

## HOUSE BILL NO. 436

INTRODUCED BY S. FITZPATRICK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HOMESTEAD LAWS; PROVIDING THAT  
5 A HOMESTEAD ATTACHES BY OPERATION OF LAW; PROVIDING THAT A HOMESTEAD EXEMPTION  
6 ATTACHES TO IDENTIFIABLE CASH PROCEEDS FROM A SALE OF HOMESTEAD PROPERTY; REQUIRING  
7 A SINGLE DESIGNATION WHEN MULTIPLE PROPERTIES COULD BE HOMESTEAD PROPERTY;  
8 AMENDING SECTIONS 70-32-101, 70-32-103, 70-32-104, 70-32-105, 70-32-202, 70-32-204, 70-32-205,  
9 70-32-207, 70-32-208, 70-32-209, 70-32-210, 70-32-212, 70-32-213, AND 70-32-216, MCA; AND REPEALING  
10 SECTIONS 70-32-106 AND 70-32-107, MCA."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 70-32-101, MCA, is amended to read:  
15 **"70-32-101. Of what homestead consists.** The homestead consists of the dwelling house or mobile  
16 home, and all appurtenances, in which ~~the claimant~~ a person resides and the land, if any, on which the same is  
17 situated, selected as provided in this chapter."

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19 **Section 2.** Section 70-32-103, MCA, is amended to read:  
20 **"70-32-103. From whose property homestead may be selected.** If ~~the claimant~~ a person is married,  
21 the homestead may be selected from the property of either spouse. When ~~the claimant~~ a person is not married,  
22 the homestead may be selected from any of the ~~claimant's~~ person's property."

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24 **Section 3.** Section 70-32-104, MCA, is amended to read:  
25 **"70-32-104. Limitation on value.** (1) A homestead may not exceed \$250,000 in value. In a proceeding  
26 instituted to determine the value of the homestead, the assessed value of the land with included appurtenances,  
27 if any, and of the dwelling house as it appears on the last-completed assessment roll preceding the institution of  
28 the proceeding is prima facie evidence of the value of the homestead property ~~claimed as a homestead~~.

29 (2) If a ~~claimant~~ person who is an owner of an undivided interest in real property ~~claims~~ is entitled to a  
30 homestead exemption, the ~~claimant~~ person is limited to an exemption amount proportional to the ~~claimant's~~

1 person's undivided interest."

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3 **Section 4.** Section 70-32-105, MCA, is amended to read:

4 **"70-32-105. ~~Mode of selection~~ -- No homestead declaration required -- protection of proceeds of**  
 5 **homestead.** (1) ~~The person selecting a~~ Except in the case of undesignated property in [section 5(2)], a person  
 6 who is entitled to a homestead must execute and acknowledge, in the same manner as a grant of real property  
 7 is acknowledged, a declaration of homestead and file the same for record exemption holds the exemption by  
 8 operation of law and no written claim or recording is required.

9 (2) Only one homestead exemption at a time may be held by a person.

10 (3) A homestead exemption automatically attaches to a person's interest in identifiable cash proceeds  
 11 from a voluntary or involuntary sale of homestead property."

12

13 **NEW SECTION.** **Section 5. Designation of property on creditor's request -- recording.** (1) If a  
 14 person has more than one property interest to which a homestead exemption could reasonably apply, a creditor  
 15 may require the person to designate which property, if any, is protected by the homestead exemption. The  
 16 creditor shall demand the designation by sending a letter by certified mail, return receipt requested, to each  
 17 address of the person who may reasonably be protected by the homestead exemption. The person shall  
 18 designate the property subject to a homestead exemption by recording a declaration in the office of the county  
 19 recorder where the property is located or by mailing the designation to the creditor by certified mail, return receipt  
 20 requested, within 30 days of receiving the creditor's demand letter.

21 (2) If a person receives a creditor's letter and does not make a timely response either by recording or  
 22 by mail as provided in this section, the person may only assert a homestead exemption by recording a declaration  
 23 in the office of the county recorder where the designated homestead property is located. The declaration must  
 24 contain a description of the property.

