

**21 GCA REAL PROPERTY
CH. 43 HOMESTEADS**

**CHAPTER 43
HOMESTEADS**

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§ 43101. Homestead, Of What It Consists.

The homestead consists of the dwelling house in which the claimant resides, together with outbuildings, and the land on which the same are situated, selected as in this Title provided.

The dwelling house may be in condominium, a planned development, a stock cooperative or a community apartment project, or may be situated on real property held under long-term lease rather than a freehold. In such cases, an agreement, covenant or restriction between or binding upon the owners of a title, interest or estate in a condominium, planned development, stock cooperative or community apartment project, or a lien arising under such agreement, covenant or restriction or an underlying lease or sublease, indebtedness, security or other interest or obligation may be enforced in the same manner as if no homestead were declared, and the homestead shall include the interest in and right to use common areas and other appurtenances subject to the terms and conditions applicable thereto. For the purposes of this Section, "long-term lease" is a lease thirty (30) years or more.

SOURCE: CC §1237. R/R by P.L. 15-113:8.

§ 43102. From What Property It May Be Selected.

If the claimant be married, the homestead may be selected:

(a) from the community property; or

(b) from the property held by the spouses as co-tenants in tenancy in common or in joint tenancy or from the separate property of the husband or the wife.

When the claimant is not married but is the head of a family within the meaning of § 43124 of this Article, the homestead may be selected from any of his or her property. If the claimant be an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property. Property within the meaning of this Article, includes any freehold title, interest or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive, and includes land held under long-term lease, as specified in § 43101 of this Article, and ownership rights in a condominium, planned development, stock, cooperative or community apartment project even though the title, interest or estate of the condominium, planned development, stock

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cooperative or community apartment project is in a leasehold or sublease hold.

SOURCE: CC §1238. R/R by P.L. 15-113:9.

NOTE: CC §1239 was repealed by P.L. 15-113:22.

§ 43103. Exempt From Forced Sale.

The homestead is exempted from execution or forced sale, except as in this Chapter provided.

SOURCE: CC §1240.

§ 43104. Subject To, When.

The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(a) before the declaration of homestead is recorded, and which, at the time of such recordation, constitute liens upon the premises;

(b) on debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises;

(c) on debts secured by encumbrances on the premises executed and acknowledged by husband or wife, by a claimant of a married person's separate homestead, or by an unmarried claimant; or (d) on debts secured by encumbrances on the premises, executed and recorded before the declaration of homestead was filed for record.

SOURCE: CC §1241 R/R by P.L. 15-113:10.

§ 43105. How Conveyed or Encumbered.

Except as provided in §163 of the Civil Code of Guam where one (1) or more spouses is incompetent, and except in the case of a married person's separate homestead, 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 or unless each spouse executes and acknowledges as separate instrument so conveying or encumbering the homestead in favor of the same party or his successor in interest; provided, however, that a conveyance of the homestead between husband and wife need be executed and acknowledged only by the spouse conveying, and unless the one conveying expressly reserves his homestead rights, the spouse to whom the conveyance is made

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may convey or encumber the homestead property in the same manner and to the same extent as though no homestead had been declared.

SOURCE: CC §1242 R/R by P.L. 15-113:11.

§ 43106. How Abandoned.

Except as provided in §163 of the Civil Code of Guam, a homestead can be abandoned only by:

(a) a declaration of abandonment executed and acknowledged by the husband and wife, jointly or by separate instruments, if the claimants are married;

(b) a declaration of abandonment or a conveyance by the claimant if unmarried;

(c) a declaration of abandonment or a conveyance by the grantee named in a conveyance by which one spouse conveys the homestead to the other spouse without expressly reserving his homestead rights;

(d) a conveyance or conveyances by both spouses as provided in § 43105 of this Article; or

(e) a declaration of abandonment or a conveyance by the claimant alone in the case of a married person's separate homestead.

SOURCE: CC §1243 R/R by P.L. 15-113:12.

§ 43107. Same.

A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

SOURCE: CC §1244.

§ 43108. Proceedings on Executions Against Homestead.

