

THE MASSACHUSETTS HOMESTEAD ACT AND RECENT CHANGES

Homeownership is the American dream. However, many Massachusetts homeowners are not aware of a relatively simple way to protect the equity in their home from creditors.

The Massachusetts Homestead Act is a law (MGL Chapter 188) under which a homeowner may establish an Estate of Homestead. A homestead estate provides limited protection of the value of the home. The homestead estate is designed to protect home ownership from execution and forced sale, so long as the owner or covered family member occupies or intends to occupy the property as his or her principal place of residence.

The Massachusetts legislature recently amended this law and the changes are scheduled to take effect on March 16, 2011.¹ One of the major changes provided is the creation of an “Automatic Homestead Exemption.” The Automatic Homestead Exemption exists in a home for the benefit of the homeowner and his or her family members who occupy or intend to occupy the home as a principal residence. Therefore, as long as you and/or your family members maintain the home as your principal residence, up to \$125,000 of the equity in your home is automatically protected under the law.

Additionally, the amended law provides for a “Declared Homestead Exemption” which protects up to \$500,000 against unsecured creditor claims. The Declared Homestead Exemption must be in writing, executed, and recorded to be effective. Finally, the amended law provides coverage to beneficiaries of a trust who occupy a home as a principal residence. Taking advantage of the Declared Exemption is relatively simple. The steps required are:

1 Access the Registry of Deeds where your residence is located on-line. For example:

- a.* Suffolk County: www.suffolkdeeds.com
- b.* Norfolk County: www.norfolkdeeds.org
- c.* Middlesex South District: www.cambridgedeeds.com
- d.* Middlesex North District: www.loweldeeds.com
- e.* Plymouth County: www.plymouthdeeds.org
- f.* Barnstable County: www.barnstabledeeds.org
- g.* Southern Essex District: www.salemdeeds.org
- h.* Northern Essex District: www.lawrencedeeds.com

2 Look up the pertinent information to identify your property (e.g., Book and Page) by searching for your name and choosing document type “Deed” on-line.

¹ Chapter 395 of the Acts of 2010.

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- 3** Print out a copy of the Declaration of Homestead form on-line. Please note that if you are disabled or age 62 or older, a separate form is required.

- 4** Complete the form and sign it in the presence of a Notary Public. The form must be properly notarized.

- 5** File the completed form at the Registry of Deeds for the county where the property is located along with the required payment. You may mail the form to the Registry with a check made payable to the Registry of Deeds in the required amount. The cost of filing is generally less than \$40.

Once recorded with the appropriate Registry, your Declared Homestead Exemption is in effect. Generally you do not have to file a new form if you re-finance or take out a home equity line or second mortgage, unless required by the lending institution.

As a reminder, both the Automatic Homestead Exemption and the Declared Homestead Exemption protect the equity in your home from unsecured creditors. They do not provide protection from federal, state, and local taxes and liens; a lien on the home recorded prior to the creation of the estate of homestead; a mortgage on the home; and certain court orders.

If you have already filed a homestead declaration, it will continue in full force and effect. However, if you have not and the equity in your home exceeds \$125,000, you should strongly consider filing one.

If you need assistance, please feel free to contact us.

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