FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. HOMESTEAD RIGHTS

SUBCHAPTER A. SALE OF HOMESTEAD; GENERAL RULE

Sec. 5.001. SALE, CONVEYANCE, OR ENCUMBRANCE OF HOMESTEAD. Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.002. SALE OF SEPARATE HOMESTEAD AFTER SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the separate property of a spouse and the other spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Title 3, Estates Code, the owner may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2001, 77th Leg., ch. 217, Sec. 25, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.014, eff. September 1, 2017.

Sec. 5.003. SALE OF COMMUNITY HOMESTEAD AFTER SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the community property of the spouses and one spouse has been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Title 3, Estates Code, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Renumbered from Family Code Sec. 5.107 and amended by Acts 2001,

77th Leg., ch. 217, Sec. 29, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.015, eff. September 1, 2017.

SUBCHAPTER B. SALE OF HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

Sec. 5.101. SALE OF SEPARATE HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the separate property of a spouse, that spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 26, eff. Sept. 1, 2001.

Sec. 5.102. SALE OF COMMUNITY HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the community property of the spouses, one spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) has permanently abandoned the homestead and the

petitioning spouse;

(3) has permanently abandoned the homestead and the spouses are permanently separated; or

(4) has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 27, eff. Sept. 1, 2001.

Sec. 5.103. TIME FOR FILING PETITION. The petitioning spouse may file the petition in a court of the county in which any portion of the property is located not earlier than the 60th day after the date of the occurrence of an event described by Sections 5.101(1)-(3) and 5.102(1)-(3) or not less than six months after the date the other spouse has been reported to be a prisoner of war or missing on public service.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Amended by Acts 2001, 77th Leg., ch. 217, Sec. 28, eff. Sept. 1, 2001.

Sec. 5.104. APPOINTMENT OF ATTORNEY. (a) Except as provided by Subsection (b), the court may appoint an attorney in a suit filed under this subchapter for the respondent.

(b) The court shall appoint an attorney in a suit filed under this subchapter for a respondent reported to be a prisoner of war or missing on public service.

(c) The court shall allow a reasonable fee for the appointed attorney's services as a part of the costs of the suit.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.105. CITATION; NOTICE OF HEARING. Citation and notice of hearing for a suit filed as provided by this subchapter shall be issued and served in the manner provided in Subchapter D, Chapter 3.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.106. COURT ORDER. (a) After notice and hearing, the court shall render an order the court deems just and equitable with respect to the sale, conveyance, or encumbrance of a separate property homestead.

(b) After hearing the evidence, the court, on terms the court deems just and equitable, shall render an order describing or defining the community property at issue that will be subject to the management, control, and disposition of each spouse during marriage.

(c) The court may:

(1) impose any conditions and restrictions the court deems necessary to protect the rights of the respondent;

(2) require a bond conditioned on the faithful administration of the property; and

(3) require payment to the registry of the court of all or a portion of the proceeds of the sale of the property to be disbursed in accordance with the court's further directions.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Sec. 5.108. REMEDIES AND POWERS CUMULATIVE. The remedies and the powers of a spouse provided by this subchapter are cumulative of the other rights, powers, and remedies afforded the spouses by law.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.