

HOUSE No. 1591

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

1 SECTION 1. Chapter 188 of the General Laws is hereby amended by striking out
2 sections 1 through 10 and inserting in place thereof the following thirteen sections:

3 Section 1. (a) For the purposes of this chapter, the following terms shall have the
4 meanings set forth below.

5 “disabled person”, an individual who has any medically determinable permanent physical
6 or mental impairment that would meet the disability requirements for supplemental security
7 income under the provisions of 42 USC 1382c(a)(3)(A) and (C) as in effect at the time of
8 recording.

9 “elderly person”, an individual aged sixty-two or older.

10 “family” and “family members”,

11 (1) married individuals, both of whom own a home, and any minor child as defined
12 herein;

13 (2) a married individual who owns a home, his or her non-titled spouse, and any minor
14 child as defined herein; or

15 (3) an unmarried individual who owns a home, and any minor child as defined herein.

16 “home”, the aggregate of:

17 (1) any of the following: (i) a single family dwelling, including accessory structures
18 appurtenant thereto and the land on which it is located; (ii) a two-to-four family dwelling,
19 including accessory structures appurtenant thereto and the land on which it is located; (iii) a
20 manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as
21 both terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v) a
22 residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or
23 otherwise;

24 (2) the sale proceeds as provided in clause (a) of section 8; and

25 (3) the proceeds of any policy of insurance insuring the home against fire or other
26 casualty loss as provided in clause (b) of section 8.

27 “maximum automatic homestead exemption”, \$125,000.00, provided that:

28 (1) with respect to a home owned as joint tenants or as tenants by the entirety, the
29 maximum automatic homestead exemption shall remain whole and unallocated between the
30 owners, provided that the owners together shall not be entitled to an automatic homestead
31 exemption in excess of \$125,000.00.

32 (2) with respect to a home owned by multiple owners as tenants in common or as trust
33 beneficiaries, the maximum automatic homestead exemption shall be allocated among all owners
34 in proportion to their respective ownership interests.

35 “maximum declared homestead exemption”, \$500,000.00, provided that:

36 (1) with respect to a home owned by joint tenants or as tenants by the entirety, and who
37 are benefited by an estate of homestead declared pursuant to section one, the maximum declared
38 homestead exemption shall remain whole and unallocated, provided that the owners together
39 shall not be entitled to a declared homestead exemption in excess of \$500,000.00.

40 (2) if a home is owned by tenants in common or trust beneficiaries, the maximum
41 declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate
42 of homestead declared pursuant to section one shall be the product of (i) \$500,000.00 and (ii)
43 such co-tenant’s or trust beneficiary’s percentage ownership interest.

44 (3) except as provided in clause (4), each person who owns a home and who is benefited
45 by an estate of homestead declared pursuant to section 1A shall be entitled to the maximum
46 declared homestead exemption without reduction, pro-ration or allocation between or among
47 other owners of the home.

48 (4) separate estates of homestead may be declared pursuant to sections one and 1A on
49 the same home, and in such event:

50 (i) if the home is owned by tenants in common or trust beneficiaries, the maximum
51 declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate
52 of homestead declared pursuant to section one shall be calculated in the manner provided in

53 clause (2), and the maximum declared homestead exemption for each co-tenant and trust
54 beneficiary who benefits by an estate of homestead declared pursuant to section 1A shall be
55 calculated in the manner provided in clause (3), or

56 (ii) if the home is owned as joint tenants or as tenants by the entirety, the maximum
57 declared homestead exemption for the owners together shall be the sum of \$500,000.00
58 multiplied by the number of declarations recorded pursuant to section 1A, plus \$250,000.00. As
59 calculated in accordance with this paragraph, the maximum homestead exemption shall remain
60 whole and unallocated among the owners, provided that no one owner who declares homestead,
61 acting individually, shall be entitled to claim more than a \$500,000.00 exemption.

62 (5) the calculation of the amount of homestead exemption available to any owner shall
63 not be deemed to sever any joint tenancy or tenancy by the entirety.

64 “minor child”, a person aged 21 and under, who is the natural or adopted child of an
65 owner or owner’s spouse entitled to the benefits of this statute, notwithstanding any provision of
66 law to the contrary.

67 “mortgage” shall include an instrument granting a security interest in a manufactured
68 home or cooperative housing unit and the term “mortgagee” shall include the secured party under
69 any such instrument.

