

3/20/02 Rereferred To: Judiciary

HOUSE FILE 2566
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2449)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a power of attorney for the conveyance or
2 encumbrance of homestead property.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2566

1 Section 1. Section 561.13, Code 2001, is amended to read
2 as follows:

3 561.13 CONVEYANCE OR ENCUMBRANCE.

4 1. A conveyance or encumbrance of, or a contract to convey
5 or encumber, the homestead, if the owner is married, is not
6 valid, unless and until the spouse of the owner executes the
7 same or a like instrument, or a power of attorney for the
8 execution of the same or a like instrument, and the instrument
9 or power of attorney sets out the legal description of the
10 homestead. If a power of attorney sets out the legal
11 description of the homestead at the time the power of attorney
12 was executed, together with the language "or any subsequently
13 acquired homestead" or substantially similar language, and the
14 principal who executed the power of attorney acquires a
15 different homestead after the execution of the power of
16 attorney, the power of attorney shall be sufficient to allow a
17 conveyance or encumbrance of the homestead. A power of
18 attorney executed at a time when the principal does not own a
19 homestead that authorizes the attorney in fact designated by
20 the power of attorney to convey or encumber any homestead
21 property subsequently acquired is also sufficient to allow the
22 conveyance or encumbrance of any later acquired homestead.

23 2. ~~However,~~ When the homestead is conveyed or
24 encumbered along with or in addition to other real estate, it
25 is not necessary to particularly describe or set aside the
26 tract of land constituting the homestead, whether the
27 homestead is exclusively the subject of the contract or not,
28 but the contract may be enforced as to real estate other than
29 the homestead at the option of the purchaser or encumbrancer.
30 If a spouse who holds only homestead rights and surviving
31 spouse's statutory share in the homestead specifically
32 relinquishes homestead rights in an instrument, including a
33 power of attorney, constituting the other spouse as the
34 husband's or wife's attorney in fact, as provided in section
35 597.5, it is not necessary for the spouse to join in the

1 granting clause of the same or a like instrument.

2 EXPLANATION

3 This bill relates to a power of attorney for the conveyance
4 or encumbrance of homestead property.

5 The bill provides that a spouse who executes a power of
6 attorney containing the legal description of the homestead
7 together with the language "or any subsequently acquired
8 homestead" or substantially similar language, may convey or
9 encumber the homestead even if the principal acquires a
10 different homestead after the execution of the power of
11 attorney. The bill further provides that a power of attorney
12 executed at a time when the principal does not own a home that
13 authorizes the attorney in fact designated by the power of
14 attorney to convey or encumber any homestead property
15 subsequently acquired is also sufficient to allow the
16 conveyance or encumbrance of any later acquired homestead.

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