

STATEMENT OF PURPOSE

RS31937 / H0150

This legislation amends I.C. Sec. 55-1007 to allow a married person to sell or encumber property they own individually as their sole and separate property without requiring their spouse to consent to the sale or encumbrance. The current version of I.C. Sec. 55-1007 states that the homestead of a married person cannot be conveyed or encumbered unless the instrument of conveyance or encumbrance is executed by both spouses. The statute, as currently written, requires that both spouses sign regardless of whether the property is the homestead of only one spouse and regardless of whether the property is owned solely by one spouse. The current statute is at odds with the definition of homestead contained in I.C. Sec. 55-1001(2) which states that “homestead” is the house in which the owner resides. Pursuant to the definition of homestead, a person cannot claim a homestead interest in a property they do not own. If a non-owner spouse cannot claim a homestead interest in a home, since they are not the owner, it should not be necessary for them to execute a deed or encumbrance for that property to be sold or encumbered. The purpose of this amendment is to align the requirements in I.C. 55-1007 with Idaho’s homestead and community property laws as well as to align it with the expectations of the citizens of Idaho.

FISCAL NOTE

There is no impact on the general fund or other governmental entity. This legislation pertains to property rights.

Contact:

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DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).