

## EXEMPTIONS.

### CHAPTER 67.

[S. B. No. 166.]

#### DEFINING AND LIMITING THE HOMESTEAD EXEMPTIONS.

AN ACT Entitled An Act to Define and Limit the Homestead Exemption, Limiting the Value Thereof, Providing a Method of Claiming and Obtaining the Same, Regulating the Disposition, Conveyance and Incumbrance Thereof, and the Disposition, Conveyance and Re-incumbrance of the Same in Case of Insanity of Husband or Wife.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. HOMESTEAD EXEMPT.] A homestead owned by either husband or wife, not exceeding in value \$5,000, consisting of a dwelling house in which the homestead claimant resides, and all its appurtenances, and the land on which the same is situated, shall be exempt from judgment lien and from execution or forced sale, except as provided in this chapter.

§ 2. HOMESTEAD, HOW SELECTED.] If the homestead claimant be married, the homestead may be selected from the separate property of the husband, or with the consent of the wife from her separate property. When the homestead claimant is not married, but is the head of the family within the meaning of Section 15 of this act, the homestead may be selected from any of his or her property; *Provided*, That the homestead so selected must in no case embrace different lots or tracts of land unless they are contiguous.

§ 3. HOMESTEAD, WHEN SUBJECT TO EXECUTION.] The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

First. On debts secured by mechanics' or laborers' liens for work or labor done, or material furnished exclusively for the improvement of the same.

Second. On debts secured by mortgage on the premises, executed and acknowledged by both husband and wife, or an unmarried claimant.

Third. On debts created for the purchase thereof, and for all taxes accruing and levied thereon.

§ 4. ACKNOWLEDGEMENT OF HUSBAND AND WIFE.] The homestead of a married person cannot be conveyed or incumbered un-

less the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

§ 5. WHEN HOMESTEAD APPRAISED.] When an execution, for the enforcement of a judgment obtained in a case not within the classes enumerated in Section 3, is levied upon the land and tenements of a head of a family, such head of a family may notify the officer at the time of making the levy of what he regards as his homestead, with the description thereof, or whenever an execution has been issued against the property of the head of a family known to or believed by the judgment creditor to be the homestead of the defendant in judgment, and the judgment creditor believing said homestead to exceed in value the sum of \$5,000, may in either case apply to the district court in the county in which said homestead is situated for the appointment of persons to appraise the value thereof.

§ 6. APPLICATION FOR APPRAISERS.] The application for appraisers must be a verified petition showing:

1. The fact that an execution has been levied upon or issued against property which has been claimed, or is believed to be the homestead of the judgment debtor, describing the same.

2. The name of the claimant.

3. That the value of the homestead exceeds the amount of the homestead exemption.

§ 7. PETITION FILED.] The petition must be filed with the clerk of the district court and a copy thereof, with notice of the time and place of hearing, be served on the claimant at least ten days before the hearing.

§ 8. APPRAISERS, HOW APPOINTED.] At the hearing the court, in his discretion, upon proof of the service of such notice and petition and of the fact stated in the petition, shall appoint three disinterested residents of the county to appraise the value of the homestead, who must take an oath impartially to appraise the same. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemptions they must determine whether the land claimed can be divided without material injury.

§ 9. HOMESTEAD, HOW DIVIDED.] If, from the appraiser's report, it appears that the land claimed as a homestead can be divided without material injury, the court shall, by an order, direct the appraisers to set off to the claimant so much of the land, including residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

§ 10. WHEN HOMESTEAD TO BE SOLD.] If, from the appraiser's report, it appears to the court that the land claimed as a homestead exceeds in value the amount of the homestead exemption and that it cannot be divided without material injury, he must make an order directing its sale under the execution; but at

such sale no bid must be received unless it exceeds the amount of the homestead exemption.

§ 11. PROCEEDS OF SALE.] If the sale is made, 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; *Provided*, That when the execution is against the husband, whose wife is living, the court may, in his discretion, direct the \$5,000 to be deposited in court, to be paid out only on the joint receipt of the husband and wife, and it shall, whether paid directly to claimant, or to husband and wife jointly, possess all the protection against legal process and of voluntary disposition of the husband as did the original homestead premises.

§ 12. FEES OF APPRAISERS.] The appraisers 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 10 and 11 of this act the amount paid must be added as costs on execution and collected accordingly.

§ 13. PROCEEDS OF SALE EXEMPT.] If the homestead be conveyed by the claimant as provided in Section 4 of this act, or sold for the satisfaction of any lien mentioned in Section 3 of this act, the proceeds of the sale, beyond the amount necessary to satisfy such lien and not exceeding the amount of the homestead exemption shall be entitled thereafter to the same protection against legal process and voluntary disposition of the claimant which the law gives to the homestead.

