1	House BILL NO. 668
2	INTRODUCED BY Walton Ramines to
3	Token talmer Elly Hunning I I Street
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5	LAW RELATING TO HOMESTEADS; AMERDING SECTIONS 33-101,
6	33-104, 33-105, 33-109, 33-110, 33-113, 33-115, 33-116,
7	33-117, 33-118, 33-125, 33-126, AND 33-127, R.C.E. 1947;
8	REPEALING SECTIONS 33-107, 33-108, AND 33-124, R.C.B. 1947.
9	
10	WHEREAS, the present homestead exemption is not
11	available to many needy persons because of their ignorance
12	of the required declaration; and
13	WHERRAS, the present law needs clarification.
14	THEREFORE, it is the intent of this bill to provide for
15	a homestead exemption which does not require a declaration
16	and is effective unless explicitly waived.
17	
18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19	Section 1. Section 33-101, R.C.M. 1947, is amended to
20	read as follows:
21	*33-101. Romestead- of what it consists definition.
22	The homestead consists of the dwelling house in which the
23	claimant resides, all appurtenances thereto, and the land on
24	which the same dwelling house is situated, selected as in
25	this chapter provided, subject to the following limitations:

ı	(1) The homestead may consist of:
2	(a) a quantity of land not exceeding 320 acres used
3	for agricultural purposes or 5 acres not used for
4	agricultural or commercial purposes; or
5	(b) a quantity of land not exceeding one-fourth acre
6	within a town or city.
7	(2) A homestead, in either case, may not exceed
8	\$20,000 in value. In any proceeding instituted to determine
9	the value of such homesteads the assessed value of the
0	appurtenances, if any, and of the dwelling house as
1 ,	appearing on the last completed assessment roll preceding
2	the idstitution of the proceedings is prima facie evidence
3	of the walue of the property claimed as a homestead."
4	Section 2. Section 33-104, R.C.M. 1947, is amended to
5	read as follows:
6	*33-104. Exemptfromforcedsale When homestead
7	exempt. The homestead is exempt from execution or forced
8	sale, except as in-this-chapter provided <u>in 33-105</u> ."
9	Section 3. Section 33-105, R.C.N. 1947, is amended to
0	read as follows:
1	"33-105. When subject to execution or forced sale. The
2	homestead is subject to execution or forced sale in
3	satisfaction of judgments obtained:
4	1-(1) Before before July 1, 1977, and before the a
:5	declaration of homestead was filed for record, and which

1	constitute liens upon the premises; but no judgments
2	ebtained-before-this-sode-takes-effect-shall-senstitute-such
3	liens;
4	2-121 0m on debts secured by mechanics cr wendors
5	liens upon the premises;
6	3-13) On on debts secured by purchase soney sortgages
7	on the premises, executed and acknowledged by the husband
8	and wife, or by an unmarried claimant:
9	4-14) On op debts secured by mortgages on the
10	premises, executed and recorded before July 1, 1977, and
11	before the a declaration of homestead was filed for record.
12	15) on debts secured by mortgages on the premises
13	
	executed and acknowledged as provided in [section 4]."
14	Section 4. There is a new R.C.E. section that reads as
15	follows:
16	Waiver of homestead exemption for nonpurchase money
17	mortgages. (1) A homestead's exemption from execution and
18	forced sale may be waived for nonpurchase money mortgages by
19	execution of the following waiver of homestead exemption:
20	WAIVER OF HOMESTEAD EXPMPTION FROM
2 1	FIECUTION AND FORCED SALE
22	I now waive my homestead exemption. I do this knowing
23	my homestead otherwise cannot generally be taken to satisfy
24	my debts. However, upon signing this agreement as head of a
25	household. I realize my bomestead may now be sold by forced

