

CHAPTER 395
S.B. No. 2405
THE ESTATE OF HOMESTEAD

AN ACT relative to the estate of homestead.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 188 and inserting in place thereof the following chapter:--

CHAPTER 188

HOMESTEADS

<< MA ST 188 § 1 >>

Section 1. For the purposes of this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Automatic homestead exemption”, an exemption in the amount of \$125,000 pursuant to section 4; provided, however, that: (1) with respect to a home owned as joint tenants or as tenants by the entirety, the automatic homestead exemption shall remain whole and unallocated between the owners, provided that the owners together shall not be entitled to an automatic homestead exemption in excess of \$125,000; and (2) with respect to a home owned by multiple owners as tenants in common or as trust beneficiaries, the automatic homestead exemption shall be allocated among all owners in proportion to their respective ownership interests.

“Declared homestead exemption”, an exemption in the amount of \$500,000 created by a written declaration, executed and recorded pursuant to section 5; provided, however, that: (1) with respect to a home owned by joint tenants or tenants by the entirety who are benefited by an estate of homestead declared pursuant to section 3, the declared homestead exemption shall remain whole and unallocated, provided that the owners together shall not be entitled to a declared homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to said section 3 shall be the product of: (i) \$500,000; and (ii) the co-tenant's or trust beneficiary's percentage ownership interest; (3) except as provided in clause (4), each person who owns a home and who is benefited by an estate of homestead declared pursuant to section 2 shall be entitled to the declared homestead exemption without reduction, proration or allocation among other owners of the home; and (4) separate estates of homestead may be declared pursuant to sections 2 and 3 on the same home, and in such event: (i) if the home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 3 shall be calculated in the manner provided in clause (2), and the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 2 shall be calculated in the manner provided in clause (3); or (ii) if the home is owned by joint tenants or tenants by the entirety, the declared homestead exemption for the owners together shall be the sum of \$500,000 multiplied by the number of declarations recorded pursuant to section 2, plus \$250,000; provided, however, that the homestead exemption under this subclause shall remain whole and unallocated among the owners; and provided further, that no owner who declares a homestead, acting individually, shall be entitled to claim an exemption of more than \$500,000; and (5) the calculation of the amount of homestead

exemption available to an owner shall not sever a joint tenancy or tenancy by the entirety.

“Disabled person”, an individual who has a medically-determinable, permanent physical or mental impairment that would meet the disability requirements for Supplemental Security Income under 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording.

“Elderly person”, an individual 62 years of age or older.

“Family” or “family members”, (1) married individuals, both of whom own a home, and any minor child; (2) a married individual who owns a home, a non-titled spouse of the married individual and any minor child; or (3) an unmarried individual who owns a home and any minor child.

“Home”, the aggregate of: (1) any of the following: (i) a single-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to 4-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as those terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of subsection (a) of section 11; and (3) the proceeds of any policy of insurance insuring the home against fire or other casualty loss as provided in clause (2) of said subsection (a) of said section 11.

“Minor child”, a person aged 21 and under, who is the natural or adopted child of an owner or owner's spouse entitled to the benefits of this chapter, notwithstanding any law to the contrary.

“Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder or holder of a beneficial interest in a trust.

“Principal residence”, the home where an owner, and the owner's family if applicable, resides or intends to reside as the primary dwelling; provided, however, that no person shall hold concurrent rights in more than 1 principal residence.

“Record”, “recording” or “recorded”, the act of recording in the registry of deeds or the registry district of the land court for the county or district wherein the home lies, except that with respect to a manufactured home located on registered land, recording in the registry of deeds shall be sufficient.

<< MA ST 188 § 2 >>

Section 2. (a) The estate of homestead of each owner who is an elderly or disabled person, regardless of marital status, shall be protected under this section against attachment, seizure, execution on judgment, levy and sale for payment of debts and legacies, except as provided in subsection (b) of section 3, to the extent of the declared homestead exemption; provided, however, that the declaration of homestead for such elderly or disabled person that complies with section 5 has been recorded; and provided, further, that each owner occupies or intends to occupy the home as his principal residence.

An owner of a home who qualifies under this section shall, upon recording of an elderly or disabled person's declaration of homestead protection, be eligible for protection of such ownership interest to the extent of the declared homestead exemption as set forth in clauses (3) and (4) of the definition of “declared homestead exemption” in section 1 regardless of whether such declaration is recorded individually or jointly with another.

(b) Except as provided in the following paragraph, each elderly or disabled person's estate of homestead shall terminate upon: (i) the sale or transfer of that person's ownership interest in the home, except where the elderly or disabled person is also the transferee of all or a portion of the transferred interest; (ii) the recorded release of that person's homestead estate; (iii) the subsequent declaration of an estate of homestead on other property; (iv) the abandonment of the home as the principal residence by the person; (v) the death of the person; or (vi) with respect to a home owned in trust, the execution of a deed or recorded release by the trustees.

