

Mass General Laws Chapter 188 – The Homestead Act

To read the Massachusetts statute that governs Declarations of Homestead, [CLICK HERE](#)

Frequently Asked Homestead Questions

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 the equity in their home up to \$500,000* of the value per residence, per family.

** Older Homesteads recorded prior to October 26, 2004 automatically provide increased protection without the necessity of recording a new Homestead.*

How does the Homestead work?

By filing a Declaration of Homestead, you exclude up to \$500,000 in the value of your personal residence from creditors. You still may incur debts and, if you have other assets like bank accounts or a vacation home, they can be seized to satisfy your debts, but your home would be protected for as long as you continued to live in it.

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.

As defined in the statute, the word 'family' shall include either a parent and a child or children, a husband and wife 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 a Homestead protection to the extent of five hundred thousand dollars (\$500,000).

Where do I file my Homestead?

All Homesteads must be filed in the county in which the residence is located. 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. An attorney can assist you in preparing a Homestead for a small fee, or the forms are also available at the Registry of Deeds.

When should I record a Homestead?

As soon as possible. The Homestead only protects you from debts that come into existence after the Homestead has been recorded. When you need the Homestead, it's too late to record it. (Although most attorneys advise clients to record a Homestead even after a debt has come into existence since it might provide some protection).

What's the downside of a Homestead?

There isn't one. Having a Homestead does not prevent you from selling or refinancing your home. It does not harm your credit report. It just protects your equity in your home.

Does a Homestead replace insurance?

Absolutely not. You should still carry adequate insurance on your home, car and possessions. The Homestead is in addition to 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.)

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 protection to apply to a vacation home. For example, a husband cannot declare a Homestead exemption on one residence while the wife declares the exemption on the other residence, unless each can prove that the residence is their "principal residence".

My spouse and I both own our home; do we both sign the Homestead form?

No, the Homestead law specifies that only one spouse may file a Homestead, but that Homestead protects the equity in the family home against creditors of either spouse. If you or your spouse are 62 or older, however, you may both file a Homestead form.

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.

My brother and I jointly own our home; do we both file Homesteads?

If two or more people jointly own a home, every joint owner who lives in the house should file a separate Homestead.

Will a Homestead protect me from nursing home costs?

Not really. If you go into a nursing home and accumulate substantial charges that you cannot pay, the nursing home would be your creditor and could sue you or your estate for the amount owed. In this case, the Homestead protects up to \$500,000 equity in your home as long as you or your spouse or children live there. For lower income people in nursing homes who have their

bills paid by Medicaid (i.e., the Commonwealth of Massachusetts), the value of Medicaid benefits you receive are not protected by the Homestead.

Liens imposed by the Massachusetts Department of Public Welfare, as a result of the payment of Medicaid benefits, are exempt from the Homestead protection. However, 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 talk to an attorney to address your specific concerns regarding Medicaid.

I signed a deed transferring an interest in my home to my daughter; do I need a new Homestead?

Yes. If you already have a Homestead and then sign a deed transferring an interest in your home to someone else - even if you keep an ownership interest in the home and still live there - you must record a new Homestead to be protected. Signing a new deed automatically dissolves an existing Homestead.

I just refinanced; do I need a new Homestead?

There is no clear answer to this question. Some believe a newly recorded mortgage would dissolve the existing Homestead. Most lawyers and judges, however, feel that a mortgage is not a deed and therefore a new Homestead would not be necessary. We must emphasize, however, that this remains an unanswered question. Also, the debt created by the new mortgage is not covered by the Homestead.

Is it a good idea to file a new homestead, just to be safe?

Many people prefer to file a new Homestead when refinancing. The problem with this approach is that the Homestead protects against debts that arise after the Homestead is recorded. If you recorded a Homestead in 2000 and incurred a debt in 2002, the Homestead works. But if you record a new Homestead in 2005, that 2002 debt predates your Homestead which no longer protects your home from that debt. A new Homestead dissolves an older one, and there is no retroactive coverage.

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 \$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 \$500,000 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 \$500,000 each. Be sure to use the proper homestead form when you file.

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 would seem to be beneficial to have that person file an over 62 (elderly) homestead. However, because of a recent Bankruptcy Court decision, it would be safer for both parties to continue to claim the protection afforded by the traditional (under age 62) homestead. This is because Section 2 of Chapter 188 states "The acquisition of a new estate or claim of homestead shall defeat and discharge any such previous estate". That means that the filing of an elderly homestead by either spouse would rescind the under age 62 homestead and open up the claim period for previous creditors. It would be better to wait until both spouses reach 62 and then file a joint elderly homestead. In all cases, you may want to consult an attorney.

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.

Is there anything I will not be protected from?

The following are exempt from the Homestead Protection:

- 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 owner 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.

Can (a) trustee(s) file for home Homestead protection?

The Massachusetts Supreme Judicial Court determined in one case that registered land held in trust cannot be given Homestead protection. The case did not address recorded land. Until there is court clarification, we suggest you record a Homestead, even if your property is in trust and is not registered land.

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 liquidation 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 an attorney or counselor 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 (800) 208-2227 or a bankruptcy attorney.

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 declarant, 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 \$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.

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