

Senate Study Bill 1120 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON FRAISE)

A BILL FOR

1 An Act relating to the conveyance or encumbrance of a homestead
2 by a spouse.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 561.13, Code 2011, is amended to read as
2 follows:

3 **561.13 Conveyance or encumbrance.**

4 1. A conveyance or encumbrance of, or contract to convey
5 or encumber the homestead, if the owner is married, ~~is not~~
6 ~~valid, unless and until the spouse of the owner executes~~ may
7 be invalidated by a spouse who has not executed the same or a
8 like instrument, or a power of attorney for the execution of
9 the same or a like instrument. However, when the homestead is
10 conveyed or encumbered along with or in addition to other real
11 estate, it is not necessary to particularly describe or set
12 aside the tract of land constituting the homestead, whether the
13 homestead is exclusively the subject of the contract or not,
14 but the contract may be enforced as to real estate other than
15 the homestead at the option of the purchaser or encumbrancer.

16 2. If a spouse who holds only homestead rights and surviving
17 spouse's statutory share in the homestead specifically
18 relinquishes homestead rights in an instrument, including
19 a power of attorney constituting the other spouse as the
20 husband's or wife's attorney in fact, as provided in section
21 597.5, it is not necessary for the spouse to join in the
22 granting clause of the same or a like instrument.

23 3. A conveyance or encumbrance is not invalid under
24 subsection 1 if any of the following occur:

25 a. The spouse's interest is terminated by divorce subsequent
26 to delivery of the document, and the decree awarded the
27 property to the signing spouse.

28 b. The nonsigning spouse abandons the homestead for a
29 minimum of six consecutive months with the intent to remain
30 away permanently.

31 c. Section 614.15 applies.

32 EXPLANATION

33 This bill provides that the conveyance or encumbrance of a
34 homestead by a married person who is the owner of the homestead
35 is not automatically invalid if the person's spouse has not

1 joined in the conveyance or encumbrance. Such a spouse must
2 take action to invalidate the conveyance or encumbrance.

3 The bill further provides that a conveyance or encumbrance
4 is not invalid solely because a person's spouse did not join
5 in the conveyance or encumbrance if the spouse's interest
6 is terminated by divorce subsequent to delivery of the
7 document and the decree awarded the property to the signing
8 spouse, if the nonsigning spouse abandons the homestead for a
9 minimum of six consecutive months with the intent to remain
10 away permanently, or as provided in section 614.15 (action
11 for recovery of property where spouse fails to join in the
12 conveyance).