In the event that an owner records a declaration under this section and then conveys to or is survived by a spouse who does not have the benefit of an estate of homestead created under this section or section 3 and the spouse occupies or intends to occupy the home as the principal residence, then the spouse shall be deemed, as of the time such spouse acquired title, to have the benefit of the declaration previously recorded to the same extent as if such declaration had been recorded under section 3, until the spouse becomes eligible for and records a declaration of homestead pursuant to this section.

(c) No declaration of homestead created under this section shall terminate the existing homestead rights of a non-titled spouse or any minor children.

(d) Nothing in this section shall prohibit an elderly or disabled person from declaring or continuing a homestead pursuant to section 3, but no person shall concurrently hold rights under both this section and section 3.

<< MA ST 188 § 3 >>

Section 3. (a) An estate of homestead to the extent of the declared homestead exemption in a home may be acquired by 1 or more owners who occupy or intend to occupy the home as a principal residence. The estate of homestead shall be created by a written declaration executed and recorded in accordance with section 5. A homestead declaration shall benefit each owner making the declaration and that owner's family members who occupy or intend to occupy the home as their principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as their principal residence.

(b) An estate of homestead shall be exempt from the laws of conveyance, descent, devise, attachment, seizure, execution on judgment, levy and sale for payment of debts or legacies except as follows:

(1) for a sale for federal, state and local taxes, assessments, claims and liens;

(2) for a lien on the home recorded prior to the creation of the estate of homestead;

(3) for a mortgage on the home as provided in sections 8 and 9;

(4) upon an order by a court that a spouse, former spouse or parent shall pay a certain amount weekly or otherwise for the support of a spouse, former spouse or minor children;

(5) where buildings on land not owned by the owner of the estate of homestead are attached, levied upon or sold for the ground rent of the lot upon which they are situated; and

(6) upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

<< MA ST 188 § 4 >>

Section 4. In the absence of a valid declaration of homestead recorded under this chapter, an estate of homestead to the extent of the automatic homestead exemption shall exist in a home for the benefit of the owner and the owner's family members who occupy or intend to occupy the home as a principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as a principal residence. The estate shall be held subject to this chapter, except for sections 2, subsection (a) of section 3 and section 5.

In the event that spouses occupy or intend to occupy separate homes, then both estates of homestead together shall not exceed the automatic homestead exemption. The recording of a declaration of homestead under this chapter shall supersede the automatic homestead exemption provided by this section, but shall not terminate the automatic homestead exemption applicable to the period between the creation of the automatic homestead and the later recording of a declaration of homestead. If a superseding declaration of homestead on the same home is later invalidated or terminated, the estate of homestead provided in this section shall be reinstated as of the date of its original creation.

A homestead under this section may be subordinated to a subsequent new loan or line of credit; provided, however, that the new loan or line of credit: (a) is not secured by a recorded document; (b) does not exceed \$20,000; (c) is exempt from the provisions of chapter 140D; (d) is evidenced by a written agreement executed by all record owners and their non-titled spouses for the purpose of subordinating the homestead as provided herein; and (e) contains a statement in substantially the following form, in boldface type and of a minimum size of 12-point font, "I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims up to the principal amount of the loan or line of credit provided under this contract." The subordination allowed in this paragraph shall not apply to credit card agreements or to any loan made in anticipation of a paycheck, tax refund or insurance settlement.

<< MA ST 188 § 5 >>

Section 5. (a) A declaration of homestead shall be in writing, signed and acknowledged under penalty of perjury by each owner to be benefited by the homestead, except as provided in clause (4), shall be recorded and shall comply with the following:

- (1) each owner to be benefited by the homestead, and the owner's non-titled spouse, if any, shall be identified;
- (2) the declaration shall state that each person named therein occupies or intends to occupy the home as their principal residence;
- (3) if the home is co-owned by a married couple, whether in their names only or as co-tenants with others, and the home is the principal residence or is intended to be the principal residence of both spouses, a declaration under section 3 shall be executed by both spouses; and
- (4) if the home is owned in trust, only the trustee shall execute the declaration.

(b) A declaration of homestead under section 2 shall, in addition to the requirements of subsection (a), include the following:

- (1) a statement that the owner to be benefited is an elderly person or a disabled person; and
- (2) with respect to a declaration of homestead benefiting a disabled person: (i) an original or certified copy of a dis-

ability award letter issued to the person by the United States Social Security Administration; or (ii) a letter signed by a physician registered with the board of registration in medicine certifying that the person meets the disability requirements stated in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording; provided, however, that the award letter or physician's letter shall be recorded with the declaration.