§ 14. 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 provided in this act.

§ 15. HEAD OF FAMILY.] The phrase "head of a family," as used in this act, includes within its meaning:

First. The husband or wife when the claimant is a married person; but in no case are both husband and wife entitled each to a homestead under the provisions of this act.

Second. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either.

1. His or her minor child, or the minor child of his or her deceased wife or husband.

2. A minor brother or sister, or the minor child of a deceased brother or sister.

3. A father, mother, grandfather or grandmother.

4. The father or mother, grandfather or grandmother of a deceased husband or wife.

5. An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

§ 16. IN CASE OF DEATH OF HUSBAND OR WIFE.] Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead until it is otherwise dis-

posed of according to law; and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age.

§ 17. HOMESTEAD DESCEND, HOW.] Such homestead shall descend according to the laws of succession as now provided for by the Civil Code, unless otherwise directed by or disposed of by will, and shall be held exempt from any antecedent debt of the parent and of the devisor in the cases hereinafter mentioned, and if it descend to the issue of either husband or wife or to any person or persons mentioned in Section 16 of this act, by will or otherwise, it shall be held by such issue, person or persons, devisee or devisees, exempt from such debts of such husband or wife, or devisor, except as provided by Section 3 of this act; but in all other cases the homestead shall be liable to be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

§ 18. WHEN HOMESTEAD MAY BE DEVISED.] Subject to the rights of the husband or wife as declared by law, the homestead may be devised like other real property of the testator.

§ 19. IN CASE OWNER IS INSANE.] If the husband or wife of any owner of a homestead shall be insane, and such owner shall desire to convey such homestead, or any interest therein, he may petition the county court of the county in which such homestead may be situated for license to convey the same, and such court, upon reasonable and not less than twenty days' notice of such petition to the kindred of such insane wife or husband residing in this state (which notice may be personal or by publication in some newspaper in the county, or directed by the court), may hear and determine such petition, and may license such owner to convey such homestead, or any interest therein, by his sole deed; which license shall be recorded in the office of register of Deeds for such county, and thereupon such sole deed shall have the same operation as if such husband or wife had been sane and had joined in such deed.

§ 20. DUTY OF COURT.] Before granting such license the court must be satisfied: (1) That it is for the best interests of all parties concerned that the homestead be sold; (2) that the sum to be received for the sale of such homestead be equal to the value of the same, and to that end the court may subpoena such persons as he may desire to appear before him and testify under oath relative to the value of such homestead. Such witnesses shall be entitled to the same fees as provided in Section 13 of this act to be paid to appraisers, which fees shall be paid by the petitioner.

§ 21. COURT MAY DIRECT USE OF FUNDS.] On granting such license, the court may make a special order directing that a part of the funds derived from such conveyance, not to exceed one-third thereof, be set aside, and he may direct its investment, for the use and benefit of the insane husband or wife. If said hus-

band or wife die while insane, the sum so set aside reverts to the sorrowing [surviving] husband or wife. If he or she be dead at the time the insane husband or wife dies then such sum shall descend agreeably to the laws of succession, as provided by the Civil Code.

§ 22. APPEAL FROM DECISION OF COURT.] On hearing such petition for license, any of the kindred of the insane 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 district in which the land is situated, in the same manner provided for appeals in other cases.

§ 23. IN CASE OF INCUMBRANCE.] If the husband or wife of any owner of a homestead shall be insane, and there shall exist upon such homestead a mortgage or other incumbrance which becomes due during the insanity of either the husband or wife, and the owner desires to extend or renew such incumbrance, or to re-incumber such homestead or any part thereof, he may petition the county court of the county in which such homestead is situated, setting forth in such petition: The insanity of the husband or wife, the description of the homestead and of the incumbrance thereon, that it is due, that it is impracticable for him or her to pay the same, and that he or she desires to extend or renew such incumbrance or re-incumber the homestead; whereupon the court shall issue an order directing the husband or wife to execute the extension, renewal or re-incumbrance by his or her sole instrument, which order shall be recorded in the office of the register of deeds in and for the county in which the homestead is situated, and thereupon such sole instrument shall have the same operation as if such husband or wife had been sane and had joined in such instrument; *Provided*, That in no case shall the extension, renewal or re-incumbrance be for a greater amount than the principal sum of the incumbrance existing upon the homestead at the time such order was issued.

§ 24. REPEAL.] All acts and parts of acts in conflict with the provisions of this act, and especially Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 17, 18 and 19 of Chapter 38 of the Revised Code of 1877, be and the same are hereby repealed.

Approved March 9, 1891.