

QUESTIONS and ANSWERS

The Homestead Act

Massachusetts General Laws, Ch. 188, §1-10



William Francis Galvin
Secretary of the Commonwealth

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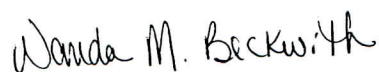
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Dear Homeowner,

This pamphlet has been designed to answer some of the basic questions asked every day pertaining to the Homestead Act. It is not designed to provide any legal advice or address the practical effect of a claim of Homestead. As in all areas of the law, to fully understand what your rights are you should consult an attorney of your choice.

If you have any further questions or concerns about how the Registry of Deeds can assist you in filing a Declaration of Homestead, please do not hesitate to give the Registry of Deeds office a call. We are here to serve you.

Sincerely,



Wanda M. Beckwith
Register of Deeds, Southern Berkshire District



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What is a Declaration of Homestead/Homestead Protection?

An Estate of Homestead is a type of protection for a person's residence, in the form of a document called a "Declaration of Estate of Homestead". The form is filed at the Registry of Deeds in the county where the property is located, referencing the title/deed to the property. It allows homeowners in Massachusetts to protect their property up to five hundred thousand dollars (\$500,000) of the value of their primary residence, per family.

Who can file a Homestead protection?

The owner or owners of a home or those who rightfully possess the premises by lease or otherwise and also occupy or intend to occupy the home as a principal residence may file for the Homestead protection. A sole owner, joint tenant, tenant by the entirety or tenant in common may all be regarded as owners, provided that only one owner may acquire an estate of homestead in any such home. If you are married and you and your spouse own the property as tenants by the entirety, when one married person files a homestead, their spouse and family members receive homestead protection on the premises as well.

Where do I file my Homestead?

All Homesteads must be filed in the county in which the residence is located. For **Southern Berkshire District**, you may mail or record your Homestead in person at the **Southern Berkshire District Registry of Deeds, 334 Main Street, Suite 2, , Great Barrington, MA 01230-1894**. To acquire a claim of Homestead for a mobile home, you must file at the city or town clerk's office in the city or town in which the mobile home is located. Be sure the form is filled out completely and has been properly notarized, and remember to enclose a check for the proper recording fee with the Homestead form. The check should be made payable to the **Commonwealth of Massachusetts**.

Homestead forms may be obtained at most Registries of Deeds; check your county's website at www.sec.state.ma.us/rod. They are also available at legal stationery stores or your local attorney's office. Forms for mobile homes are available at your city/town clerk's office.

How am I protected?

The real property or manufactured home which serves as an individual's principal residence upon filing a Declaration of Homestead, shall be protected against subsequent attachment, levy on execution or sale to satisfy debts to the extent of five hundred thousand dollars (\$500,000) per residence, per family.

This would include either a parent and a child or children, a married couple and their children, if any, or a sole owner. Thus, a single person who is the sole owner of a primary residence may file for the Homestead protection to the extent of \$500,000.00.

How am I protected if I am 62 or older, or disabled?

The real property or manufactured homes of persons sixty-two (62) years of age or older, regardless of marital status, or of a disabled person or persons, regardless of age, shall be protected against subsequent attachment, seizure or execution of judgment to the extent of five hundred thousand dollars (\$500,000) each.

Real property or manufactured homes must serve as an individual's principal residence and each individual filing will be eligible for protection up to a maximum amount of five hundred thousand dollars (\$500,000) each regardless of whether such declaration is filed individually or jointly with another. Elderly persons filing jointly, regardless of marital status, will be exempt up to five hundred thousand dollars (\$500,000) each. Be sure to use the proper homestead form when you file.

What does the Homestead Law mean by a "disabled person"?

A disabled person is defined as an individual who has any medically determinable permanent physical or mental impairment which would meet the disability requirement of supplemental social security. You must attach to the Homestead form either the original or a certified copy of the award letter issued by the United States Social Security Administration, or a letter signed by a licensed physician registered with the Massachusetts Board of Registration in Medicine. Disabled

persons must meet the disability requirements stated in 42 USC 1382 (a) (3) (A) and (C). Basically, an individual is considered disabled – for the purpose of this law – if he or she cannot engage in any gainful activity as a result of the physical or mental impairment.

Are my spouse and children covered, should I pass away?

Yes. Should the parent who declares the Homestead die, the law protects the residence until the youngest unmarried child reaches the age of eighteen (18) and until the surviving spouse dies or remarries.

If I am over 62 and my spouse is under 62, should we both file?

No. The law states that only one spouse under 62 years of age can file a Homestead under Section 1 on behalf of themselves and his or her family. However, for elderly and disabled individuals, the protection of \$500,000 under Section 1A is for each person's ownership interest in the residence. If a non-elderly homestead exemption already exists and one of the spouses reaches the age of 62, it may be beneficial to have that person file an over 62 (elderly) homestead.

If you and your spouse are in this situation, both should seek legal advice to determine your best course of action. Recent Bankruptcy Court decisions impact how a Bankruptcy Court will interpret the priority of the liens on the premises and the protections of the homestead. **In all cases, you may want to consult an attorney.**

Will my Homestead Declaration protect my home from being taken if I go into a nursing home?