(c) A declaration of homestead shall not be created within a deed or other instrument vesting title in the owner.

(d) The statement of principal residence required in clause (2) of subsection (a) shall be binding upon an identified owner, including an owner who is a beneficiary of a trust, but may be overcome by an interested third party upon presentation of clear and convincing evidence to the contrary. In the event that spouses occupy or intend to occupy separate homes and valid declarations are recorded with respect to each, then both estates of homestead together shall not exceed the declared homestead exemption.

The estate of homestead of an individual who records a declaration of homestead under section 3 and who subsequently marries shall automatically be deemed to benefit that individual's spouse. Any subsequent recording of a declaration of homestead benefiting: (i) a family member identified on a prior declaration on the same home; or (ii) the spouse of that person, without an intervening release, shall relate back to the filing date of the earliest recorded declaration, but the provisions of this chapter pursuant to which the later recorded declaration was made shall control the rights of a person identified in the later declaration.

<< MA ST 188 § 6 >>

Section 6. In a case where a complaint for divorce, separate support, guardianship or conservatorship has been filed in the probate court by or against a person entitled to the benefit of an estate of homestead, the spouse and minor children of that person may use, occupy and enjoy the homestead estate until ordered otherwise by the probate court. The recording of an order of the probate court, together with the description of the homestead estate, shall prevent a beneficiary of the homestead estate from disposing of the estate until such time as the probate court revokes the judgment.

<< MA ST 188 § 7 >>

Section 7. The estate of homestead existing at the death or divorce of a person holding a homestead under section 3 or 4 shall continue for the benefit of the surviving spouse or the former spouse and minor children who occupy or intend to occupy the home as their principal residence. The estate of homestead of the surviving spouse or former spouse and minor children shall continue notwithstanding the remarriage of the surviving or former spouse. The right, title and interest of the deceased in the home, except the estate of homestead thus continued, shall be subject to the laws relating to devise, descent and sale for the payment of debts and legacies.

<< MA ST 188 § 8 >>

Section 8. No estate of homestead shall affect a mortgage, lien or other encumbrance previously existing, except as provided in this chapter.

<< MA ST 188 § 9 >>

Section 9. An estate of homestead shall be subordinate to a mortgage encumbering the home executed by all the owners of the home. For the purposes of this chapter, a mortgage shall include an instrument granting a security interest in a manufactured home or cooperative housing unit. The subordination shall not require the signature of a spouse who is not an owner. A mortgage executed by fewer than all of the owners of a home that is subject to an estate of homestead shall be superior only to the homestead estate of the owners who are parties to the mortgage and

their non-titled spouses and minor children, if any.

No statement that a homestead estate shall be subordinate to the mortgage shall be required in the mortgage instrument and nothing contained in a mortgage or any document executed in connection with the mortgage shall affect or be construed to create, modify or terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid. A mortgage lender shall not require or record a release of homestead in connection with the making and recording of a mortgage.

<< MA ST 188 § 10 >>

Section 10. (a) An estate of homestead created under section 3 or 4 may be terminated by any of the following methods:

(1) a deed to a non-family member conveying the home, signed by the owner and a non-owner spouse or former spouse residing in the home as a principal residence as of the date of the deed;

(2) a recorded release of the estate of homestead, duly signed and acknowledged by the owner and a non-owner spouse or former spouse residing in the home as a principal residence as of the date of the release;

(3) the abandonment of the home as the principal residence by the owner, the owner's spouse, former spouse or minor children, except that such abandonment shall terminate only the rights of the persons who have abandoned the home; provided, however, that no person in military service as defined in 50 U.S.C. appendix, section 511 shall be deemed to have abandoned the home due to such military service;

(4) in the case of a home the title to which is held in trust, by either: (i) the execution of a deed or a release of homestead by the trustee; or (ii) action of a beneficial owner identified in the declaration, who is not a minor child, taken in the same manner as provided in clauses (2) and (3); or

(5) the subsequent recorded declaration of an estate of homestead under section 3 on other property, except that such declaration shall terminate only the rights of the owner making such subsequent declaration and the rights of that owner's spouse and minor children who reside or intend to reside in the other property as their principal residence.

(b) No deed between spouses or former spouses or co-owners who individually or jointly hold an estate of homestead under section 3 or 4 and no deed between a trustee and a trust beneficiary or between a life tenant and a remainderman shall terminate the homestead unless each co-owner, spouse, former spouse or trust beneficiary entitled to the benefit of the homestead has executed an express release thereof pursuant to clause (2) or clause (4) of subsection (a).

