Meg Lawless

From: Alexandra Caval <alex@cavallawoffice.com>
Sent: Wednesday, March 5, 2025 6:11 PM
To: Meg Lawless
Subject: Fwd: HB 150 - Public Testimony

Ms. Lawless,

Please see the public testimony below on HB 150 which is scheduled to be heard tomorrow afternoon. I sent this to the members directly but then wondered if it should be sent to you. If it does not go to you then please excuse my error; I'm not entirely certain how written public testimony is handled.

Sincerely,

Alex Caval

---------- Forwarded message ---------
From: **Alexandra Caval** <alex@cavallawoffice.com>
Date: Wed, Mar 5, 2025 at 6:01 PM
Subject: HB 150 - Public Testimony
To: <DRicks@senate.idaho.gov>, <BAdams@senate.idaho.gov>, <SGrow@senate.idaho.gov>, Senator Kelly Anthon <KAnthon@senate.idaho.gov>, Senator Treg Bernt <TBernt@senate.idaho.gov>, <LDenHartog@senate.idaho.gov>, <BToews@senate.idaho.gov>, <ARabe@senate.idaho.gov>, <RTaylor@senate.idaho.gov>

Members of the Committee:

My name is Alexandra Caval, I reside in Twin Falls, Idaho (LD 24). I am an attorney and I wish to offer my comments in this email as written testimony since I have a conflicting meeting tomorrow at 3 PM and cannot appear either in person or by video. I have 16 years of experience as a bankruptcy law which heavily involves the homestead exemption statutes contained in title 55, chapter 10.

My concern with HB 150 is the last sentence which reads as follows, "Consent of a spouse who is not an owner of the homestead shall not be required if the homestead is conveyed or encumbered by a spouse who has sole ownership of the homestead as separate property."

First, Idaho Code 55-1002 states that if the owner is married, the homestead can consist of separate property owned by either spouse. So, the fact that one spouse has sole ownership based on the title to the property doesn't eliminate the other spouse's homestead claim and that homestead is automatic (55-1001) if that spouse is physically residing in the property titled in the other spouse's name. The proposed statute still prohibits selling (conveying) or giving a security interest in (encumbering) a homestead without the consent of the each spouse. That consent can be evidenced by an acknowledgment in the deed (or deed of trust) or through a power of attorney authorizing the encumbrance or conveyance. The assumption that a spouse cannot have a homestead on the other's

separate property is mistaken; it can happen and it is contemplated by 55-1002. Moreover, the definition of "owner" in 55-1001 is not exhaustive nor is it limited to the person whose name appears on the deed.

Also, that last sentence in the proposed statute creates a conflict with Idaho Code 32-912 (a community property statute) which prohibits the sale or encumbrance of without the consent of both spouses. Under the case law that has developed under 32-912, the failure to get the consent renders the transaction void as to the spouse who did not consent.

Community property is property that is acquired during the term of the marriage. However, the community can also have an interest in a spouse's separate, pre-marriage property. This occurs when the community uses community funds to pay for the debt servicing, maintenance, upkeep, and taxes on the separate property. The fact that it was acquired before marriage and in only one spouse's name, does not automatically make it fully separate property - the community may have a claim against it. Additionally, in a community property state, it fairly common for property to be acquired during a marriage but in only one spouse's name - one spouse may have a bad credit score or no income that affects the terms of the loan so the loan and corresponding title work is done in one spouse's name only.

Why is all of this important? If you vote in favor of this bill as written, you open the door for Wife to either sell the property or give liens to third parties without the knowledge or consent of Husband simply because the title to the home is in Wife's name only. I have personally seen this this scenario happen. Lenders are willing to take 2nd, 3rd, and 4th place positions on homes to secure repayment when they issue business loans because they want to make sure the borrower has skin in the game. The other spouse should know about it and should consent when the homestead is going to be sold or pledged as collateral because giving a consensual lien is different than a judgment lien. When you give a consensual lien (deed of trust) you are waiving your right to claim a homestead and if the debt is not paid that creditor can foreclosure and the homestead exemption will not save your home because the homestead only protects against foreclosures by judgment lien holders.

In my opinion as a bankruptcy lawyer, the last sentence of the proposed bill should be removed to avoid creating a conflict with I.C. sections 32-912, 55-1001, and 55-1002.

Thank you for listening.

Sincerely,

Alex

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