homesteaded property upon a deed of trust with a waiver therein, the public trustee must limit the sale to the extent of the waiver or else require that the sale of the homestead conform to the safeguards in a forced sale of homestead by execution as set forth in this section. *Frank v. First Nat'l Bank*, 653 P.2d 748 (Colo. App. 1982).

Creditor not creditor as to exemption. While a creditor may be interested when the value of the property exceeds the exemption allowance, nevertheless, as to the exemption, he is, in fact, not a creditor at all. *Barnett v. Knight*, 7 Colo. 365, 3 P. 747 (1884); *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 P. 54 (1925).

Creditor may not refuse to pay its bid price. A judgment creditor cannot bid the property in the sale for the full amount of the homestead exemption and then refuse to pay its bid price. *American Heritage Bank & Trust Co. v. Trees*, 35 Colo. App. 147, 532 P.2d 380 (1974).

38-41-207. Proceeds exempt - bona fide purchaser.

The proceeds from the exempt amount under this part 2, in the event the property is sold by the owner, or the proceeds from such sale under section 38-41-206 paid to the owner of the property or person entitled to the homestead shall be exempt from execution or attachment for a period of one year after such sale if the person entitled to such exemption keeps the exempted proceeds separate and apart from other moneys so that the same may be always identified. If the person receiving such proceeds uses said proceeds in the acquisition of other property for a home, there shall be carried over to the new property the same homestead exemption to which the owner was entitled on the property sold. Such homestead exemption shall not be valid as against one entitled to a vendor's lien or the holder of a purchase money mortgage against said new property.

#### History

Source: R.S. p. 386, § 64. G.L. § 1350. G.S. § 1638. R.S. 08: § 2957. C.L. § 5931. CSA: C. 93, § 29. L. 53: p. 413, § 5. CRS 53: § 77-3-7. C.R.S. 1963: § 77-3-7. L. 75: Entire section R&RE, p. 1446, § 4, effective July 14.

#### Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, §§ 43, 44.  
C.J.S. See 40 C.J.S., Homesteads, § 45.

Law reviews. For article, "Executions and Levies on Tangible Property", see 27 *Dicta* 143 (1950).

Section protects rights of creditors and homestead owner. This section makes provision for the protection of the rights of both the creditors and the owner of the homestead. *Union Nat'l Bank v. Wright*, 78 Colo. 346, 242 P. 54 (1925).

Debtor's right to dispose of homestead. This section does away with every doubt as to the debtor's right to dispose of his homestead; the last clause puts at rest all uncertainty as to the effect of a judgment lien upon the homestead. *Barnett v. Knight*, 7 Colo. 365, 3 P. 747 (1884).

Exemption for debtor conveying to ex-wife. A debtor, who conveyed his interest in the family home to his ex-wife for a promissory note and deed

of trust, was allowed to exempt the note and deed of trust for one year as "proceeds" under this section, even though he was not allowed to claim an exemption under § 38-41-201. *In re Hoover*, 35 Bankr. 709 (Bankr. D. Colo. 1984).

Sale of homestead property prior to bankruptcy did not preclude debtor from claiming exemption in the proceeds where the debtor had specifically reserved his homestead rights at time funds were disbursed. *In re Swartzendruber*, 72 Bankr. 463 (Bankr. D. Colo. 1987).

Debtors were allowed to claim homestead exemption on proceeds from sale of Oregon home, even though Colorado statutes specify that the exemption applies to real properties located in Colorado. *In re Bloedon*, 137 Bankr. 824 (Bankr. D. Colo. 1992).

Debtor entitled to homestead exemption even though she had listed her house for sale, only resided there for ten days after filing petition for bankruptcy, and her family had already relocated to another state. *In re Raymond*, 987 F.2d 675 (10th Cir. 1993).

In order to give the debtor full benefit of the homestead exemption, the withdrawal of some funds from the segregated homestead account for non-exempt purposes does not terminate the exempt status of the balance. *Fleet v. Zwick*, 994 P.2d 480 (Colo. App. 1999).

