

TITLE 55
PROPERTY IN GENERAL

CHAPTER 10
HOMESTEADS

55-1001. DEFINITIONS. For purposes of this chapter:

- (1) "Dwelling house" and "mobile home" include manufactured housing.
- (2) "Homestead" means and consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved; or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as a principal home for the owner.
- (3) "Net value" means market value less all liens and encumbrances.
- (4) "Owner" includes, but is not limited to, a purchaser under a deed of trust, mortgage, or contract, or a person who takes the subject property under a life estate.

[55-1001, added 1989, ch. 371, sec. 2, p. 934; am. 2000, ch. 226, sec. 1, p. 622.]

55-1002. FROM WHAT PROPERTY SELECTED. If the owner is married, the homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse: Provided, that the same premises may not be claimed separately by the husband and wife with the effect of increasing the net value of the homestead available to the marital community beyond the amount specified in section [55-1003](#), Idaho Code. When the owner is not married, the homestead may consist of any of his or her property.

[55-1002, added 1989, ch. 371, sec. 2, p. 934.]

55-1003. HOMESTEAD EXEMPTION LIMITED. A homestead may consist of lands, as described in section [55-1001](#), Idaho Code, regardless of area, but the homestead exemption amount shall not exceed the sum of one hundred seventy-five thousand dollars (\$175,000).

[55-1003, added 1989, ch. 371, sec. 2, p. 934; am. 1992, ch. 14, sec. 1, p. 38; am. 2006, ch. 262, sec. 1, p. 814; am. 2020, ch. 232, sec. 2, p. 685.]

55-1004. AUTOMATIC HOMESTEAD EXEMPTION -- CONDITIONS -- DECLARATION OF HOMESTEAD -- DECLARATION OF ABANDONMENT. (1) Property described in section [55-1001](#), Idaho Code, constitutes a homestead and is automatically protected by the exemption described in section [55-1003](#), Idaho Code, from and after the time the property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required in this section are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mo-

bile home, from and after delivery of a declaration as described in section [55-1006](#), Idaho Code.

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recorder of the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recorder of the county in which the land is located.

(3) The declaration of homestead must contain:

- (a) A statement that the person making it is residing on the premises or intends to reside thereon and claims the premises as a homestead;
- (b) A legal description of the premises; and
- (c) An estimate of the premises actual cash value.

(4) The declaration of abandonment must contain:

- (a) A statement that a premises occupied as a residence or claimed as a homestead no longer constitutes the owner's homestead;
- (b) A legal description of the premises; and
- (c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

[55-1004, added 1989, ch. 371, sec. 2, p. 934.]

55-1005. TO WHAT JUDGMENTS SUBJECT. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) Before the homestead was in effect, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the homestead became effective.

(2) On debts secured by mechanic's, laborer's or vendor's lien upon the premises.

(3) On debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant.

(4) On debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and recorded before the homestead became effective.

[55-1005, added 1989, ch. 371, sec. 2, p. 935.]

55-1006. PRESUMPTION OF ABANDONMENT -- DECLARATION OF NONABANDONMENT. A homestead is presumed abandoned if the owner vacates the property for a continuous period of at least six (6) months. However, if an owner is going to be absent from the homestead for more than six (6) months but does not intend to abandon the homestead, and has no other principal residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record in the office of the recorder of the county in which the property is situated. The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the homestead property, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the homestead property.

[55-1006, added 1989, ch. 371, sec. 2, p. 935.]

55-1007. CONVEYANCE OR ENCUMBRANCE BY HUSBAND AND WIFE. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife, except that a husband or a wife or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

[55-1007, added 1989, ch. 371, sec. 2, p. 936.]

55-1008. HOMESTEAD EXEMPT FROM EXECUTION -- WHEN PRESUMED VALID. (1) Except as provided in section [55-1005](#), Idaho Code, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in section [55-1003](#), Idaho Code. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in section [55-1003](#), Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county in which the homestead is situated.

[55-1008, added 1989, ch. 371, sec. 2, p. 936.]

55-1009. JUDGMENT AGAINST HOMESTEAD OWNER -- LIEN ON EXCESS VALUE OF HOMESTEAD PROPERTY. A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recorder of the county where the property is located.

[55-1009, added 1989, ch. 371, sec. 2, p. 936.]

55-1010. LIABILITY FOR DEBTS OF OWNER. The homestead shall not be held liable for the debts of the owner, except as provided in this title or in section [56-218](#), Idaho Code.

[55-1010, added 2004, ch. 131, sec. 2, p. 450.]

55-1011. EXEMPTION OF PENSION MONEY AND RETIREMENT OR PROFIT-SHARING BENEFITS FROM LEGAL PROCESSES. (1) Except as provided in subsection (2) of this section, any money or other assets payable to a participant or beneficiary from or any interest of any participant or beneficiary in, a retirement or profit-sharing plan that is qualified under sections 401(a), 403(a),

403(b), 408, 408A or 409 of the internal revenue code, as amended, is exempt from all claims of judgment creditors of the beneficiary or participant arising out of a negligent or otherwise wrongful act or omission of the beneficiary or participant resulting in monetary damages to the judgment creditor. The exemption provided by this subsection shall be in addition to that provided in this chapter.

(2) Any plan or arrangement described in subsection (1) of this section is not exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the department of health and welfare, or the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in section 414(p) of the internal revenue code of 1986.

(3) The provisions of subsection (1) of this section apply to any proceeding that is filed on or after July 1, 1988.

[(55-1011) 1988, ch. 358, sec. 1, p. 1061; 55-1201A am. and redesignated 55-1011, 1989, ch. 371, sec. 3, p. 937; am. 1999, ch. 337, sec. 1, p. 915.]