



**Downtown Office**  
817.573.3733

**Luton Ranch Office**  
817.573.8882

**Glen Rose Office**  
254.897.9992

[www.centraltexasitle.com](http://www.centraltexasitle.com)

## Homestead Laws

A homestead in Texas is a place of residence for a single adult or a family. It is protected from forced sale by creditors, regardless of the improvidence or misfortune of the owner or a member of the family.

There is no formal procedure to create this homestead protection. The mere act of using and enjoying the property as a home qualifies it for the protection under the Texas Constitution. The responsibility for establishing the property as homestead is born by the party claiming the protection. For the protection to arise, a homestead claimant must both use the property as homestead, and show an intention to claim it as homestead.

As we have said, to establish property as homestead, the claimant must show he intends the property to be his homestead. The intent can be established in different ways, so long as they are sufficient to give notice of his purpose to occupy the premises as a homestead. Each homestead is established by facts specific to that home- stead situation.

Filing a homestead exemption for tax purposes with the county appraisal district is not enough by itself to establish a homestead, but provides one fact towards establishing intent. There must be some visible action coupled with intent to effectively establish a homestead. For example, merely intending to someday live on an undeveloped property, may not be sufficient to protect that property as homestead.

A single adult person or family can have only one protected homestead at a time. If a person or family owns more than one home, only one will qualify for the protection from forced sale by creditors.

The Texas Constitution and the Texas Property Code recognize and define two types of Homestead: Urban and Rural. In 1999, voters passed an amendment to the Texas Constitution changing the way an urban homestead is defined and merging the former "business homestead" into the urban homestead. The Property Code was also amended in 1999 to recognize this change and to clarify the definition of a rural homestead.

### **URBAN HOMESTEAD**

A homestead in a city, town or village consists of one or more contiguous lots amounting to not more than ten acres of land, together with any improvements on the land. The urban homestead is to be used for a home or as both a home and a place of business for the homestead claimant.

A homestead is considered to be urban if it is located in a municipality or a platted subdivision, provided it is served by police protection, paid or volunteer fire protection and at least three of the following municipal services: electricity, natural gas, sewer, storm sewer and/ or water.

### **RURAL HOMESTEAD**

Section 41.002(b) of the Texas Property Code defines a rural homestead in this way:

If used for the purpose of a rural home, the homestead consists of:

- For a family, not more than 200 acres, which may be in one or more parcels, including improvements;
- For a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, including improvements.

## **VOLUNTARY LIENS AGAINST HOMESTEAD**

The Property Code follows the language of the Texas Constitution in identifying the types of liens which can be valid against homestead property, if properly created. These are for:

1. Purchase money
2. Ad valorem taxes on the property
3. Work and material used in constructing improvements on the property if contracted for in writing as provided by the Constitution and Property Code
4. Ovelty of partition imposed by court decree or written agreement, including division of property in a divorce
5. Refinance of a valid lien against a homestead, including a federal tax lien
6. A home equity loan that complies with Article 16, Section 50.a.6 of the Texas Statute
7. A reverse mortgage loan
8. Ehe conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property.

Since only the liens mentioned above are considered to be valid as to homestead property, creditors holding liens for other purposes or which are not perfected in the manner set out by the Constitution or Property Code as encumbrances against homestead property may have difficulty pursuing their rights.

## **TERMINATION**

Once the homestead character of property is established, it is only terminated through specific conduct of the homestead claimant, such as dissolution of the family relationship, a sale, or abandonment as a homestead. Temporarily renting does not terminate the homestead character unless a new homestead is acquired. Neither an offer to sell nor an executed contract to sell constitutes an abandonment of the homestead. The claim of homestead can be lost by abandonment of the property as a homestead, established by:

- The intention to permanently discontinue use of the property
- Actual discontinuance of such use.

If a homestead claimant is married, the homestead cannot be sold, mortgaged or abandoned without the consent of the claimant's spouse.

Death terminates the homestead unless the claimant is survived by other family members entitled to homestead protection. If the deceased person is survived by a spouse, unmarried children or a minor child, these family members may claim a continuing homestead interest in the property.