38-41-208. Survival of exemption.

(1) If the property qualifies as a homestead for a joint tenant who is the husband or wife of the other joint tenant or one of the other joint tenants, then, upon the death of either spouse, the homestead shall continue in effect on the interest in such property of the surviving spouse. If the property qualifies as a homestead for a joint tenant who is the parent of one or more of the other joint tenants who are minors, then, upon the death of such parent leaving no spouse surviving, the homestead shall continue in effect on the interest in such property of the surviving minor children.

(2) If the property qualifies as a homestead for a joint tenant who is not related to any other joint tenant as husband or wife or parent and minor child, then, upon the death of such joint tenant, his homestead shall cease and terminate, and the property shall be held by the surviving tenants free of any homestead interest of such decedent, his spouse, or his minor children.

#### History

Source: L. 53: p. 413, § 6. CRS 53: § 77-3-8. C.R.S. 1963: § 77-3-8. L. 75: Entire section R&RE, p. 1446, § 5, effective July 14.

#### Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 57.  
C.J.S. See 40 C.J.S., Homesteads, § 50.

Law reviews. For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 *U. Colo. L. Rev.* 175 (1985).

38-41-209. Insurance proceeds.

Whenever the improvements on property which has been homesteaded are insured in favor of a person entitled to the exemption and a loss is incurred entitling such person to the insurance or a part thereof, such insurance proceeds to the amount of the exemption shall be exempt in the same manner as provided for a sale of the homesteaded property.

## History

Source: L. 53: p. 413, § 6. CRS 53: § 77-3-9. C.R.S. 1963: § 77-3-9.

## Annotations

Am. Jur.2d. See 40 Am. Jur.2d, Homestead, § 46.

C.J.S. See 40 C.J.S., Homesteads, § 46.

## 38-41-210. Definitions - vendor's rights.

The terms "owner of the property" and "householder" mean a person holding any equity under a contract of sale or other agreement whereby such person is holding possession of the property, but the rights of the vendor or seller in such contract or other agreement shall always be superior to any homestead.

## History

Source: L. 53: p. 413, § 6. CRS 53: § 77-3-10. C.R.S. 1963: § 77-3-10.

## 38-41-211. Exemption in addition to allowances.

The homestead exemption granted under this part 2 shall be in addition to and not in lieu of the exempt property and family allowances to a surviving spouse and minor and dependent children of a decedent and the preferences granted to dependents of protected persons under articles 10 to 20 of title 15, C.R.S.

## History

Source: L. 53: p. 413, § 6. CRS 53: § 77-3-11. C.R.S. 1963: § 77-3-11. L. 73: p. 1648, § 10.

## 38-41-212. Waiver.

(1) Any purchase by an encumbrancer, lienholder, or any other person or any redemption by a junior lienholder pursuant to a foreclosure sale conducted by any court, sheriff, public trustee, or other public official pursuant to a mortgage, deed of trust, or other lien which contains a waiver of homestead rights in the encumbered property shall be subject to such waiver of homestead rights, and the purchaser of or person redeeming the property shall be entitled to acquire said property free of any homestead rights and without compliance with the requirements of section 38-41-206.

(2) Any purchase by an encumbrancer, lienholder, or any other person or any redemption by a junior lienholder pursuant to a foreclosure sale conducted by any court, sheriff, public trustee, or other public official pursuant to a mortgage, deed of trust, or other lien, except a tax sale pursuant to article 11 of title 39, C.R.S., which does not contain a waiver of homestead rights in the encumbered property shall be subject to such homestead rights.

## History

Source: L. 83: Entire section added, p. 1479, § 1, effective June 15.

## Annotations

Law reviews. For article, "The Statutory Right of Redemption from Foreclosures", see 13 Colo. Law. 793 (1984). For article, "Homestead and Bankruptcy in Colorado and Elsewhere", see 56 U. Colo. L. Rev. 175 (1985). For article, "Partial Redemption In Colorado Foreclosures", see 67 Den. U.L. Rev. 61 (1990).