

## Massachusetts Expands Protections for Homeowners

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Declaration of Homestead prior to 2011, such Declaration will be governed by the new statute, and will be effective as of the date it was initially filed. The new statute does *not* require homeowners who previously filed to file new Declarations.

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### *Definition of "home"*

In addition to creating the automatic protection, the new law expands the definition of "home," by explicitly providing the same homestead protection to manufactured homes, 2-4 family dwellings, condominiums, and units in a cooperative. The new legislation also expands the homestead protection to cover resident beneficiaries of a home that is held in the name of a trust. The protection for a trust, however, is not automatic. In order to obtain such protection, the trustee must file a Declaration with the appropriate Registry of Deeds, providing the names of the beneficiaries and stating that the property is their principal residence.

### *Insurance and Sale Proceeds*

Still another expansion of the homestead protection created under the new statute, applies to sales and insurance proceeds relating to homestead property. Under the new statute, sale proceeds are protected for the period of the earlier of one (1) year from the date of the sale of the homestead property, or the date on which a new homestead property is purchased. For insurance proceeds from a principal residence received due to casualty loss, the period of protection is the earlier of two (2) years from the date of loss, or the date upon which the homestead property is repaired.

### *Multiple Owners*

The new statute not only expands the protections offered under the previous Homestead Law, but also attempts to clarify many lingering questions that had been frustrating homeowners and lawyers alike. One major area of clarification came with

respect to protection for multiple owners. Under the new statute:

- Joint owners, or spouses who own the home as a tenancy-by-the-entirety (which is typical for married couples), share one indivisible exemption;
- Homeowners living together who own the home as tenants in common must share the \$500,000 exemption *pro rata* based on their ownership interest in the home. This is also true of the beneficiaries of a trust who have obtained homestead protection.

### *Effect of marriage, divorce and death*

As to declared homesteads, the statute provides that the homestead of a single person who marries automatically benefits the new spouse. Further, a declared homestead will continue to benefit the former spouse of a divorced homeowner who filed a declaration during the marriage, along with the minor children who continue to reside in the home as a principal residence. Homestead protection also continues for the surviving spouse of a deceased homeowner who filed a declaration.

### *"Elder/Disabled" Homesteads and "Stacking" Homestead Exemptions*

Although a regular homestead exemption must be shared by multiple owners, for older or disabled homeowners an entirely separate classification of homestead exemption is available, and, for qualified owners, may be combined or "stacked," with the regular homestead exemption (and with other multiple/elder exemptions) to increase the total value in the home protected. Under the "elder/disabled" homestead provision, co-owners over age 62 or disabled owners, regardless of marital status, are each entitled to a \$500,000 exemption. By way of illustration, if Grandma, 77, Grandpa, 79, and Disabled Grandson, 23, live together in their home and are co-owners, they will be entitled to a

On December 16, 2010, Governor Deval Patrick signed into law An Act Relative to the Estate of Homestead, revising the Massachusetts homestead exemption law, G.L. c. 188, §§ 1-10. The revision, which took effect on March 16, 2011<sup>1</sup>, provides additional protections for homeowners, and includes many important and long-awaited clarifications to the current statute. While this Update does not cover every aspect of the new law, it does highlight the significant changes.

### *Automatic homestead*

An estate of homestead is a property interest intended to secure an owner's right in his principal residence free of attachment or seizure by creditors. Prior to the statute's revision, only homeowners who filed a signed and notarized Declaration of Homestead in the Registry of Deeds for the county in which the residence was located had homestead protection. The written Declaration secured protection for up to \$500,000 in equity in the home. The revised law, however, creates an automatic homestead exemption (i.e., protected interest) in the amount of \$125,000 without the necessity of any writing or filing; additionally, homeowners can still increase that protection to \$500,000 by filing a written Declaration of Homestead, as before. For homeowners who have already filed a

<sup>1</sup> Per Chapter 395 of the Acts of 2010.

cumulative exemption of \$1,500,000. The rules can be confusing, however, if only one of the owners qualifies for the elder/disabled homestead. For instance, under the statute, if Mom, 64, lives with Dad, 59, they will be entitled only to a single \$750,000 exemption until Dad turns 62. Under the statute, a “disabled” person is one who is disabled according to the criteria set forth by the Social Security Administration.

#### *Relationship to Bankruptcy Rules*

The protection afforded a homeowner through the homestead exemption is also relevant if a homeowner is ever forced to file for bankruptcy. So long as the homeowner has recorded a Declaration of Homestead before he files a bankruptcy petition, then he should be entitled to take advantage of the Massachusetts Homestead Exemption to exclude up to \$500,000 in the equity of his principal residence from being liquidated or otherwise attached by creditors - although in some circumstances provisions of the federal Bankruptcy Code may result in the exemption being capped at a lower amount, primarily if the home was recently acquired. Persons seeking bankruptcy protection should always consult with an attorney before taking any legal action. If a homeowner has not filed a Declaration of Homestead prior to filing a bankruptcy petition, then he will only be eligible to exempt the first \$125,000 of his home’s value. It is important to note that while pre-existing debts are covered by the homestead exemption, filing a Declaration of Homestead will not protect your property against certain liens and attachments, such as mortgages, tax liens, support payment liens, and pre-existing liens. Additionally, the value of a primary residence can only be protected up to \$500,000 of equity; therefore, if you own a property in which you have more than \$500,000 of equity, creditors may still seek to attach the value of the house in excess of that amount.

Each person hoping to take full advantage of this new law should consider the following: (1) if you are under 62, make sure that a Declaration is recorded with the applicable Registry of Deeds in your name

and your spouse’s name, even if your spouse is not listed on the deed (but, as noted previously, *existing* recorded Declarations without a spouse’s name are fully valid); (2) for each co-owner residing in the home that is over age 62 or disabled, make sure that separate Declarations are recorded in the name of each qualifying person; and (3) if a primary residence is held by a trust, it probably could not have been homesteaded until now. Declare a homestead in the name of all beneficiaries of the trust who reside in the home.

As with many overhauled statutes, not every question has a clear answer yet, and further complications will undoubtedly arise over time. For additional guidance, to obtain answers to any questions you may have about this Update, or for advice on maximizing the new statute’s protection for your home and family, please contact Burns & Levinson LLP.

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