

THE HOMESTEAD ACT



What is the Homestead Act?

The Massachusetts Homestead Act is a law under which a homeowner may establish an Estate of Homestead. A homestead estate provides limited protection of the value of the home, up to \$500,000.00 against unsecured creditor claims.

What is an unsecured debt?

Any loan that is NOT secured by something such as a house or a car is an unsecured debt. Credit card debt, personal loans, and education loans are examples of unsecured debt. Anyone who has loaned you money that is unsecured has the right to sue you if you cannot pay the money back. If a judge allows it, your assets can be sold to pay off these unsecured debts. But NOT your primary residence if you have a Declaration of Homestead.

How is the Homestead established?

The declaration is filed at the Registry of Deeds for the county where the property is located. There are two types of Homestead Declaration. The standard form of homestead declaration is filed under Section 1 of the Homestead Act. The second form is for an elderly or disabled person and is filed under Section 1A.

Section 1: Homestead Declaration under Section 1 may be filed by an owner of a home for the benefit of his or her family. Although only one owner files a Homestead Declaration, a declaration filed by one spouse benefits both, and their children.

Section 1A: An elderly (age 62 or older) or disabled person may declare a Homestead under Section 1A. The Section 1A homestead benefit does not extend to other family members, but each qualified owner may file separately.

Under both sections, the property must be occupied as a principal residence and the extent of the homestead protection is \$500,000.00.

Is there anything I will not be protected from?

Yes. The Homestead Law cannot protect you from the following:

- Federal, state and local tax assessments, claims and liens.
- First and second mortgages held by financial institutions.
- An execution issued from the Probate Court to enforce its judgment that a spouse pay for the support of a spouse or minor children.
- Any court judgment against you that is based on fraud, mistake, duress, undue influence, or lack of capacity.
- Debts contracted prior to recording the Declaration of Homestead.

Will my Homestead protect my home from being taken if I go into a nursing home?

No. Liens imposed by MassHealth, as a result of payment of Medicaid benefits, are governmental liens which are exempt from Homestead protection.

Can I file a Homestead for my residence if it is a mobile home?

Yes. However, for a mobile home, the declaration form is to be filed at the city or town clerk's office in the city or town in which the mobile home is located, and not at the Registry of Deeds.

Can I declare a Homestead on both my winter and summer homes?

No. A Declaration of Homestead can only be made on your "principal residence". If you have more than one home, that statute only allows the protection for your legal residence. 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".

What information is required to file a Homestead?

You will need the name of the owner of the property, the property address and the title reference of the property. The title reference is the Book and Page of the owner's recorded deed, certificate of title number (if the property is registered land), or Probate Court docket number (for inherited property). The signed form is required to be notarized before filing. For a disabled person's homestead declaration, a disability letter must be attached.

Can a Trustee file for Homestead protection?

The Massachusetts Appeals Court has ruled that real estate held in a trust is not eligible for Homestead protection.

Does the Homestead protection take the place of homeowners insurance?

No. Homestead protection is not a substitute for homeowner's insurance or any other type of liability insurance.

Do I have to file a new Homestead every time I refinance or take out a second mortgage or home equity loan?

Generally, no. In some cases, however, the lending institution may require that your Homestead be released prior to or as part of the refinancing. You should check the language of your mortgage documents which may void a previously filed homestead. In that case you would have to refile.

Can my Homestead be terminated?

The Declaration of Homestead will be terminated upon the sale or transfer of your home during the declarant's lifetime, upon the death of the declarant and the marriage of the declarant's surviving spouse, and upon each child reaching the age of majority or by a release of Homestead estate duly signed, sealed, and acknowledged by the declarant and recorded at the Registry of Deeds, or when the property ceases to be a principal residence.