When an execution for the enforcement of a judgment, obtained in a case not within the classes enumerated in § 43104 is levied upon the homestead, the judgment creditor may at any time within sixty (60) days thereafter apply to the court having jurisdiction for the appointment of persons to appraise the value thereof, and if such application shall not be made within sixty (60) days after the levy of such execution the lien of the execution based upon the same judgment shall thereafter be levied upon the homestead.

SOURCE: CC §1245.

§ 43109. Application.

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The application must be made upon a verified petition of the judgment creditor showing:

(a) The fact that an execution has been levied upon the homestead within sixty (60) days prior to the filing of said petition.

(b) A description of the homestead and the name of the claimant.

(c) That the value of the homestead, over and above all liens and encumbrances thereon, exceeds the amount of the homestead exemption.

(d) That no previous execution arising out of the same judgment has been levied upon said homestead.

SOURCE: CC §1246.

§ 43110. Petition.

The petition must be filed with the clerk of court.

SOURCE: CC §1247.

§ 43111. Hearing.

Within ninety (90) days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, must be served upon the claimant or his attorneys at least two (2) days before the hearing; and if such notice shall not be so served, the lien of the execution shall cease at the expiration of said period of ninety (90) days, and no execution based upon the same judgment shall thereafter be levied upon the homestead.

SOURCE: CC §1248.

§ 43112. Appraisers.

At the hearing the 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 (3) disinterested appraisers to appraise the value of the homestead.

SOURCE: CC §1249.

§ 43113. Oaths.

The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

SOURCE: CC §1250.

§ 43114. Duties of Appraisers.

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They must view the premises and appraise the value thereof, and if the appraised value, less the aggregate of all liens and encumbrances thereon, exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

SOURCE: CC §1251 as amended by P.L. 15-113:13.

§ 43115. Report.

Within fifteen (15) days after their appointment, they must make to the judge a report in writing, which report must show the appraised value, the amount of all liens and encumbrances, and their determination upon the matter of a division of the land claimed.

SOURCE: CC §1252.

§ 43116. Subdivision Impractical.

If, from the report, it appears to the judge that the land claimed can be divided 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 and outbuildings, as will amount in value to the homestead exemption, over and above all liens and encumbrances, and the execution may be enforced against the remainder of the land.

SOURCE: CC §1253.

§ 43117. Sale.

If, from the report, it appears to the judge that the land claimed exceeds in value, over and above all liens and encumbrances, the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

SOURCE: CC §1254.

§ 43118. Excess Bid.

At such sale no bid shall be received, unless it exceeds the amount of the homestead exemption plus the aggregate amount of all liens and encumbrances on the property.

SOURCE: CC §1255.

§ 43119. Proceeds.

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If the sale is made, the proceeds thereof must be applied in the following order of priority, first, to the discharge of all liens and encumbrances, if any, on the property; second, to the homestead claimant to the amount of the homestead exemption; third, to the satisfaction of the execution; and fourth, the balance, if any, to the homestead claimant.

SOURCE: CC §1256.

§ 43120. Exemption - Moneys Protected.

The money paid to the claimant is entitled, for the period of six (6) months thereafter, to the same protection against legal process and the voluntary disposition of the husband or wife, which the law gives to the homestead.

SOURCE: CC §1257 as amended by P.L. 15-113:14.

§ 43121. Appraisers, Generally.

The court must fix the compensation of the appraisers, not to exceed two dollars (\$2.00) per day each for the time actually engaged, but no compensation shall be paid to officers or employees of the Federal or Guam Government.

SOURCE: CC §1258.

§ 43122. Expenses.

The execution creditor must pay the costs of these proceedings in the first instance; but in the cases provided for in §§62116 and 62117, the amount so paid must be added as costs on execution, and collected accordingly.

SOURCE: CC §1259.

§ 43123. Who May Select Homestead, Value.

Homesteads may be selected and claimed:

(a) by any head of a family, of not exceeding Forty Thousand Dollars (\$40,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon;

(b) by any person sixty-five (65) years of age or older, of not exceeding Forty Thousand Dollars (\$40,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy or execution thereon; or

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(c) by any other person, of not exceeding Twenty-Five Thousand Dollars (\$25,000) in actual cash value, over and above all liens and encumbrances.