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

72 “principal residence”, the home where an owner, and his or her family, if applicable,
73 reside or intend to reside as the primary dwelling. No person may hold concurrent rights under
74 this chapter in more than one home.

75 “record”, “recording” and “recorded”, the act of recording in the registry of deeds or
76 registry district of the land court for the county or district where the home lies, except that, with
77 respect to a manufactured home located on registered land, recording in the registry of deeds
78 shall be sufficient.

79 (b) An estate of homestead to the extent of the maximum declared homestead exemption
80 in a home may be acquired subject to the provisions of section two by one or more owners who
81 occupy or intend to occupy said home as a principal residence. Said estate of homestead shall be
82 created by a written declaration prepared, executed and recorded in compliance with section two.
83 A homestead declaration shall benefit each owner identified as provided in section two and such
84 owner’s family members who occupy or intend to occupy the home as a principal residence. The
85 homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy
86 the home as a principal residence.

87 (c) Said estate shall be exempt from the laws of conveyance, descent, devise, attachment,
88 seizure, execution on judgment, levy and sale for payment of debts or legacies except in the
89 following cases:

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

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

92 (3) for any mortgage on the home as provided in sections five and six;

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

95 (5) where buildings on land not owned by the owner of a homestead estate are attached,
96 levied upon or sold for the ground rent of the lot whereon they stand;

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

99 Section 1A. The estate of homestead of each owner who is an elderly or disabled
100 person, regardless of marital status, shall be protected under this section against attachment,
101 seizure, execution on judgment and levy, except as provided in subsection (c) of section one, to
102 the extent of the maximum declared homestead exemption; provided that a declaration of
103 homestead protection for such elderly or disabled person that complies with section two has been
104 recorded; and, provided further, that such person occupies or intends to occupy such home as his
105 or her principal residence.

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

111 Except as provided in the following paragraph, each elderly or disabled person's estate of
112 homestead shall terminate upon (a) the sale or transfer of that person's ownership interest in the
113 home, except where such elderly or disabled person is also the transferee of all or a portion of the
114 transferred interest; (b) the recorded release of that person's homestead estate; (c) the

115 subsequent declaration of an estate of homestead on other property; (d) the abandonment of the
116 home as the principal residence by the person (e) upon the death of the person, or (f) with respect
117 to a home owned in trust, the execution of a deed or recorded release by the trustee(s).

118 In the event that an owner records a declaration under this section, and such owner
119 conveys to, or is survived by, a spouse who does not have the benefit of an estate of homestead
120 under either section one or this section, and the spouse occupies or intends to occupy the home as
121 his or her principal residence, then the spouse shall be deemed, as of the time he or she acquired
122 title, to have the benefit of the declaration previously recorded, as if such declaration had been
123 recorded under section one, until the spouse is eligible for and does record a declaration creating
124 an estate of homestead under this section.

125 No declaration creating an estate of homestead pursuant to section 1A shall terminate the
126 existing homestead rights of a non-titled spouse or minor children.

127 Nothing in this section shall prohibit an elderly or disabled person from declaring or
128 continuing a homestead pursuant to section one, but no one person may concurrently hold rights
129 under both section one and this section.

130 Section 2. Each declaration of homestead shall be in writing, signed and acknowledged
131 under penalty of perjury by each owner to be benefited by the homestead, except as provided in
132 subparagraph (d), shall be recorded and shall comply with the following:

133 (a) Each owner to be benefited by the homestead, and such owner's non-titled spouse, if
134 any, must be identified.

135 (b) The declaration shall state that each person so identified occupies or intends to occupy
136 the home as his or her principal residence.

137 (c) If the home is co-owned by a married couple, whether only in their names or as co-
138 tenants with one or more other parties, and the home is or is intended to be both spouses'
139 principal residence, a declaration under section 1 must be executed by both spouses.

140 (d) If the home is owned in trust, only the trustee shall execute the declaration.

141 (e) In addition to the foregoing, a declaration creating an estate of homestead under
142 section 1A shall include the following:

143 (1) a statement that the owner to be benefited is either an elderly person or a disabled
144 person, as defined in section 1; and

145 (2) with respect to a declaration of homestead benefiting a disabled person, there shall be
146 recorded with the declaration either: (i) an original or certified copy of a disability award letter
147 issued to the person by the United States Social Security Administration; or (ii) a letter signed by
148 a licensed physician registered with the Massachusetts Board of Registration in Medicine
149 certifying that the person meets the disability requirements stated in 42 USC 1382c(a)(3)(A) and
150 (C) as in effect at the time of recording.

