

**33-1101 .**  
**Homestead defined;**  
**homestead exemptions;**  
**persons entitled to hold homesteads**

A. Any person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding one hundred thousand dollars in value, any one of the following:

1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land upon which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under the provisions of this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed one hundred thousand dollars in value.

C. The homestead exemption, not exceeding the value provided for in subsection A of this section, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. Only one homestead exemption at a time may be held by a person under the provisions of this section.

33-1102. Exemption by operation of law; designation of multiple properties on creditor's request; recording

A. A person who is entitled to a homestead exemption as prescribed by section 33-1101 holds that exemption by operation of law and no written claim or recording is required. If a person has more than one property interest to which a homestead exemption may reasonably apply, a creditor may require the person to designate which property, if any, is protected by the homestead exemption. The creditor shall demand the designation by sending a letter by certified mail, return receipt requested, to each address of the person which may reasonably be protected by the homestead exemption. The person shall designate the property by recording a homestead exemption in the office of the county recorder where the property is located or by sending the creditor a certified letter, return receipt requested, within thirty days of receiving the creditor's demand letter. If the person receives the creditor's letter and fails to respond as provided by this subsection, the person may only assert the homestead exemption by recording a claim in the office of the county recorder where the property is located.

B. If the person is married, the homestead may be selected from the community property, the joint property or the separate property of the person.

33-1103. Effective date of homestead exemption; extent of exemption; exceptions

A. The homestead provided for in section 33-1101, subsection A is exempt from process and from sale under a judgment or lien, except:

1. A consensual lien, including a mortgage or deed of trust, or contract of conveyance.
2. A lien for labor or materials claimed pursuant to section 33-981.
3. To the extent that a judgment or other lien may be satisfied from the equity of the debtor exceeding the homestead exemption under section 33-1101.

B. A sale as described in subsection A of this section and not excepted by subsection A, paragraph 1, 2 or 3 of this section is invalid and does not convey an interest in the homestead, whether made under a judgment existing before or after homestead is established.

33-1104. Abandonment of homestead; encumbrance of homestead

A. A homestead may be abandoned by any of the following:

1. A declaration of abandonment or waiver.

2. A transfer of the homestead property by deed of conveyance or contract for conveyance.

3. A permanent removal of the claimant from the residence or the state. A claimant may remove from the homestead for up to two years without an abandonment or a waiver of the exemption.

B. A declaration of abandonment or waiver shall be executed by the claimant and acknowledged. A declaration of abandonment or waiver is effective only from the time of its recording in the office of the county recorder in the county in which the homestead property is located.

C. This article shall not be construed to repeal the provisions of section 25-214, subsection C, pertaining to the acquisition, conveyance or encumbrance of community property.

D. Any recorded consensual lien, including a mortgage or deed of trust, encumbering homestead property shall not be subject to or affected by the homestead claim or exemption.

E. Notwithstanding the provisions of subsection A, paragraph 2 of this section, a transfer of the homestead property by deed of conveyance or contract for conveyance under a trust, as defined in section 14-1201, in which the claimant retains the power to administer and revoke the trust shall not constitute an abandonment of the homestead.

33-1105. Sale by judgment creditor of property subject to homestead exemption

A judgment creditor other than a mortgagee or beneficiary under a trust deed may elect to sell by judicial sale as specified in title 12 the property in which the judgment debtor has a homestead under section 33-1101, subsection A, provided that the judgment debtor's interest in the property shall exceed the sum of the judgment debtor's homestead plus the amount of any consensual liens on the property having priority to the judgment. A bid shall not be accepted by the officer in charge of a sale under this section which does not exceed the amount of the judgment debtor's homestead plus the amount of any consensual liens on the property having a priority to the judgment plus the costs of the sale allowable under title 12. After receipt of a sufficient bid, the officer shall sell the property. From the proceeds, the officer shall first pay the amount of the homestead to the judgment debtor plus the amount of any consensual liens on the property having a priority to the judgment and then pay the costs of the sale. The remaining proceeds shall be applied in accordance with the provisions of section 12-1562, subsection A. If the sale does not occur, either because of voluntary abandonment by the judgment creditor or because no sufficient bid is made, the judgment creditor may not charge any costs or attorney fees incurred in connection with the sale against the judgment debtor by addition to the judgment or otherwise.