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26 **Section 6.** Section 70-32-202, MCA, is amended to read:

27 **"70-32-202. Execution allowed under certain judgments.** The homestead is subject to execution or  
 28 forced sale in satisfaction of judgments obtained:

29 (1) on debts secured by construction or vendors' liens upon the premises; or

30 (2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and

1 wife or by an unmarried claimant person; or  
 2 ~~—— (3) on debts secured by mortgages on the premises, executed and recorded before the declaration of~~  
 3 ~~homestead was filed for record."~~

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 5 **Section 7.** Section 70-32-204, MCA, is amended to read:  
 6 **"70-32-204. Application for appraisal -- contents -- filing.** (1) The application must be made upon a  
 7 verified petition showing:

- 8 (a) the fact that an execution has been levied upon the homestead;  
 9 (b) the name of the claimant person holding the homestead exemption;  
 10 (c) that the value of the homestead exceeds the amount of the homestead exemption.  
 11 (2) The petition must be filed with the clerk of the district court."

12  
 13 **Section 8.** Section 70-32-205, MCA, is amended to read:  
 14 **"70-32-205. Service of petition -- notice of hearing.** A copy of the petition, with a notice of the time  
 15 and place of hearing, must be served upon the claimant person holding the homestead exemption at least 2 days  
 16 before the hearing."

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 18 **Section 9.** Section 70-32-207, MCA, is amended to read:  
 19 **"70-32-207. Duty of appraisers.** ~~They must~~ The appraisers shall view the premises and appraise the  
 20 value ~~thereof~~ of the land, and if the appraised value exceeds the homestead exemption, they must determine  
 21 whether the land ~~claimed~~ can be divided without material injury."

22  
 23 **Section 10.** Section 70-32-208, MCA, is amended to read:  
 24 **"70-32-208. Report of appraisers -- contents.** Within 15 days after their appointment ~~they must make~~  
 25 the appraisers shall report to the judge ~~a report~~ in writing, ~~which~~ and the report must show the appraised value  
 26 and their determination upon the matter of a division of the land ~~claimed~~ subject to a homestead exemption."

27  
 28 **Section 11.** Section 70-32-209, MCA, is amended to read:  
 29 **"70-32-209. Order dividing land -- execution against remainder over exemption.** If from the report  
 30 it appears to the judge that the land ~~claimed~~ subject to a homestead exemption can be divided without material

1 injury, the judge shall by an order direct the appraisers to set off to the ~~claimant~~ person holding the homestead  
 2 exemption as much of the land, including the residence, that will amount in value to the homestead exemption,  
 3 and the execution may be enforced against the remainder of the land."

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5 **Section 12.** Section 70-32-210, MCA, is amended to read:

6 **"70-32-210. Sale when land cannot be divided.** If from the report it appears to the judge that the land  
 7 ~~claimed~~ subject to a homestead exemption exceeds in value the amount of the homestead exemption and that  
 8 it cannot be divided, the judge shall make an order directing its sale under execution."

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10 **Section 13.** Section 70-32-212, MCA, is amended to read:

11 **"70-32-212. Application of proceeds of sale.** If the sale is made, the proceeds ~~thereof~~ of the sale, to  
 12 the amount of the homestead exemption, must be paid to the ~~claimant~~ person holding the homestead exemption  
 13 and the balance applied to the satisfaction of the execution."

14

15 **Section 14.** Section 70-32-213, MCA, is amended to read:

16 **"70-32-213. Sale proceeds equal to exemption protected.** The money paid to the ~~claimant~~ person  
 17 holding the homestead exemption is entitled, for the period of 18 months ~~thereafter~~ after the sale, to the same  
 18 protection against legal process and the voluntary disposition of either spouse which the law gives to the  
 19 homestead."

20

21 **Section 15.** Section 70-32-216, MCA, is amended to read:

22 **"70-32-216. Tracing homestead proceeds.** (1) If property or a part of property that could have been  
 23 ~~claimed~~ as an exempt homestead has been sold or taken by condemnation, as provided in Title 60, chapter 4,  
 24 or Title 70, chapter 30, or has been lost, damaged, or destroyed and the owner has been indemnified for the  
 25 property, the owner is entitled for 18 months to exemption of the proceeds that are traceable.

26 (2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in  
 27 first-out, or any other reasonable basis for tracing selected by the judgment debtor."

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29 NEW SECTION. **Section 16. Codification instruction.** [Section 5] is intended to be codified as an  
 30 integral part of Title 70, chapter 32, part 1, and the provisions of Title 70, chapter 32, part 1, apply to [section 5].

