

Revised Homestead Law Provides Greater Creditor Protection and Clarity

Revisions to the Homestead law went into effect in March of 2011. The most significant change is that the law now automatically protects up to \$125,000 of a family's home equity from many creditors. A home owner can increase the amount of protected equity if they take the extra step of filing a Declaration of Homestead in their Registry of Deeds. The Legislature has also clarified several important and previously unresolved questions by giving trusts the ability to file Declarations of Homestead, extending Homestead protection to home sale proceeds and insurance settlements, and describing the procedure for filing multiple Declarations of Homestead on the same piece of property.

Massachusetts is one of many other states to have Homestead laws in place to protect homeowners from losing their primary residences if they have no other assets available to pay their debts. Previously, protection was only available to homeowners if they filed a simple "Declaration of Homestead" in their Registry of Deeds. Upon filing, the homeowner could protect up to \$500,000 in equity, so long as a homeowner recorded the Declaration before a creditor filed a lien against his property. Even though this was a great tool for a homeowner to have, the law contained many inconsistencies and points of contention which have been corrected with the amended law.

The new Homestead law greatly improves the Homestead protection for *all* Massachusetts homeowners, not just the few who file the Declaration of Homestead. Under the new Homestead law, all homeowners automatically receive \$125,000 in creditor protection without having to file a Declaration of Homestead at all. (The \$125,000 figure is the total amount of protection per property, not per owner, which means that a husband and wife who own their home together automatically receive \$125,000 in protection, not \$250,000). If homeowners want additional protection, they can file a Declaration of Homestead and protect up to \$500,000 of equity per family, much like they could under the previous version of the law. However, under the new law, if both spouses own property together they must both sign the Declaration of Homestead. Co-property owners who are not in the same family unit will either receive \$500,000 of undivided protection (if they own the property as joint tenants) or \$500,000 of total protection divided between the property owners in proportion to their individual interests (if they own the property as tenants in common) so long as each owner signs his or her own Declaration of Homestead. Furthermore, the new law keeps the "elderly" Homestead exemption in place. This important exemption allows each homeowner over age 62 to file a Declaration of Homestead and receive the full \$500,000 of protection, giving married senior couples the ability to protect up to \$1 million of equity, instead of the \$500,000 of equity that younger families are allowed to protect.

Additionally, other significant changes in the law include:

- Trusts that contain the primary residence of the grantor receive protection when the trustee files a Declaration of Homestead which will now protect the equity of the home from many of a trust beneficiary's debts;
- A Declaration of Homestead executed by one member of a married couple prior to marriage will automatically protect the property for his or her spouse after the marriage takes place, and the protection will stay in place if the spouse who executed the Declaration dies before his or her spouse;
- Allows homeowners who sell their residence to protect up to \$500,000 of the sale proceeds from creditor claims for up to one year following the sale or until they purchase a new primary residence, whichever comes first; and,
- Protects funds received from an insurance claim for fire or loss for two years or until the home is repaired, whichever comes first.

While a Declaration of Homestead provides protection from claims of general creditors, it does not provide blanket protection from all types of creditors. Any claims recorded prior to the filing of the Declaration are not invalidated by the Homestead law, and taxes, alimony, child support, and some court judgments that result from claims of fraud and undue influence can always be recovered from home equity despite a Declaration of Homestead. Most importantly for homeowners in these troubling economic times, a Declaration of Homestead does nothing to protect a home when it comes to a mortgage – in the event of a default, no home equity is exempt under the Homestead law and the mortgage holder can still foreclose on the property.

Lastly, the law does clear up a previous question about the effect of refinancing a property that is protected by a Declaration of Homestead. The new Homestead law clearly states that a refinance or subsequent mortgage will supersede a Homestead but it will not terminate the Homestead's protection from other creditors.

The benefits for homeowners are clear. While the \$125,000 of automatic protection is great, it may not be nearly enough if you or a family member are involved in an accident or if your debts quickly spiral out of control through no fault of your own. The best solution in almost any case is to inquire about the preparation of a Declaration of Homestead to protect as much of your home equity as possible before problems arise.