

Declaration of Non-Abandonment of Homestead (Married Couple) (Idaho)

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General Instructions & Checklist

Idaho Declaration of Non-Abandonment of Homestead (Married Couple)

- Both spouses should review the Declaration carefully before signing.
- Both spouses must sign the Declaration, and should retain an original signed Declaration.
- The purchase and use of these forms is subject to the “Disclaimers and Terms of Use” found at findlegalforms.com.

General Information

Idaho Declaration of Non-Abandonment of Homestead (Married Couple)

Generally, a homestead is a dwelling house or mobile home (including its land and buildings) occupied by an owner as a home and which is exempted by law from seizure or sale for debt. For example, if you (the owner and debtor) are sued for money in court and lose, the person (or creditor) who sued you will receive a judgment from the court. If you do not pay the judgment, the creditor may seek satisfaction of the judgment in various ways, such as by garnishing your wages, having your automobile sold, or by having your home sold. The homestead law protects a certain amount of the equity in your home of land from being taken to pay the judgment.

In Idaho, homestead exemptions are generally limited to \$100,000. In other words, except in certain situations discussed below, up to \$100,000 in equity in your home will be absolutely protected from attachment, execution or forced sale, and the exemption shall not be conveyed or encumbered without the joint consent of both spouses. However, creditors may be able to force a sale of your home to recoup any amount of equity you own in your home that exceeds this limit. For example, if your home is worth \$200,000 and you hold a \$50,000 mortgage (giving you \$150,000 in equity), a creditor might be able to force a sale of the home and recoup \$50,000 from the proceeds (your equity, less your \$100,000 exemption).

In Idaho, the homestead exemption is generally automatic from and after the time the property is occupied as a principal residence by the owner. An exception to this rule is if your homestead consists of your own mobile home located on land not owned by you, and which you do not yet occupy as a homestead. In this instance, you must execute a declaration of non-abandonment of homestead and file the declaration for record in the office of the recorder of the county in which the property is situated. [NOTE: *If you own another parcel of property on which you reside or in which you claim a homestead, you must also execute a declaration of abandonment of homestead on that other property and file it for record with the recorder of the county in which the land is located. The declaration of abandonment of homestead is available for separate purchase on our site.*]

Another exception to the general rule of automatic homestead exemption is if you are going to be absent from your homestead for a continuous period of at least six (6) months, and you do not intend to abandon the homestead, and you have no other principal residence. (Under Idaho law, a homestead is presumed abandoned if you vacate the property for a continuous period of at least six (6) months.) This is another instance where you must execute a declaration of non-abandonment of homestead and file the declaration for record in the office of the recorder of the county in which the property is situated.

A married couple's homestead may consist of the community or jointly owned property of the spouses or the separate property of either spouse; however, a married couple may only claim one homestead exemption. Also, proceeds from the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, shall be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds.

Finally, Idaho law specifies situations in which the homestead exemption does not apply. For example, the homestead exemption does not apply to judgments obtained (i) before the homestead was in effect, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the homestead became effective, (ii) on debts secured by mechanic's, laborer's or vendor's lien upon the premises, (iii) on debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and acknowledged by the husband and wife, or (iv) on debts secured by mortgages, deeds of trust or other consensual liens upon the premises, executed and recorded before the homestead became effective.

For more information, please refer to 55-1001 to 55-1011 of the Idaho Code.

Step-by-Step Instructions

Idaho Declaration of Non-Abandonment of Homestead (Married Couple)

A. GETTING STARTED - COMPLETING THE DECLARATION

Step 1: Requirements

To use this Declaration you must:

- i. Be an owner of a mobile home located on land not owned by you, and which you do not yet occupy as a homestead; or be an owner of a homestead property and you are going to be absent from your homestead for a continuous period of at least six (6) months, and you do not intend to abandon the homestead, and you have no other principal residence.
- ii. Be married;
- iii. Be a resident of the state of Idaho.

You may fill out the forms electronically by entering the requested information in the appropriate spaces, or you can fill them out manually. If you are filling out the forms manually and are not using a typewriter, use black ink and print as legibly and neatly as possible. The county recorder may reject forms that are difficult to read or they may input the information incorrectly.

Step 2: Completing the Declaration. Insert the appropriate information in the Declaration. Below are additional instructions for the trickier sections:

Return Address. In the upper left hand corner, insert the address you would like the Declaration mailed to once it is recorded.

Legal Description. Fill in the legal description of the property. This description can be found on the deed to the property. If you do not have this description, the county recorder will often accept the complete address alone.

Statement of Residence while Absent from Homestead. Here, you should indicate the address where you plan on residing while you are absent from your homestead, the duration of time, and the reason for your absence.

Signature and Date. You will need to have this form notarized, so wait to sign it until you are in front of the notary.

Notarization. This section will be completed by the notary.

B. RECORDING THE DECLARATION

- Step 3: Notary Acknowledgement.** Take the form to a Notary Public. You can find one in your telephone directory or at local bank. Take personal identification with you (e.g. social security card, driver license, passport, etc.).
- Step 4: Copies.** You should make at least two copies of your completed Declaration in case additional copies are required by the county recorder and for your personal records.
- Step 5: Recording.** You can either record the Declaration in person or by mail.

In Person. Recording your Declaration in person will be quicker because you won't have to wait for delivery. You can take the Declaration to the office of the county recorder where the property is located. You will need to bring in the original and two copies (just to be safe) of your completed and notarized Declaration. You will tell the clerk there that you want to record a Declaration and Claim of Homestead. The clerk will help you from here.

Fees. You will need to pay the clerk the amount of the recording fee, probably around \$10. To get the specific amount of the recording fee you can contact the office of your county recorder. You can find its address and telephone number in your local telephone directory.

- **Mail.** If you choose to mail your Declaration to the county recorder's office, you will need to begin with a cover letter explaining what you have included and what you need done. You will want the clerk to record the Declaration and mail back it back to you (in the self-addressed stamped envelope you've enclosed).

You will need to include the following items:

Forms. The original and a copy of the Declaration

Fees. You will need to include a check for the recording fee. To get the specific amount of the recording fee you can contact your county recorder. You can find addresses and telephone numbers in your local telephone directory.

One Self-Addressed Stamped Envelope. You will need this because you will be asking for a returned copy of the recorded Declaration.

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The facts stated in this Declaration are known to be true as of our own personal knowledge.

Signature

Signature

Printed Name

Printed Name

Date

Date

State of Idaho
County of _____ } ss.

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY SEAL

NOTARY SIGNATURE

(Name of Notary)

(Expiration Date of Notary Appointment)