1	sale to pay the debt I am now incurring.
2	I, as head of a household, do voluntarily and knowingl
3	waive the exemption of my homestead from execution an
4	forced sale for the following consideration \$
5	(amount of loan). The description of the homestead propert
6	hereby mortgaged is:
7	
8	
9	Witness my (our) hand(s) this day of,
0	••••••
l 1	Authorized Representative of Head of Household
12	Mortgagee
13	*************
14	Head of Household
15	(2) If the head of the household is married, both th
16	husband and wife must sign the above-stated waiver in orde
17	for it to be operative. The above-stated waiver must b
8	printed on one side of the document, which document contain
9	no other provisions except the statement of consideration
20	and description of the homestead property. The waiver mus
21	be subscribed and sworn before a notary public.
22	Section 5. Section 33-109, R.C.M. 1947, is amended t
23	read as follows:
ţ.	"33-109. Proceedings on execution against homestead

When an execution for the enforcement of a judgment obtained

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- in a case not within the classes enumerated in section
- 33-105 is levied upon the homestead or where the homestead
- 3 is part of a larger tract or tracts of land and no selection
- 4 of the homestead has been made, the judgment creditor may
- 5 apply to the district court of the county in which the
- 6 homestead is situated, or a judge thereof, for the
- 7 appointment of persons to appraise the value thereof or
- 9 determine the boundaries of the homestead, or both."
- 9 Section 6. Section 33-110, R.C.M. 1947, is amended to
- 10 read as follows:

2

- 11 *33-110. Application for appraisement or determination
- 12 of boundaries. The application must be made upon a verified
- 13 petition, showing:
- 14 4-11 The the fact that an execution has been levied
- 15 upon the homestead:
- 16 2-(2) The the name of the claimant;
- 17 3-(3) That either that the value of the homestead
- 18 exceeds the amount of the homestead exemption or that the
- 19 homestead is part of a larger tract or tracts of land and no
- 20 selection of a homestead has been made, or both."
- 21 Section 7. Section 33-113. R.C.B. 1947, is amended to
- 22 read as follows:
- 23 "33-113. Appointment of appraisers. At the hearing the
- 24 judge may, upon proof of the service of a copy of the
- 25 petition and notice, and of the facts stated in the

1 petition, appoint three disinterested residents and

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- freeholders of the county to appraise the value or to
- determine the boundaries of the homestead. If a claimant
- 4 makes a voluntary selection at any time before the
- 5 appointment of the appraisers, it shall be effective, but
- 6 after their appointment, the determination of the court
- 7 shall be binding with regard to the execution in question."
- 8 Section 8. Section 33-115, R.C.E. 1947, is amended to
- 9 read as follows:
- 10 m33-115. Duty of appraisers. They must view the
- 11 premises and appraise the value thereof, and if the
 - ! appraised value exceeds the homestead exemption or if the
- 13 homestead is part of a larger tract or tracts, they must
- 14 determine whether the land claimed can be divided without
- 15 material injury."
- 16 Section 9. Section 33-116, R.C.H. 1947, is amended to
- 17 read as follows:
- 18 #33-116. Report of appraisers -- contents. Within
- 19 fifteen 15 days after their appointment, they must make-to
- 20 the judge a report in writing to the judge, which report
- 21 must show the appraised value, the boundaries of the tract
- 22 where the homestead lies if it is larger than the homestead,
 - and their determination upon the matter of a division of the
- 24 land claimed.
- 25 Section 10. Section 33-117, R.C.M. 1947, is amended to

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to that particular transaction.

1 read as follows:

2 **33-117. Setting apart homestead. If, from the report,
3 it appears to the judge that the land claimed can be divided
4 without material injury, he must, by an order, direct the
5 appraisers to set off to the claimant so much of the land,
6 including the residence, as will amount in value or in size
7 to the homestead exemption, and the execution may be
8 enforced against the remainder of the land.**

- 9 Section 11. Section 33-118, R.C.M. 1947, is amended to 10 read as follows:
- 11 "33-118. Order directing sale when to be made. If,
 12 from the report, it appears to the judge that the land
 13 claimed exceeds in value the amount of the homestead
 14 exemption, or that the land exceeds the maximum acreage and
 15 that it cannot be divided, he must make an order directing
 16 its sale under execution."
- 17 Section 12. Section 33-125, R.C.M. 1947, is amended to 18 read as follows:
- 19 "33-125. "Read of family" defined who may claim the
 20 homestead exemption. The homestead exemption, as set forth
 21 in this chapter may be claimed by any "head of a household".
 22 The phrase "head of a family household" as used in this
 23 Chapter, includes within its meaning means a person who fits
 24 one or more of the following criteria:
- 25 1-(1) The a husband and or wife; acting together or

