

CHAPTER 561

HOMESTEAD

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561.1 "Homestead" defined.

1. The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

2. As used in this chapter, "owner" includes but is not limited to the person, or the surviving spouse of the person, occupying the homestead as a beneficiary of a trust that includes the property in the trust estate.

[C51, §1250, 1251; R60, §2282, 2283; C73, §1994, 1995; C97, §2977; C24, 27, 31, 35, 39, §10135; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.1]

2007 Acts, ch 134, §3, 28

[SP] 2007 amendments to this section apply retroactively to beneficiaries of trusts in existence on or after July 1, 1997; 2007 Acts, ch 134, §28

561.2 Extent and value.

If within a city plat, it must not exceed one-half acre in extent, otherwise it must not contain in the aggregate more than forty acres, but if, in either case, its value is less than five hundred dollars, it may be enlarged until it reaches that amount.

[C51, §1252; R60, §2284; C73, §1996; C97, §2978; S13, § 2978; C24, 27, 31, 35, 39, §10136; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.2]

561.3 Dwelling and appurtenances.

It must not embrace more than one dwelling house, or any other buildings except such as are properly appurtenant thereto, but a shop or other building situated thereon, actually used and occupied by the owner in the prosecution of the owner's ordinary business, and not exceeding three hundred dollars in value, is appurtenant thereto.

[C51, §1253; R60, §2285; C73, §1997; C97, §2978; S13, § 2978; C24, 27, 31, 35, 39, §10137; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.3]

561.4 Selecting — platting.

The owner, husband or wife, or a single person, may select the homestead and cause it to be platted, but a failure to do so shall not render the same liable when it otherwise would not be, and a selection by the owner shall control. When selected, it shall be designated by a legal description, or if impossible it shall be marked off by permanent, visible monuments, and the description shall give the direction and distance of the starting point from some corner of the dwelling, which description, with the plat, shall be filed and recorded by the recorder of the proper county in the manner provided in sections 558.49 and 558.52.

[C51, §1254, 1255; R60, §2286, 2287; C73, §1998, 1999; C97, §2979; S13, §2979; C24, 27, 31, 35, 39, §10138; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.4]

87 Acts, ch 116, §1; 2006 Acts, ch 1031, §13

561.5 Platted by officer having execution.

Should the homestead not be platted and recorded at the time levy is made upon real property in which a homestead is included, the officer having the execution shall give notice in writing to the owner or owners if found within the county, to plat and record the same within ten days after service; after which time the officer shall cause the homestead to be platted and recorded, and the expense shall be added to the costs in the case.

[C51, §1254; R60, §2286; C73, §1998; S13, §2979; C24, 27, 31, 35, 39, §10139; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.5]

87 Acts, ch 116, §2

561.6 Platting under order of court.

Upon application made to the district court by any creditor of the owner of the homestead, or other person interested therein, such court shall hear the cause upon the proof offered, and fix and establish the boundaries thereof, and the judgment therein shall be filed and recorded in the manner provided in section 561.5.

[C97, §2980; C24, 27, 31, 35, 39, §10140; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.6]

561.7 Changes — nonconsenting spouse.

The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it.

Such changes shall not prejudice conveyances or liens made or created previously thereto.

No such change of the entire homestead, made without the concurrence of the other spouse, shall affect that spouse's rights, or those of the children.

[C51, §1256, 1257; R60, §2288, 2289; C73, §2000, 2001; C97, §2981; C24, 27, 31, 35, 39, §10141; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.7]

561.8 Referees to determine exemption.

When a disagreement takes place between the owner and any person adversely interested, as to whether any land or buildings are properly a part of the homestead, the sheriff shall, at the request of either party, summon nine disinterested persons having the qualifications of jurors. The parties then, commencing with the owner, shall in turn strike off one person each, until three remain. Should either party fail to do so, the sheriff may act for that person, and the three as referees shall proceed to examine and ascertain all the facts of the case, and report the same, with their opinion thereon, to the court from which the execution or other process may have issued within thirty days after their qualification as referees.

[C51, §1258, 1259; R60, §2290, 2291; C73, §2002, 2003; C97, §2982; C24, 27, 31, 35, 39, §10142; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.8]

561.9 Referring back — marking off — costs.

The court in its discretion may refer the whole or any part of the matter back to the same or other referees, to be selected in the same manner, or as the parties agree, giving them directions as to the report required of them. When the court is sufficiently advised in the case, it shall make its decision, and may direct the homestead to be marked off anew, or a new plat and description to be made and recorded, and take such other steps as shall be lawful and expedient in attaining the purpose of this chapter. It shall also award costs in accordance with the practice in other cases, as nearly as may be.

[C51, §1260, 1261; R60, §2292, 2293; C73, §2004, 2005; C97, §2983; C24, 27, 31, 35, 39, §10143; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.9]

[P] Costs, chapter 625

561.10 Change of circumstances.

The extent or appurtenances of the homestead thus established may be called in question in like manner, whenever a change in value or circumstances will justify such new proceedings.

