

The Massachusetts Homestead Act - M.G.L. c. 188 § 14

WHAT IS A 'HOMESTEAD'?

An estate of homestead is a type of protection for a person's principal residence. A homestead estate exempts a certain amount of equity of a home from attachment, seizure, execution on judgment, levy, and sale for the unsecured debts of the owner of the home; excluding the following:

- Federal, state, and local taxes, assessments, claims, and liens;
- Liens recorded prior to the creation of the estate;
- Mortgages;
- Orders of the Probate Court for support;
- A levy or sale for ground rents (where the homeowner does not own the land); and
- An execution from a court to enforce a judgment based upon fraud, mistake, duress, undue influence, or lack of capacity.

Under the Homestead Act, the homeowner's equity in the home is protected for up to one year after the sale of the home. If the home has suffered a casualty that results in the payment of insurance proceeds, then the insurance proceeds are protected for up to two years in order to allow the homeowner time to acquire a homestead in a new (or reconstructed) home.

Homestead protection is available for owner-occupied, residential one-to-four-family homes, condominium units, cooperative apartments, and for manufactured (mobile) homes. Co-owners of a home "share" the exemption amount.

AUTOMATIC HOMESTEAD

All homeowners are entitled to automatic homestead protection of up to \$125,000 of the equity in their home. You do not need to do anything to have the benefit of this protection.

An automatic homestead can be subordinated to an unsecured debt of the homeowner of up to \$20,000 but the homeowner and any non-owner spouse must consent in writing.

DECLARED HOMESTEAD

By making a written declaration of homestead, recorded in the Registry of Deeds, homestead protection is increased to \$500,000 per residence, per family. The homestead shall benefit each owner named on the homestead and each of the owner's family members who occupy or intend to occupy the home as their primary residence.

Some other benefits of declaring a homestead include:

- A non-owner spouse who lives with the owner has the benefit of the homestead (until terminated in writing);
- A declared homestead cannot be subordinated to an unsecured debt;
- If an unmarried owner declares a homestead and marries thereafter, the declaration will automatically benefit the owner's spouse upon marriage; similarly, a divorce and/or remarriage will not affect the homestead of the spouse who remains in the home as his/her primary residence;
- A trustee of property held in trust can declare homestead for the beneficiaries of the trust who occupy the home as their principal residence;
- Elderly (62+ years) and disabled persons (all ages) who declare homesteads are EACH entitled to a SEPARATE EXEMPTION of up to \$500,000, which is personal and not shared with any other co-owners of the home—regardless of marital status.
 - So, if two (2) owners qualify for the elderly/disabled homestead protection, the aggregate protection on the home shall be one million dollars (\$1,000,000).

A HOMESTEAD IS NOT HOME INSURANCE

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.).