- oither one of them if they do not join in the particular
 transaction. In any given transaction which requires action
 by the "head of a family" the speude who undertakes the
 transaction shall be deemed "head of the family" in regard
- 6 2-(2) Every every person who has attained the age of
 7 sixty 60 years and who actually resides on the premises-;
- 8 3-(3) Every every person who has residing on the 9 premises with him or her, and under his or her care and maintenance, either:
- 11 First (a) His his or her minor child, or the minor

 12 child of his or her wife or husband, or former wife or

 13 husband:
- 14 Second. (b) A a minor grandchild, brother or sister,
 15 or minor child of a brother or sister;
- 16 Third. (c) A a father, mother, grandfather, or qrandmother:
- 18 <u>Fourth, (d)</u> <u>The the</u> father, acther, grandfather, or
 19 grandmother, of a husband or wife, or former husband or
 20 wife;
- 21 <u>Pifth- (e) Am an</u> unmarried sister, brother, or any 22 other of the relatives mentioned in this section, who have 23 attained the age of majority and are unable to take care of 24 or support themselves."
- 25 Section 13. Section 33-126, R.C.M. 1947, is amended to

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- 1 read as follows:
- 2 *33-126. **sade of salestion Selection of homestead from
- 3 larger tract. When the homestead is part of a larger tract
- 4 or tracts of land than is exempt from forced sale as such
- 5 homestead, the head of a household may select and set apart
 - the homestead to which the household is entitled. In order
- 7 to select and set apart a homestead, the husband or other
- 8 head of a family household must execute and acknowledge, in
- 9 the same manner as a grant of real property is acknowledged,
- 1) a declaration of homestead, and file the same for record.
- 11 Section 14. Section 33-127, R.C. 8. 1947, is amended to
- 12 read as follows:

6

- 13 "33-127. Declaration of homestead must contain
- 14 what. The declaration of homestead must contain:
- 15 4-(1) A a statement, showing that the person making it
- 16 is the head of a family household. If both spouses join in
- 17 the declaration, this fact shall be stated.
- 18 $2_{r}(2)$ A a statement that the person making it is
- 19 residing on the premises, and claims them as a homestead;
- 20 3-(3) A a description of the premises;
- 21 4-(4) An an estimate of their actual cash value."
- 22 Section 15. There is a new R.C.M. section that reads
- 23 as follows:
- 24 Effect of declaration. A declaration and setting apart
- 25 of the homestead by the claimant or by the court operates as

- 1 a relinquishment of all right of homestead in excess of land
- 2 so partitioned from the homestead and shall be binding on
- 3 the claimant and all others in privity with him. The
- 4 claimant may, at any time after the homestead has been
- 5 designated and set apart in either of the modes pointed out
- in this title, change the boundaries of the homestead by an
- 7 instrument as in cases of setting apart the homestead, but
- 8 no such change may impair the rights of parties acquired
- 9 prior to such change.
- 10 Section 16. Repealer. Sections 33-107, 33-108, and
- 11 33-124, R.C.M. 1947, are repealed.

-End-

45th Legislature

Approved by Committee on Labor & Employment Relations

1	HOUSE BILL NO. 668
2	INTRODUCED BY WALDRON, RAMIREZ, FABREGA,
3	UHDE: FAGG: PALMER, ELLIS: HARPER: DUSSAULT:
4	HOLMES, HUENNEKENS, MELOY, EUDAILY, KENNERLY, KIMBLE
5	
6	A SILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7	LAW RELATING TO HOMESTEADS; AMENDING SECTIONS 33-101.
đ	33-104, 33-105, 33-109, 33-110, 33-113, 33-115, 33-116,
9	33-117, 33-118, 33-125, 33-126, AND 33-127, ReC.M. 1947;
10	REPEALING SECTIONS 33-107, 33-108, AND 33-124, R.C.M. 1947."
11	
12	WHEREAS+ the present homestead exemption is not
13	available to many needy persons because of their ignorance
14	of the required declaration; and
15	WHEREAS, the present law needs clarification.
16	THEREFORE, it is the intent of this bill to provide for
17	a homestead exemption which does not require a declaration
13	and is effective unless explicitly waived.
19	
20	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21	Section 1. Section 33-101. R.C.M. 1947, is amended to
2 2	read as follows:
23	#33-101. Homesteadofwhatitconsists <u>definition</u> .
24	The homestead consists of the dwelling house in which the
25	claimant resides. all appurtenances thereto. and the land on

