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Sec. 8. HOMESTEAD. At any time after the return of the inventory the court, of its own motion or upon application, shall set apart the homestead to the decedent's spouse, or in case of his death, to the minor children. The court may set apart the homestead to any adult children who have been declared incompetent by order of court. The homestead may be set aside without filing of inventory if no inventory is required by the court or if no administration is had under Article IV of this code. Any homestead set apart under this section shall not be subject to administration and shall be exempt from all claims against the estate excepting any lien thereon at the time of the decedent's death.

COMMENT: The homestead has traditionally been exempt from the claims of unsecured creditors; both during life and after death. E.g., Secs. 55-9-79 and 61-12-2, ACLA 1949. The function of the exemption is to provide a place for the family and its surviving members where they may live free of fear of deprivation. After death, the homestead provides "shelter, care, and support for the widow and minor children." Shively Estate, 145 Cal. 400, 78 P. 869 (1904); Kachigian Estate, 20 Cal.(2d) 787, 128 P.(2d) 865 (1942).

This section does not state a legal definition of "homestead." That definition is set out in Sec. 55-9-79, ACLA 1949, as amended by Ch. 61, SLA 1957, Sec. 1. Also see Seagreen v. Wendler, 5 A. 715 (1917); Williams v. Thompson, 7 A. 601 (1927). While perhaps some distinction might be made in terms of definition before and after death it has not been the usual custom to do so. E.g., Mass. Laws Anno. (Supp. 1959) c. 103, Sec. 4.

The third sentence of the section . . .