

Homestead

M.G.L. C. 188 Section 1 and 1A

The most significant changes to homestead protection in Massachusetts in a decade occurred as a result of passage on August 4, 2000 of Chapter 174 of the acts of 2000. These changes affect both the regular homestead exemption and the elderly and disabled persons homestead exemption, both of which may be claimed under Chapter 188 of the Massachusetts General Laws.

Background

A homeowner in Massachusetts wishing to protect a principal residence from creditors may declare a "regular" homestead under M.G.L. c. 188 § 1, or an elderly or disable person homestead under M.G.L. c. 188 § 1A, both types of homestead provide protection of a principal residence against seizure by a creditor (up to a specified dollar amount).

Homestead protection does not apply to certain obligations as set forth in M.G.L. c. 188 § 1 and 1A.

These Include.:

- Debts relating to taxes
- Debts contracted prior to the filing of the declaration of homestead

For a regular homestead

- Debts in connection with the purchase of the home
- First and second mortgages
- Probate and Family Court executions for spousal support and child support
- Execution on a judgement "based upon fraud, mistake duress, undue influence or lack of capacity

Homestead protection is not automatic. A homeowner must claim the protection of the homestead law by recording a declaration of homestead in the Registry of Deeds for the county or registry district in which the real estate is located.

Regular homestead - Prior to the August 2000 amendments to the homestead law, the amount of the homestead exemption had remained at \$100,000. 00 for a number of years. Homestead may be declared by a sole owner, a joint tenant, a tenant in common or a tenant by the entirety.

- Only one owner is permitted to acquire a homestead estate for the benefit of his or her family. The term "family" includes "either a parent and child or children, a husband and wife and their children, if any, or a sole owner." M.G.L. c. 188 § 1.

Q. What is the effectiveness of a single declaration of homestead signed by more than one owner and real estate held in trust?

- A. 1. In the case where two co-owners signed the declaration of homestead the court held that the claim of homestead was valid only as to the party whose signature came first on the homestead form itself. Dwyer v. Cempellin 424 Mass. 26673 N.E. 2d 863 (1996).
2. Another case dealt with real estate held in a nominee trust in which the settlor was both the trustee and beneficiary and recorded a declaration of homestead. The court held that the settlor was not eligible for homestead protection. Assistant Recorder of the N. Registry Dist. v. Spinelli 38 Mass. App. 655,651 N.E. 2d 411 (1995).

Chapter 174 of the Acts of 2000

- Amends both regular homestead provision under M.G.L c. 188 § 1 and the elderly or disabled persons homestead provision under M.G.L. c. 188 § 1A. The amendment was effective November 2, 2000.
- Increases the amount of homestead from \$ 100,000 to \$300,000 for the regular homestead, and from \$200,000 to \$300,000 for the elderly or disabled persons.
- Both homesteads now are worth \$300,000. In the case of the elderly or disabled persons homestead, each person having a joint ownership interest in a principal residence may individually claim a \$300,000 exemption.
- Increase applies to existing homesteads. A pre-existing \$100,000 regular homestead will "automatically" become a \$300,000 homestead on November 2, 2000; a pre-existing \$200,000 elderly or disabled persons homestead likewise "automatically" became a \$300,000 homestead on November 2, 2000.
- In an effort not to have an impact on mortgages, attachments, and other liens that were perfected (recorded) prior to November 2, 2000 the new law provides that the automatic increase to \$300,000 will have no priority over and will be subordinate to such perfected interests.
- Attachment Prohibited - Both regular homesteads under M.G.L. c. 188 § 1, and elderly or disabled persons homesteads under M.G.L. c. 188 § 1A are exempt from attachment by a plaintiff who sues a defendant who has claimed homestead protection. It would appear, however, that an attachment may be made against real estate subject to a homestead in excess of the \$300,000 exemption.
- Execution Prohibited - A plaintiff who has filed suit against a defendant, recovered judgement and who obtains execution may not levy the execution against exempt property M.G.L. c. 235 § 34. It would appear, however, that a creditor should be able to levy execution against homesteaded real estate in excess of the new \$300,000 exemption.

Conclusion

By simply increasing the amount of the exemption and not accepting the view that principal residence should automatically be protected from creditors, the Legislature has given protection only to those who have taken affirmative steps to record a regular homestead or an elderly or disabled persons homestead.

The significant increase in the exemption in the year 2000 clearly benefits homeowners who may desire to shield their principal residence from the reach of creditors. However, the homeowner must take affirmative

steps to declare the homestead exemption. If you are purchasing a home or if you are refinancing and have not previously recorded a homestead exemption, Lane, Lane & Kelly would be happy to take care of all the paperwork for a nominal charge of \$50.00 plus the recording fee of \$10.00.