1	which the same <u>dwelling house</u> is situated, selected as in
2	this-enapter-provideds subject to the following limitations:
3	(1) The homestead may consist of:
4	(a) a quantity of land not exceeding 320 acres used
5	for agricultural purposes or 5 acres not used for
6	agricultural or commercial purposes: or
7	(b) a quantity of land not exceeding one-fourth acre
в	within a town or city.
9	(2) A homestead, in either case, may not exceed
10	\$20,000 \$40,000 in value. In any proceeding instituted to
11	determine the value of such homestead, the assessed value of
12	the appurtenances, if any, and of the dwelling house as
13	appearing on the last completed assessment roll preceding
14	the institution of the proceedings is prima facie evidence
15	of the value of the property claimed as a homestead."
16	Section 2. Section 33-104, R.C.M. 1947, is amended to
17	read as follows:
18	#33-104. Exemptfromforcedsale <u>When homestead</u>
19	exempt. The homestead is exempt from execution or forced
20	sale, except as in-this-chapter provided in 33-105."
21	Section 3. Section 33-105, R.C.M. 1947, is amended to
22	read as follows:
23	*33-105. When subject to execution or forced sale. The
24	homestead is subject to execution or forced sale in

satisfaction of judgments obtained:

25

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declaration of homestead was filed for record, and which
constitute liens upon the premises; butnojudgments
obtained-before-this-code-takes-effect-shall-constitute-such
lienst
₹ <u>#[2]</u> On on debts secured by mechanics or vendors
liens upon the premises;
3 (3) On on debts secured by <u>purchase money</u> mortgages
on the premises, executed and acknowledged by the husband
and wifew or by an unmarried claimant;
$4\pi(4)$ θn \underline{on} debts secured by mortgages on the
premises, executed and recorded before July 1, 1977, and
before the a declaration of homestead was filed for recordu:
(5) on debts secured by mortgages on the premises
executed and acknowledged as provided in [section 4]."
Section 4. There is a new R.C.M. section that reads as
follows:
Waiver of homestead exemption for nonpurchase money
mortgages. (1) A homestead's exemption from execution and
forced sale may <u>CNLY</u> be waived for nonpurchase money
mortgages by execution of the following waiver of homestead
exemption:
WAIVER OF HOMESTEAD EXEMPTION FROM
, EXECUTION AND FORCED SALE
I now waive my homestead exemption. I do this knowing

1	my homestead otherwise cannot generally be taken to satisfy
2	my debts. However, upon signing this agreement as head of a
3	household. I realize my homestead may now be sold by forced
4	sale to pay the debt I am now incurring.
5	I, as head of a household, do voluntarily and knowingly
6	waive the exemption of my homestead from execution and
7	forced sale for the following consideration \$
8	(amount of loan). The description of the homestead property
9	hereby mortgaged is:
10	
11	
12	Witness my (our) hand(s) this day of
13	
14	Authorized Representative of Head of Household
15	Mortgagee
16	***************************************
17	Head of Household
18	(2) If the head of the household is married, both the
19	husband and wife must sign the above-stated waiver in order
20	for it to be operative. The above-stated waiver must be
21	printed on one side of the document, which document contains
22	no other provisions except the statement of consideration
23	and description of the homestead property. The waiver must
24	be subscribed and sworn before a notary public.