Liens imposed by the Massachusetts Department of Transitional Assistance (formerly Public Welfare), as a result of the payment of Medicaid benefits, are exempt from the Homestead protection. However, as of the printing of this pamphlet, as long as the recipient, or the spouse of the recipient, is alive, the Commonwealth will not look to the residence for reimbursement of Medicaid benefits. If the surviving spouse is also the recipient of Medicaid benefits, the Commonwealth will file a claim for reimbursement from the estate

for the entire amount of Medicaid benefits paid, once the surviving recipient has died. The rules and regulations regarding Medicaid are complicated and constantly changing. You should seek qualified counselors to address your specific concerns regarding Medicaid.

Is there anything I will not be protected from?

The following are exempt from the Homestead Law:

- federal, state and local taxes, assessments, claims, and liens;
- mortgages used to purchase the residence, and in the case of the elderly homestead, first and second mortgages held by financial institutions or others;
- an execution issued from the Probate Court to enforce its judgment that a spouse pay for the support of a spouse or minor children;
- where buildings on land not owned by the declarant of a Homestead estate are attached, levied upon or sold for the ground rent of the lot whereon they stand;
- upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity;
- debts contracted prior to the acquisition of the homestead.

What happens to my Homestead if I should remortgage or take out a second mortgage or home equity loan?

Existing law on the effect of refinancing on an existing homestead is unclear. If you are in this situation, you should ask your lawyer whether you should file a new homestead after refinancing.

If I divide my time equally between my winter and summer residences, can I declare a Homestead on both?

No. A Homestead can be declared only on an applicant's "principal residence". A person can have more than one residence but the statute only allows the protection on one's legal domicile. There is

no legislative intent to allow the exemption to apply to a vacation and not primary residence. For example, one spouse cannot declare a Homestead exemption on one residence while the other spouse declares the exemption on the other residence, unless each can prove that the residence is their "principal residence".

**Does the Homestead protection
take the place of home insurance?**

Absolutely not! The Homestead protection is not a substitute for home insurance or any other type of liability insurance. These are separate and distinct types of protection. The Homestead protection will be effective after any liability insurance is used to pay for any judgments that are related to liability incurred under that particular insurance policy (e.g. home, automobile, etc.)

**How does the Homestead Declaration help protect a home
against unsecured creditors in bankruptcy proceedings?**

Remember that the Homestead Declaration protects a homeowner only from unsecured creditors. It will not offer protection from first or second mortgage lenders and/or equity lenders who possess a security interest in a home. If payments are not current on these types of secured credit, a homeowner runs the risk of losing the home to foreclosure proceedings.

In a Chapter 7 bankruptcy, which is an asset liquidation proceeding, a homeowner is allowed to claim certain exemptions which function as asset protection allowances. If a Homestead Declaration is in place, and the state exemptions are claimed, a homeowner would be allowed to retain a much greater portion of the proceeds from a liquidations sale of the home than s/he would be allowed to keep under federal bankruptcy law exemptions. This factor in turn decreases (or eliminates) the possibility that the homeowner would be required to sell his/her home as part of Chapter 7 proceedings.

In all Chapter 13 bankruptcy proceedings, the court will require a homeowner to repay some or all of the unsecured debt over a three- to five-year period. You will be required to repay a percentage of that debt at least equal to that which the unsecured creditors would receive were a homeowner required to proceed under Chapter 7 liquidation regulations. By increasing the amount of the home's exemption, the Homestead Declaration decreases the proceeds which would become available for repaying unsecured creditors through the Chapter 7 alternative. This may decrease the percentage of the unsecured debt the homeowner would be required to repay through a Chapter 13 proposal.

Where can additional information be obtained about bankruptcy issues as they apply to Homestead protection?

This information can be discussed with qualified counselors from the Consumer Credit Counseling Service, a private non-profit agency with chapters nationwide. In MA, contact the Consumer Credit Counseling Service of Southern New England at: 1-800-208-2227.

Is the Homestead form difficult to understand and fill out?

No. It simply asks for basic information. Just be careful when writing your book and page number or your Certificate of Title number. Either number is shown on your deed. If you own recorded land, you will write the book and page of your current deed on the form. If you own registered land, you will write your certificate number from your current Certificate of Title on the form.

Can my Homestead be terminated?

The estate or claim of Homestead will be terminated upon the sale or transfer of the real property or mobile home during the declarant's lifetime, upon the death of the declarant and the remarriage of the declarant's surviving spouse and upon each child reaching the age of majority or by a release of the Homestead estate duly signed, sealed,

and acknowledged by the owner and the owner's spouse, if any, and recorded at the Registry of Deeds, or when the property ceases to be the principal residence. In addition, the Bankruptcy Court has ruled that the filing of a sequential Declaration of Homestead acts to discharge a prior declaration.

What is the filing fee?

The cost of filing the Declaration of Homestead is thirty five dollars (\$35.00). The declarant filing must sign the form and his/her signature must be notarized. Remember, all declarants over 62 must sign.

How can I tell if my real property is recorded or registered land?

In the large majority of cases your real property is recorded land. Your evidence of title will be a quitclaim deed.

If your property is registered land, you may have received a large document called an Owner's Duplicate Certificate of Title. Owners' Duplicate Certificates of Title were eliminated as of April 9, 1997. After this date, you would have received a certified copy of your Certificate of Title. (If you are not sure whether your real property is recorded or registered, call your Registry of Deeds.)

Chapter 218 of the Acts of 2004 guarantees this act shall apply to declarations of homestead recorded or filed for registration pursuant to section 1 or 1A of chapter 188 of the General Laws before, on, or after the effective date of this act, but the increase in the amount of homestead protection for declarations recorded or filed for registration before the effective date of this act shall not have priority over, and shall be subordinate to, any lien, right or interest recorded or filed for registration before the effective date of this act.