151 A single instrument may contain separate homestead declarations by eligible co-owners
152 of the same home, and such instrument shall not be treated as a multifunctional document for
153 purposes of determining the recording fee. A declaration of homestead may not be created
154 within a deed or other instrument vesting title in the owner.

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

161 The estate of homestead of an individual who records a declaration under section one and
162 who subsequently marries shall automatically be deemed to benefit such individual's spouse.
163 Any subsequent recording of a declaration of homestead benefiting (i) a family member
164 identified on a prior declaration on the same home or (ii) the spouse of such person, without an
165 intervening release, shall be deemed to relate back to the filing date of the earliest recorded
166 declaration, but the section of this chapter pursuant to which the later recorded declaration is
167 made shall control the rights of a person identified in such later declaration.

168 Section 2A. In the absence of a valid declaration of homestead recorded under this
169 chapter, an estate of homestead to the extent of the maximum automatic homestead exemption
170 shall exist in any home for the benefit of the owner and the owner's family members who occupy
171 or intend to occupy the home as a principal residence. The homestead rights of non-titled family
172 members shall consist of the right to use, occupy and enjoy the home as a principal residence.
173 Said estate shall be held subject to the provisions of this chapter, except for subsection (b) of
174 section 1 and sections 1A and two.

175 In the event that spouses occupy or intend to occupy separate homes, then both estates of
176 homestead together shall not exceed the maximum automatic homestead exemption.

177 The recordation of a declaration of homestead under this chapter shall supersede the
178 automatic homestead exemption provided by this section, but shall not terminate the automatic
179 homestead exemption applicable to the period between the creation of the automatic homestead
180 and the later recording of a declaration of homestead. If a superseding declaration of homestead
181 on the same home is later invalidated or terminated, the estate of homestead provided in this
182 section shall be reinstated as of the date of its original creation.

183 Section 3. In a case where a complaint for divorce, separate support, guardianship or
184 conservatorship has been filed in the probate court by or against any person entitled to the benefit
185 of an estate of homestead, his or her spouse and minor children shall have the right to use,
186 occupy and enjoy such homestead estate until ordered otherwise by the probate court. The
187 recording of an order of the probate court, together with the description of the homestead estate,
188 shall operate to prevent any beneficiary of the homestead estate from disposing of said estate
189 until such time as the probate court may revoke said judgment.

190 Section 4. The estate of homestead existing at the death or divorce of a person
191 holding a homestead under sections one or 2A shall continue for the benefit of his or her
192 surviving spouse or former spouse and minor children who occupy or intend to occupy said
193 home as a principal residence. The estate of homestead of the surviving spouse or former spouse
194 and minor children shall continue notwithstanding the remarriage of the surviving or former
195 spouse. The right, title and interest of the deceased in the home, except the estate of homestead
196 thus continued, shall be subject to the laws relating to devise, descent, and sale for the payment
197 of debts and legacies.

198 Section 5. No estate of homestead shall affect a mortgage, lien or other encumbrance
199 previously existing, except as provided in this chapter.

200 Section 6. An estate of homestead shall be subordinate to any mortgage encumbering
201 the home executed by all the owners of such home. Such subordination shall not require the
202 signature of any spouse who is not an owner. A mortgage executed by fewer than all of the
203 owners of a home that is subject to an estate of homestead shall be superior only to the
204 homestead estate of the owners who are parties to the mortgage, and their non-titled spouses and
205 minor children, if any.

206 It shall not be necessary to indicate in any mortgage that a homestead estate is
207 subordinate as aforesaid and nothing contained in a mortgage or any document executed in
208 connection therewith shall affect, or be construed to create, modify or terminate, a homestead
209 estate, other than to subordinate it to the mortgage as aforesaid.

210 No mortgage lender shall require or record a release of homestead in connection with the
211 making and recording of any mortgage.

212 Section 7. An estate of homestead created under section one or 2A of this chapter
213 may be terminated by any of the following methods:

214 (a) a deed to a non-family member conveying the home, signed by the owner and, with
215 respect to estates of homestead created under section one of this chapter, any non-owner spouse
216 or former spouse residing in the home as a principal residence as of the date of such deed;

217 (b) a recorded release of the estate of homestead, duly signed and acknowledged by the
218 owner and, with respect to estates of homestead created under section one of this chapter, any

219 non-owner spouse or former spouse residing in the home as a principal residence as of the date
220 of such release;

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

225 (d) the abandonment of the home as the principal residence by the owner, the owner's
226 spouse, former spouse or minor children, except that such abandonment shall terminate only the
227 rights of persons who have abandoned the home; or

228 (e) in the case of a home the title to which is held in trust, by either

229 (1) the execution of a deed or a release of homestead by the trustee; or

230 (2) action of a beneficial owner identified in the declaration, who is not a minor child,
231 taken in the same manner as provided in clauses (b), (c) and (d).