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Section 5. Section 33-109, R.C.M. 1947, is amended to

-4-

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read as follows:

1

2 *33-109. Proceedings on execution against homestead. When an execution for the enforcement of a judoment obtained 3 in a case not within the classes enumerated in section 33-105 is levied upon the homestead or where the homestead 5 is part of a larger tract or tracts of land and no selection of the homestead has been made, the judgment creditor may 7 apply to the district court of the county in which the homestead is situated, or a judge thereof, for the appointment of persons to appraise the value thereof or 10 11 determine the boundaries of the homestead, or both.*

Section 6. Section 33-110, R.C.H. 1947, is amended to read as follows:

14 m33-110. Application for appraisement <u>or determination</u>
15 <u>of boundaries</u>. The application must be made upon a verified
16 petition, showing:

19 2w[2] The the name of the claimant;

23 3*(3) That either that the value of the homestead
21 exceeds the amount of the homestead exemption or that the
22 homestead is part of a larger tract or tracts of land and no
23 selection of a homestead has been made: or both.**

24 Section 7. Section 33-113, R.C.M. 1947, is amended to read as follows:

1 "33-113. Appointment of appraisers. At the hearing the 2 judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents freeholders of the county to appraise the value or to 5 determine the boundaries of the homestead. If a claimant 6 7 makes a voluntary selection at any time before the appointment of the appraisers, it shall be effective, but after their appointment, the determination of the court shall be binding with regard to the execution in guestion. 10 11 Section 8. Section 33-115. R.C.M. 1947. is amended to read as follows:

13 m33-115. Duty of appraisers. They must view the
14 premises and appraise the value thereof, and if the
15 appraised value exceeds the homestead exemption or if the
16 homestead is part of a larger tract or tracts, they must
17 determine whether the land claimed can be divided without
18 material injury.**

19 Section 9. Section 33-116, R.C.N. 1947, is amended to 20 read as follows:

21 #53-116. Report of appraisers -- contents. Within
22 fifteen 15 days after their appointment, they must make-to
23 the-judge-a report in writing to the judge. which report
24 must show the appraised value, the boundaries of the tract
25 where the homestead lies if it is larger than the homestead.

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- and their determination upon the matter of a division of the land claimed."
- 3 Section 10. Section 33-117. R.C.M. 1947. is amended to read as follows:
- "33-117. Setting apart homestead. If, from the report, it appears to the judge that the land claimed can be divided 7 without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value or in size 10 to the homestead exemption, and the execution may be 11 enforced against the remainder of the land."
- 12 Section 11. Section 33-118. R.C.H. 1947. is amended to 13 read as follows:

14

15

15

17

18

19

- *33-118. Order directing sale -- when to be made. If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemptiony or that the land exceeds the maximum acreage and that it cannot be divided, he must make an order directing its sale under execution."
- 20 Section 12. Section 33-125, R.C.N. 1947, is amended to 21 read as follows:
- #33-125. #Head-of-family#--defined Who may claim the 22 23 homestead exemption. Ibe homestead exemption. as set forth in this chapter may be claimed by any "head of a household". 24 The phrase "head of a family household" as used in this 25

- chaptery-includes-within-its-meaning means a person who fits
- one or more of the following criteria:
- 1*(1) The a husband end or wife: acting-together-or
- either--one--of--them--if-they-do-not-join-in-the-particular
- transaction. -- In-any-given-transaction-which requires-action
- by-the-"head-of-a-family"--the--spouse--who--undertakes--the
- transaction--shall--be-deemed-shead-of-the-family--in-regard
- to-that-particular-transactions
- 2-/2) Every every person who has attained the age of
- sixty 60 years and who actually resides on the premises: 10
- 3=(3) Every every person who has residing on the 11
- 13 maintenance, either:
- Firste (a) His his or her minor childy or the minor 14
- child of his or her wife or husbandy or former wife or 15
- 16 husband:
- Second (b) A a minor grandchild, brother or sister, 17
- or minor child of a brother or sister; 18
- Thirdw (c) A a father, mother, grandfather, or 19
- grandmother; 20
- Fourthw (d) The the father, mother, grandfather, or 21
- grandmothery of a husband or wifet or former husband or 22
- 23 wife;
- Fifthw [e] An an unmarried sister, brother or any 24
- other of the relatives mentioned in this sectiony who have

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attained the age of majority and are unable to take care of or support themselves."

