

The Massachusetts Homestead Exemption

The Massachusetts Homestead Exemption is a simple but underutilized law that allows homeowners to protect certain equity in their principal residence from the majority of creditors. *Massachusetts General Laws Chapter 188, § 1* allows an owner of real estate, for the benefit of themselves or their family, to exempt Five Hundred Thousand Dollars (\$500,000.00) in home equity from attachment, levy on execution, or sale for payment. The filing fee with the Registry of Deeds is \$35.00.

The mechanism is relatively simple. A Declaration of Homestead, prepared for the owner, executed by them, and recorded at the Registry of Deeds in the County where they reside, provides the protection allowed by statute.

The estate of homestead, or “*homestead exemption*”, provides protection and security to homeowners, eliminating the threat that the equity in their principal residence could be exposed to satisfy common debts or obligations.

There are limited exceptions to the obligations afforded homestead protection:

- A town, city, the Commonwealth of Massachusetts, federal government, or other taxing entity may attach property or force a sale to collect taxes owed;
- Debts contracted prior to the acquisition (declaration) of the homestead are not exempt. Obligations which arise from any personal obligation, including negligence are included, but for obligations other than contract, it must be reduced to a judgment before the exception is triggered;
- Debts related to the purchase of the home (most commonly, mortgages) are not exempt.
- Orders of the probate court to collect obligations for the support of a spouse or minor children may be enforced over a Declaration of Homestead.

One quirk in the statute is that while it provides protection to an “owner or owners”, and for a single person or a family, “only one owner may acquire an estate of homestead in any such home.” Joint owners, including spouses, should therefore give serious consideration to which individual is more likely to incur liability for a claim that is not covered by insurance.

Finally, special provisions apply to the “elderly” (defined by statute as age sixty-two or older) or disabled, as defined by statute. Unlike the homestead discussed above, all qualifying owners may declare a homestead, allowing for greater protection. These special homestead provisions are governed by *Massachusetts General Laws chapter 188, § 1A*.

For more information and the required form visit the Registry of Deeds page on the Secretary of State’s website at: <http://www.sec.state.ma.us/rod/rodhom/homidx.htm>