Any declaration of homestead which has been filed prior to July 1, 1980 shall be deemed to be amended on such date by increasing the value of any property selected and claimed to the value permitted by this Section on such date to the extent that such increase does not impair or defeat the right of any creditor to execute upon the property which existed prior to such date.

SOURCE: CC §1260 as R/R by P.L. 15-113:15.

§ 43124. Head of Family, Generally.

The phrase "head of a family," as used in this Chapter, includes within its meaning:

(a) the husband or wife when the claimant is a married person.

(b) every person who has residing on the premises with him or her, and under his or her care and maintenance, either;

(1) his or her minor child, or minor grandchild, or the minor child of his deceased wife or husband;

(2) a minor brother or sister, or the minor child of a deceased brother or sister;

(3) a father, mother, grandfather or grandmother;

(4) the father, mother, grandfather or grandmother of a deceased husband or wife;

(5) an unmarried sister or brother, or any other of the relatives mentioned in this Section, who have attained the age of majority, and are unable to take care of or support themselves.

SOURCE: CC §1261 as amended by P.L. 15-113:16.

§ 43125. Claim of Homestead on Property Previously Homesteaded Not Deemed Abandonment of Prior Homestead.

Whenever a claim of homestead is made pursuant to Subsection (a) or (b) of § 43123 of this Article which includes property previously homesteaded, to the extent that such prior homestead is still valid, such new claim of homestead shall not be considered an abandonment of the prior homestead.

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SOURCE: CC §1261.1 added by P.L. 15-113:17.

**ARTICLE 2
HOMESTEAD OF THE HEAD OF A FAMILY**

§ 43201. Mode of Selection.

§ 43202. Declaration of Homestead.

§ 43203. Declaration Must be Recorded.

§ 43204. Disposition, Generally.

§ 43205. Retroactive Effect of New Declaration on Property Purchased
With Proceeds of Former Homestead.

§ 43201. Mode of Selection.

In order of select a homestead, either husband or wife or head of a family must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record in the Department of Land Management.

SOURCE: CC §1262, R/R by P.L. 15-113:18.

§ 43202. Declaration of Homestead.

The declaration of homestead must contain:

(a) a statement showing that the person making it is the head of a family, and if the claimant is married, the name of the spouse; or when the declaration is made by a married person without the joinder of his or her spouse, in the execution and acknowledgment of the declaration, showing that the other spouse has not made such declaration and that he or she therefor makes the declaration for their joint benefit;

(b) a statement that the person making it is residing on the premises, and claims them as a homestead;

(c) a description of the premises; and

(d) such declaration of homestead may further contain a statement of the character of the property sought to be homesteaded, showing the improvement or improvements which have been affixed thereto, with sufficient detail to show that it is a proper subject of homestead, and that no former declaration has been made, or, if made, that it has been abandoned

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and if it contains such further statement and the declaration is supported by the affidavit of the declarant, annexed thereto, that the matters therein stated are true of his or her own knowledge, such declaration, when property recorded, shall be prima facie evidence of the facts therein stated, and conclusive evidence thereof in favor of a purchaser or encumbrancer in good faith and for a valuable consideration.

The declaration of a homestead shall not affect the property rights of spouses as between themselves other than as provided by this Chapter.

SOURCE: CC §1263, R/R by P.L. 15-113:19.

§ 43203. Declaration Must Be Recorded.

The declaration must be recorded in the office of the Department of Land Management.

SOURCE: CC §1264.

§ 43204. Disposition, Generally.

From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property or from the separate property of the spouse making the selection of joining therein, the land so selected, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this Chapter; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the court having jurisdiction to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this Chapter; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this Chapter shall be exempt to the owner of the homestead for a period of six (6) months next following such sale.

SOURCE: CC §1265.

§ 43205. Retroactive Effect of New Declaration on Property Purchased With Proceeds of Former Homestead.

If the proceeds arising from the sale of property selected as a homestead are used for the purpose of real property within the period of six (6) months following such sale, the property purchased may be selected as a

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homestead in the manner provided in this Chapter within the period of six (6) months following such sale, and such selection, when the declaration has been filed for record, shall have the same effect as if it had been created at the time the prior declaration of homestead was filed for record.

SOURCE: CC §1265.1, added by P.L. 15-113:20.