3 Section 13. Section 33-126, R.C.M. 1947, is amended to

1

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20

23

4 read as follows: 5 #33-126. Mode-of-selection Selection of homestead from 6 larger tract. When the homestead is part of a larger tract or tracts of land than is exempt from forced sale as such 7 homestead, the head of a household may select and set apart 8 the homestead to which the household is entitled. In order to select and set apart a homestead, the husband or other 10 11 head of a fewily household must execute and acknowledge, in the same manner as a grant of real property is acknowledged, 12 a declaration of homesteady and file the same for record." 13 Section 14. Section 33-127, R.C.M. 1947, is amended to 14 read as follows: 15

16 M33-127. Declaration of homestead -- must contain

what. The declaration of homestead must contain:

tv(11 * a statementv showing that the person making it
is the head of a femily household. If both spouses join in
the declaration, this fact shall be stated;

21 $2*\{2\}$ $\pm a$ statement that the person making it is 22 residing on the premises and claims them as a homestead;

3+(3) A a description of the premises;

24 4x(4) An an estimate of their actual cash value."

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25 Section 15. There is a new R.C.M. section that reads

as follows:

2 Effect of declaration. A declaration and setting apart 3 of the homestead by the claimant or by the court operates as a relinguishment of all right of homestead in excess of land so partitioned from the homestead and shall be binding on the claimant and all others in privity with him. The claimant may, at any time after the homestead has been designated and set apart in either of the modes pointed out in this title, change the boundaries of the homestead by an 10 instrument as in cases of setting apart the homestead. but 11 no such change may impair the rights of parties acquired 12 prior to such change. 13

Section 16. Repealer. Sections 33-107, 33-108, and
 33-124, R.C.M. 1947, are repealed.

-End-

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•	10012 1122 200
2	INTRODUCED BY WALDRON, BAMIREZ, FABREGA,
3	UHDE, FAGG, PALMER, ELLIS, HARPER, DUSSAULT,
4	HOLMES, HUENNEKENS, MELOY, EUDAILY, KENNERLY, KIMBLE
5	
6	A BILL FOR AN ACT ENTITLED: "AB ACT TO GENERALLY REVISE THE
7	LAW RELATING TO HOMESTFADS; AMENDING SECTIONS 33-101,
8	33-104, 33-105, 33-109, 33-110, 33-113, 33-115, 33-116,
9	33-117, 33-118, 33-125, 33-126, AND 33-127, B.C.H. 1947;
0	BEPEALING SECTIONS 33-107, 33-108, AND 33-124, R.C.H. 1947.*
1	
2	WHEREAS, the present homestead exemption is not
3	available to many needy persons because of their ignorance
4	of the required declaration; and
5	WHEREAS, the present law needs clarification.
16	THEREFORE, it is the intent of this bill to provide for
7	a homestead exemption which does not require a declaration
16	and is effective unless explicitly waived.
9	
0	BE IT FNACTED BY THE LEGISLATURE OF THE STATE OF HORTANA:
21	Section 1. Section 33-101, R.C.H. 1947, is amended to
2	read as follows:
23	#33-101. Homestead-ef-what it consists definition.
24	The homestead consists of the dwelling house in which the
25	claimant resides, all appurtenances thereto, and the land on

