

# Declaration of Homestead

## A. What is Homestead Protection:

A “homestead estate” in Massachusetts can potentially protect the family home from creditors’ claims of up to a maximum of \$500,000.00 by protecting the property from execution, attachment and forced sale so long as the owner occupies or intends to occupy the home as his/her principal place of residence

## B. Types of Homesteads:

There are three types of Homestead: Regular Homestead, Elderly, and Disabled Person’s Homestead.

The regular Homestead allows an owner of real estate (whether sole, joint, tenant in common, or tenant by the entirety) to claim protection to the value of \$500,000.00 in a principal residence. Since November 1989, the owner is not required to have a family in order to claim the protection. Only one owner may acquire an estate of homestead in any such home for the benefit of his family.

A person age 62 or older, regardless of marital status, is allowed a \$500,000.00 Homestead protection where he/she occupy or intend to occupy the property as his/her principal place of residence and they file a declaration of homestead as an elderly person. This protection is also available to a disabled owner of any age who meets the definition of a disabled person at the time of filing (i.e., has any medically determinable permanent mental or physical impairment which would meet the disability requirements for SSI which are in effect at the time of filing) and files a declaration as an elderly or disabled person.\*

The Elderly and Disabled Person’s Homestead first became effective in 1987. This statute was amended in 1989 to clarify many of the ambiguities in the previous law and increase the amount of protection. A person who may have filed pursuant to the 1987 law prior to the effective date of the 1989 law shall be deemed to have filed under the 2004 law. This means that a person who filed a \$150,000.00 elderly and disabled persons homestead in 1987 now has a \$500,000.00 homestead which is governed by the law.

An individual who declares a regular Homestead and later becomes eligible for an Elderly or Disabled Person’s Homestead, should file a new declaration if two or more persons own the Homestead. Several elderly or disabled persons (i.e., husband and wife) who have an ownership interest in one principal residence may each file and obtain up to \$500,000.00 of protection on that residence.

The Homestead does not protect property from attachment, seizure or execution of judgment for the following debts:

- a. Federal, state and local taxes, assessments, claims and liens;
- b. First and second mortgages;
- c. Any and all debts, encumbrances, or contracts existing prior to the filing of the declaration;
- d. An execution issued from the Probate Court to enforce its judgment that a spouse pay a certain amount weekly or otherwise for the support of a spouse or minor children, and;

- e. For ground rent due to land not owned by the owner of Homestead estate.

### C. Procedure for Creating and Terminating a Homestead:

Declaring a homestead is done by using one of two simple procedures. The owner can designate the homestead in the deed at the time the property is purchased and the deed is recorded, or the owner can record at the Registry of Deeds a separate declaration. This must be signed, sealed and notarized. The declaration form can be obtained from the Registry of Deeds or at a legal stationary store. There is a small filing fee.\*

The Homestead will terminate in the following circumstances:

- a. Sale or transfer of the property during the declarant's lifetime;
- b. Sale or transfer of the declarant's interest in the property during his/her lifetime;
- c. Upon the death of the surviving declarant; or
- d. By deed or release signed by the declarant and recorded at the Registry of Deeds where the land is located.

### D. Cautions:

A declaration of homestead could potentially create an obstacle if the homeowner later tries to refinance the house or use the house as security for a home improvement or home equity loan. A lender is unlikely to grant a loan using the house as collateral if they will be unable to recover the money by attaching the house. This obstacle could be avoided by releasing the property from homestead and putting it back on later, or releasing the homestead only as to that particular creditor.

Finally, the homestead is not protected from judgments on debts that existed before the homestead was declared. Hence, homeowners will often only become aware of homestead when it is too late for them to benefit from it, i.e., after creditors are threatening.

Changes in the law effective December 19, 1990:

The mobile home owner or elderly and disabled persons may now be protected by homestead. A written declaration of homestead for a mobile home must be filed at the city or town clerk's office in the city or town where the mobile home is located.

A disabled person filing a declaration of homestead must now file with the declaration an original or certified copy of a Social Security Disability award letter, or a letter signed by a Massachusetts physician certifying the person meets federal disability requirements at the time of filing.

NOTE: Recent bankruptcy cases have had an affect on homesteads. Homestead protection may be applied differently in bankruptcy cases. You are advised to consult an attorney when bankruptcy is involved.

**Residents of the Town of Clinton should record Homestead documents with the:**

**Worcester Registry of Deeds located at 90 Front Street - Worcester, MA 01608**