(c) If a subsequent declaration on other property which terminates a homestead under clause (5) of subsection (a) is later invalidated, the prior declaration shall not be reinstated; provided, however, that the owner shall have the benefit of the provisions of section 4.

(d) Except for the subordination provided in section 9, nothing contained in a mortgage or any document executed in connection therewith shall terminate or otherwise affect a homestead estate.

(e) A deed reserving an estate of homestead shall convey, according to its terms, any title or interest in the property beyond the estate of homestead.

<< MA ST 188 § 11 >>

Section 11. (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or involuntarily, taken or damaged by fire or other casualty, then the proceeds received on account of any such sale, taking or damage shall be entitled to the protection of this chapter during the following periods:

(1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period ending on the date on which the person benefited by the homestead either acquires another home the person intends to occupy as a principal residence or 1 year after the date on which the sale or taking occurred, whichever first occurs; and

(2) in the event of a fire or other casualty, for a period ending on: (i) the date upon which the reconstruction or repair to the home is completed or the date on which the person benefited by the homestead acquires another home the person intends to occupy as a principal residence; or (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

(b) For the purposes of this section, occupancy of a trailer, manufactured home or other temporary housing shall not establish principal residency in a reconstructed or replacement home.

<< MA ST 188 § 12 >>

Section 12. If the property of a debtor is assigned under the laws relative to insolvent debtors and debtor claims and it appears to the court wherein the insolvency proceedings are pending that the debtor is entitled to hold a part thereof as a homestead and that the property in which estate of homestead exists is of greater value than either the automatic homestead exemption or the declared homestead exemption, as applicable, the court shall cause the property to be appraised by 3 disinterested appraisers, 1 of whom shall be appointed by the insolvent debtor, 1 of whom shall be appointed by the assignee and 1 of whom shall be appointed by the court; provided, however, that if either the assignee or insolvent debtor fails to make such appointment, the court shall appoint an appraiser for the assignee or the insolvent debtor. The appraisers shall be sworn faithfully and impartially to appraise the property and shall appraise and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in section 18 of chapter 236 for a judgment debtor and the residue shall vest in and be disposed of by the assignee in the same manner as property which is not exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in insolvency, as are allowed to appraisers of land seized upon execution.

<< MA ST 188 § 13 >>

Section 13. A deed, release or mortgage containing a statement of the marital status of a grantor may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith reliance on such deed, release or mortgage, an affidavit executed and acknowledged by the grantor, releaser or mortgagor under penalty of perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant had no spouse then entitled to claim the benefit of an existing estate of homestead, shall be conclusive proof of the nonexistence of such benefit at that time. The affidavit may be recorded in connection with the execution and delivery of a deed, release or mortgage and shall be accepted in the appropriate registry of deeds and registry district of the land court. The subsequent residency or renewal of residency in the home by a spouse of the grantor, releaser or mortgagor shall not defeat the priority of a mortgage, release or conveyance accepted in reliance on such affidavit.

<< MA ST 188 § 14 >>

Section 14. In all mortgage transactions, the closing attorney or settlement agent shall provide the mortgagor with notice of the right to declare homestead protection pursuant to this chapter, receipt of which shall be acknowledged in writing by the mortgagor. The notice shall include, but not be limited to, a summary of the differences between

the automatic homestead protection and the enhanced benefits acquired by making a declaration of homestead.

SECTION 2. Chapter 236 of the General Laws is hereby amended by striking out section 18, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:--

<< MA ST 236 § 18 >>

Section 18. If a judgment creditor requires an execution to be levied on property which is claimed by the debtor to be as a homestead exempt from such levy and if the officer holding such execution is of the opinion that the premises are of greater value than an amount equal to either the automatic homestead exemption or the declared homestead exemption, as applicable, as defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the manner provided by section 6. If in the judgment of the appraisers the premises are of greater value than the amount of either the automatic homestead exemption or the declared homestead exemption, as applicable, the appraisers shall set off to the judgment debtor so much of the premises, including the dwelling house, in whole or in part, as shall appear to them to be of the value of the amount of the exemption and the residue of the property shall be levied upon and disposed of in like manner as land not exempt from levy on execution; provided, however, that if the property levied on is subject to a mortgage, it may be set off or sold subject to the mortgage and to the estate of homestead in the same manner as land subject to a mortgage only.

<< Note: MA ST 188 §§ 1 to 14 >>

SECTION 3. All existing estates of homestead in effect on the effective date of this act shall continue in full force and effect notwithstanding the repeal of any law under which they were created and shall be governed by this act, notwithstanding their failure to comply with the execution requirements of section 5 of chapter 188 of the General Laws, as appearing in section 1 of this act.

Approved December 16, 2010.