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which the same <u>dwelling house</u> is situated, selected-as-in this chapter provided, subject to the following limitations: (1) The homestead may consist of: (a) a quantity of land not exceeding 320 acres used for agricultural purposes or 5 acres not used for agricultural or commercial purposes: or 7 (b) a quantity of land not exceeding ene-fourth 1 acre within a town or city. 9 (2) A homestead, in either case, may not exceed 10 \$20,000 \$40,000 in value. In-any-proceeding instituted to determine the Talue of such hemostead, the assessed Talue of 11 12 the appurtesances if any end of the dwelling tense as 13 appearing on the last completed aggessment rell preceding 14 the institution of the proceedings is print facis evidence 15 of the value of the property claimed as a homestead," Section 2. Section 33-104, R.C.E. 1947, is amended to 16 17 read as follows: 18 #33-104. Brempt-free forced sale When homestead exempt. The homestead is exempt from execution or forced 19 sale, except as in this chapter provided in 33-105." 20 Section 3. Section 33-105, R.C.M. 1947, is amended to 21 read as follows: 23 "33-105. When subject to execution or forced sale. The 24 homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1	4-[1] Before before July 1, 1977, and before the a
2	declaration of homestead was filed for record, and which
3	constitute liens upon the premises; but-ne-judgments
4	obtained before this code takes effect shall constitute such
5	liens,
6	2+(2) On on debts secured by mechanics or vendors
7	liens upon the premises;
В	3+(3) 0+ on debts secured by purchase money mortgages
9	on the premises, executed and acknowledged by the husband
10	and wife, or by an unmarried claimant;
11	4.41 0a on debts secured by mortgages on the
12	premises, executed and recorded before July 1. 1977, and
13	before the \underline{a} declaration of howestead was filed for record.
14	(5) on debts secured by mortgages on the premises
15	executed and acknowledged as rrowided in [section 4]."
16	Section 4. There is a new R.C.M. section that reads as
17	follows:
18	Waiver of homestead exemption for nonpurchase money
19	mortgages. (1) A homestead's exemption from execution and
20	forced sale may QNLY be waived for nonpurchase mcney
21	mortgages by execution of the following waiver of homestead
22	exemption:
23	MAIVER OF HOMESTRAD EXEMPTION FROM
24	EXECUTION AND FORCED SALE
25	I now waive my homestead exemption. I do this knowing

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1	my homestead otherwise cannot generally be taken to satisfy
2	my debts. However, upon signing this agreement as head of a
3	household, I realize my homestead may now be sold by force
4	sale to pay the debt I am now incurring.
5	I, as head of a household, do voluntarily and knowingly
6	waive the exemption of my homestead from execution and
7	forced sale for the following consideration \$
8	(amount of loan). The description of the homestead property
9	hereby mortgaged is:
0	
1	
12	Witness my (our) hand(s) this day of,
13	***************************************
14	Authorized Representative of Head of Household
15	Mortgagee
16	***************************************
17	Head of Household
9	(2) If the head of the household is married, both the
19	husband and wife must sign the above-stated waiver in order
0 9	for it to be operative. The above-stated waiver must be
21	printed on one side of the document, which document contains
22	no other provisions except the statement of consideration
23	and description of the homestead property. The waiver must
24	be subscribed and sworn before a notary public.
25	Section 5. Section 33-109, R.C.H. 1947, is amended to

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read as fcllows: 2 #33-109. Proceedings on execution against howestead. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in gestion 33-105 is levied upon the homestead or where _the_ homestead is part of a larger tract or tracts of land and no selection of the homestead has been made, the judgment creditor may apply to the district court of the county in which the homestead is situated, or a judge thereof, for the 10 appointment of persons to appraise the value thereof or determine the boundaries of the homestead, or both. * 11 12 Section 6. Section 33-110, R.C.E. 1947, is amended to read as follows: 13 #33-110. Application for appraisement or determination 14

of boundaries. The application must be made upon a verified

19 2-(2) The the name of the claimant;

petition, showing:

15

16

20 3-(3) That either that the value of the homestead
21 exceeds the amount of the homestead exemption or that the
22 homestead is part of a larger tract or tracts of land and no
23 selection of a homestead has been made, or both.**
24 Section 7. Section 33-113, R.C.M. 1947, is amended to
25 read as follows:

1 "33-113. Appointment of appraisers. At the hearing the 2 judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value or to determine the boundaries of the homestead. If a claimant makes a voluntary selection at any time before the appointment of the appraisers, it shall be effective, but after their appointment, the determination of the court 10 shall be binding with regard to the execution in question. 11 Section 8. Section 33-115, R.C.M. 1947, is amended to read as follows: 13 "33-115. Duty of appraisers. They must view the premises and appraise the value thereof, and if the 14 appraised value exceeds the homestead exemption or if the 16 homestead is part of a larger tract or tracts, they must 17 determine whether the land claimed can be divided without 18 material injury." 19 . Section 9. Section 33-116, R.C.H. 1947, is amended to 20 read as follows: "33-116. Report of appraisers -- contents. Within 21 22 #ifteen 15 days after their appointment, they must make to 23 the - judge -- a report in writing to the judge, which report must show the appraised value, the boundaries of the tract 24