**ARTICLE 3
HOMESTEAD OF OTHER PERSONS**

- § 43301. Mode of Selection.
- § 43302. Declaration of Homestead.
- § 43303. Declaration Must be Recorded.
- § 43304. Effect of Recording Declaration.

§ 43301. Mode of Selection.

Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead.

SOURCE: CC §1266.

§ 43302. Declaration of Homestead.

The declaration must contain everything required by the second, third, and fourth subdivisions of § 43202, and in addition thereto may contain the statement and affidavit provided for by subdivision 5 of said section, with like effect as therein provided.

SOURCE: CC §1267.

§ 43303. Declaration Must Be Recorded.

The declaration must be recorded in the office of the Department of Land Management.

SOURCE: CC §1268.

§ 43304. Effect of Recording Declaration.

From and after the time the declaration is filed for record, the land described therein is a homestead.

SOURCE: CC §1269.

ARTICLE 4

MARRIED PERSON'S SEPARATE HOMESTEAD

- § 43401. Execution, Acknowledgment and Declaration.
- § 43402. Contents of Declaration.
- § 43403. *Head of Family* Defined.
- § 43404. When Land Becomes Homestead.
- § 43405. Reconciliation of Parties.

§ 43401. Married Person's Separate Homestead: Execution, Acknowledgment and Declaration.

Following the entry of a judgment decreeing legal separation of the parties or an interlocutory judgment of dissolution of a marriage, each spouse may execute and acknowledge in the same manner as a grant of real property is acknowledged, a declaration of a married person's separate homestead from the separate property of the spouse so declaring same, or from any property awarded to such spouse by said judgment.

SOURCE: CC §1269.1, R/R by P.L. 15-113:21.

§ 43402. Contents of Declaration.

The declaration must contain:

(a) a statement that the declarant is a married person, and that there is in existence a judgment decreeing legal separation of the parties or an interlocutory judgment of a dissolution of the marriage between declarant and his or her spouse;

(b) a statement showing that declarant is the head of a family, as defined in this Article, if such is the case.

(c) the matters required by (a) and (b) subsections of § 43202, and in addition thereto, may contain the statement and affidavit provided for by Subsection 4 of said Section, with like effect as therein provided.

SOURCE: CC §1269.2, R/R by P.L. 15-113:21.

§ 43403. *Head of Family* Defined.

For the purpose of this Article, the phrase *head of a family* includes every person who is residing on the premises with him or her and under his or her care and maintenance one or more of the persons enumerated in Paragraphs (1), (2), (3), (4) and (5) of Subsection (b) of § 43124, and such person shall receive the exemption allowed the head of a family by § 43123. Any married person declaring a homestead under this Article who is not the

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head of a family, as defined in this Section, shall receive the exemption allowed other persons by § 43123.

SOURCE: CC §1269.3, R/R by P.L. 15-113:21.

§ 43404. When Land Becomes Homestead.

From and after the time the declaration is recorded in the Department of Land Management, the land described therein is a homestead.

SOURCE: CC §1269.4, added by P.L. 15-113:21.

§ 43405. Reconciliation of Parties: Transformation of Married Person's Separate Homestead Into Joint Protection Homestead: Reduction of Exemption.

When a homestead has been declared under § 43401 by a married person following the entry of an interlocutory judgment of dissolution of a marriage upon property awarded to such person by such judgment, a subsequent reconciliation of the parties when evidenced by a dismissal of such dissolution action executed by both parties or their attorneys of record shall transform such homestead into a joint protection homestead, which shall thereafter have the force and effect of a homestead selected under this Chapter. If each such married person has selected a homestead under this Article, and such a dismissal has been filed after reconciliation, one of the homesteads must be abandoned or the exemption under each shall be reduced by one-half (1/2).

SOURCE: CC §1269.5, R/R by P.L. 15-113:21.

NOTE: Division II, Title V, Chapter IV, now *Married Person's Separate Homestead*, was repealed and reenacted as §§1269.1-5 of the Civil Code, by P.L. 15-113:21. Former subject was *Alienation of Homesteads of Insane Persons*. References to Title and Chapter and specific sections of the Code have been changed by the Compiler to conform with the GCA designations.