[C51, §1262; R60, §2294; C73, §2006; C97, §2984; C24, 27, 31, 35, 39, §10144; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.10]

561.11 Occupancy by surviving spouse.

Upon the death of either spouse, the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law, but the setting off of the distributive share of the survivor in the real estate of the deceased shall be such a disposal of the homestead as is herein contemplated.

[C51, §1263; R60, §2295; C73, §2007, 2008; C97, §2985; C24, 27, 31, 35, 39, §10145; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.11]

561.12 Life possession in lieu of dower.

The survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased.

[C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §10146; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.12]

561.13 Conveyance or encumbrance.

1. A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, except as provided in subsection 3. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer.

2. If a spouse who holds only homestead rights and surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

3. A conveyance or encumbrance or a contract to convey or encumber the homestead is not invalid under subsection 1 if any of the following apply:

a. The nonsigning spouse's interest is terminated by a decree of dissolution of marriage or other order of the court.

b. The nonsigning spouse's right of recovery is barred by section 614.15.

c. The encumbrance is a purchase money mortgage as defined in section 654.12B.

d. A court sitting in equity enters a decree holding that invalidating the conveyance or encumbrance or a contract to convey or encumber the homestead would, directly or indirectly, unjustly enrich the nonsigning spouse.

4. For the purposes of this section, "*nonsigning spouse*" means a spouse who has not executed a conveyance or encumbrance or a contract to convey or encumber the homestead, the same or a like instrument, or a power of attorney for the execution of the same or a like instrument.

[C51, §1247; R60, §2279; C73, §1990; C97, §2974; C24, 27, 31, 35, 39, §10147; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.13; 81 Acts, ch 181, §1]

91 Acts, ch 106, §1; 2007 Acts, ch 68, §1, 2; 2011 Acts, ch 11, §1

[T] Section amended

561.14 Devise.

Subject to the rights of the surviving spouse, the homestead may be devised like other real estate of the testator.

[C51, §1266; R60, §2298; C73, §2010; C97, §2987; C24, 27, 31, 35, 39, §10148; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.14]

561.15 Removal of spouse or children.

Neither spouse can remove the other nor the children from the homestead without the consent of the other.

[C51, §1462; R60, §2514; C73, §2215; C97, §3166; C24, 27, 31, 35, 39, §10149; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.15]

561.16 Exemption.

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For purposes of this section, “household unit” means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

[C51, §1245; R60, §2277; C73, §1988; C97, §2972, 2973; C24, 27, 31, 35, 39, §10150; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.16; 81 Acts, ch 182, §1]
87 Acts, ch 116, §3

561.17 Repealed by 81 Acts, ch 182, § 5.**561.18 Descent.**

If there be no survivor, the homestead descends to the issue of either spouse according to the rules of descent, unless otherwise directed by will.

[C51, §1264; R60, §2296; C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §10152; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.18]

561.19 Exemption in hands of issue.

Where the homestead descends to the issue of either spouse the homestead shall be held exempt from any antecedent debts of the issue’s parents or antecedent debts of the issue, except those of the owner of the homestead contracted prior to acquisition of the homestead or those created under section 249A.5 relating to the recovery of medical assistance payments.

[C51, §1264; R60, §2296; C73, §2008; C97, §2985; C24, 27, 31, 35, 39, §10153; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.19]
95 Acts, ch 68, §6; 96 Acts, ch 1034, §53

561.20 New homestead exempt.

Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

[C51, §1257; R60, §2289; C73, §2001; C97, §2981; C24, 27, 31, 35, 39, §10154; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.20]

561.21 Debts for which homestead liable.

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.
3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.
4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

[C51, §1248, 1249, 1265; R60, §2280, 2281, 2297; C73, §1991 – 1993, 2009; C97, §2975, 2976, 2986; C24, 27, 31, 35, 39, §10155; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §561.21]

[P] Homestead acquired with pension funds, §627.9

[P] Liability for assistance furnished poor person, §252.14

561.22 Notice of homestead exemption waiver requirement.

1. *a.* Except as otherwise provided in subsection 2, if a homestead exemption waiver is contained in a written contract affecting agricultural land as defined in section 9H.1, or dwellings, buildings, or other appurtenances located on the land, the contract must contain a statement in substantially the following form, in boldface type of a minimum size of ten points, and be signed and dated by the person waiving the exemption at the time of the execution of the contract: **“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.”**

b. A principal or deputy state, county, or city officer shall not be required to waive the officer’s homestead exemption in order to be bonded as required pursuant to chapter 64.

2. This section shall not apply to a written contract affecting agricultural land of less than forty acres.

86 Acts, ch 1214, §8; 87 Acts, ch 67, §1; 89 Acts, ch 153, §3; 2005 Acts, ch 86, §1

[SP] For conveyances of real estate affecting agricultural land of less than forty acres prior to July 1, 2005, in which such written contract was not executed in compliance with the requirements of section 561.22, Code 2005, the holder is deemed to have waived the right to have the holder’s homestead exempt from judicial sale unless suit is brought within one year from July 1, 2005, to determine the effect of the written contract upon the real estate or any interest in the real estate; 2005 Acts, ch 86, §2

561.23 through 561.25 Reserved.

561.26 Definitions.

As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1