where the homestead lies if it is larger than the bomestead,

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- and their determination upon the matter of a division of the 1
- land claimed."
- 3 Section 10. Section 33-117, R.C.B. 1947, is amended to
- read as follows:
- 5 *33-117. Setting apart homestead. If, from the report,
- 6 it appears to the judge that the land claimed can be divided
- 7 without material injury, he must, by an order, direct the
- appraisers to set off to the claimant so much of the land,
- 9 including the residence, as will amount in value or in size
- 10 to the homestead exemption, and the execution may be
- 11 enforced against the remainder of the land."
- Section 11. Section 33-118, B.C.M. 1947, is amended to 12
- read as follows: 13
- 14 "33-118. Order directing sale -- when to be made. If.
- from the report, it appears to the judge that the land 15
- claimed exceeds in value the amount of the homestead 16
- 17 exemption, or that the land exceeds the maximum acreage and
- that it cannot be divided, he must make an order directing 18
- 19 its sale under execution.*
- 20 Section 12. Section 33-125, R.C.B. 1947, is amended to
- 21 read as follows:
- "33-125. "Head-of-family"-defined Who may claim the 22
- 23 homestead exemption. The homestead exemption, as set forth
- 24 in this chapter may be claimed by any "head of a household".

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25 The phrase "head of a family household" as used in this

- chaptery-includes-within-its-meaning means a person who fits
- one or more of the following criteria:
- 4-(1) The a husband and or wife; asting-together-or
- oithor-one of thos if they do not join in the particular
- transaction In-any-given-transaction-which-requirer-action
- by the "Lead of a family" the spouse the madertakes the
 - transaction-shall-be-deemed-whead-of-the-family#--in--regard
- to-that-particular-transaction-
- 9 2. (2) Byory every person who has attained the age of
- sixty 60 years and who actually resides on the premisesw: 10
- 11 3. (3) Every every person who has residing on the
- premises with him or her, and under his or her care and 12
- maintenance, either: 13
- 14 First, (a) Bis his or her minor child, or the minor
- child of his or her wife or husband, or former wife or
- 16 husband:
- 17 Second. (b) A a miner grandchild, brother or sister,
- or minor child of a brother or sister: 18
- 19 Third, (c) & a father, mother, grandfather, or
- 20 grandmother:
- Pourth, (d) The the father, mother, grandfather, or 21
- grandmother, of a husband or wife, or former husband or 22
- 23 wife:
- Fifth. (e) An an unmarried sister, brother, or any 24
- other of the relatives mentioned in this section, who have 25

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1 attained the age of majority and are unable to take care of
2 or support themselves.**

3 Section 13. Section 33-126, R.C.M. 1947, is amended to read as follows:

5 "33-126. Mode-of-selection Selection of homestead from 6 larger tract. When the howestead is part of a larger tract 7 or tracts of land than is exempt from forced sale as such homestead, the head of a bousehold may select and set apart the homestead to which the household is entitled. In order to select and set apart a homestead, the buckand or ether 10 11 head of a family household must execute and acknowledge, in 12 the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record. " 13 Section 14. Section 33-127, R.C.M. 1947, is amended to 14 read as follows: 15

"33-127. Declaration of homestead — must contain what. The declaration of homestead must contain:

4.11) A a statement, showing that the person making it is the head of a family household. If both spouses join in the declaration, this fact shall be stated.

3-13) A a description of the premises:

16 17

18

19 20

23

24 4-14) An an estimate of their actual cash value."

25 Section 15. There is a new R.C.M. section that reads

as follows:

2 Effect of declaration. A declaration and setting apart of the homestead by the claimant or by the court operates as a relinquishment of all right of homestead in excess of land 5 so partitioned from the homestead and shall be binding on the claimant and all others in privity with him. The claimant may, at any time after the homestead has been designated and set apart in either of the modes pointed out in this title, change the boundaries of the homestead by an 10 instrument as in cases of setting apart the homestead, but 11 no such change may impair the rights of parties acquired 12 prior to such change. 13 Section 16. Repealer. Sections 33-107, 33-108, and

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33-124, R.C.E. 1947, are repealed.