232 No person in "military service" as defined in the Section 511 of the Servicemembers
233 Civil Relief Act, 50 USC App. Section 501 et seq., shall be deemed to have abandoned the home
234 due to such military service.

235 No deed between spouses or former spouses or co-owners who singly or jointly hold an
236 estate of homestead under sections one or 2A, nor any deed between a trustee and trust
237 beneficiary or between a life tenant and remainderman shall be deemed to terminate said
238 homestead unless each co-owner, spouse, former spouse or trust beneficiary entitled to the
239 benefit of the homestead, has executed an express release thereof pursuant to clause (b).

240 If a subsequent declaration on other property which terminates a homestead under clause
241 (c) is later invalidated, the prior declaration shall not be reinstated, but the owner shall have the
242 benefit of the provisions of section 2A of this chapter.

243 Except for the subordination provided in section six, nothing contained in a mortgage or
244 any document executed in connection therewith shall be construed to terminate or otherwise
245 affect a homestead estate.

246 A deed reserving said estate of homestead shall convey, according to its terms, any title
247 or interest in the property beyond the estate of homestead.

248 Section 8. In the event that a home subject to an estate of homestead is sold, whether
249 voluntarily or involuntarily, taken, or damaged due to fire or other casualty, then the proceeds
250 received on account of such event shall be entitled to the protection of this chapter during the
251 following periods:

252 (a) In the event of a voluntary or involuntary sale or taking, for a period ending on the
253 earlier to occur of (1) the date on which the person benefited by the homestead acquires another
254 home that he or she intends to occupy as a principal residence, or (2) the expiration of one year
255 after the date on which such sale or taking occurred.

256 (b) In the event of a fire or other casualty, for a period ending on the earlier to occur of
257 (1) the date upon which (i) the reconstruction or repair to the home is completed, or (ii) the
258 person benefited by the homestead acquires another home that he or she intends to occupy as a
259 principal residence, or (2) the expiration of two years after the date on which such fire or other
260 casualty occurred. For purposes of this section occupancy of a trailer, manufactured home or

261 other temporary housing shall not establish principal residency in a reconstructed or replacement
262 home.

263 Section 9. If the property of a debtor is assigned under the laws relative to insolvent
264 debtors, and such debtor claims, and it appears to the court wherein the proceedings in
265 insolvency are pending, that he or she is entitled to hold a part thereof as a homestead and that
266 the property in which such estate of homestead exists is of greater value than either the
267 maximum declared homestead exemption or maximum automatic homestead exemption, as
268 applicable, the court shall cause the property to be appraised by three disinterested appraisers,
269 one of whom shall be appointed by the insolvent, one by the assignee and the third by the court;
270 or if either the assignee or insolvent neglects to appoint, the court shall appoint for him or her.
271 The appraisers shall be sworn faithfully and impartially to appraise the property, and shall
272 appraise and set off an estate of homestead therein to the insolvent debtor in the manner
273 prescribed in section eighteen of chapter two hundred and thirty-six in case of a judgment debtor;
274 and the residue shall vest in and be disposed of by the assignee in the same manner as property
275 which is not exempt by law from levy on execution. The appraisers shall be entitled to the same
276 fees, to be paid out of the estate in insolvency, as are allowed to an appraiser of land seized upon
277 execution.

278 Section 10. All existing estates of homestead which have been acquired under any law
279 heretofore in force shall continue to be held and enjoyed notwithstanding the repeal of such law.

280 Section 11. A deed containing a statement of the marital status of the grantor may be
281 relied upon by a good faith purchaser for value. As to acts undertaken in good faith reliance
282 thereon, an affidavit executed and acknowledged by a grantor, releasor or mortgagor under

283 penalty of perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant
284 had no spouse who was then entitled to claim the benefit of an existing declaration of homestead,
285 shall be conclusive proof of the nonexistence of such benefit at that time. Such affidavit may be
286 recorded in connection with the execution and delivery of any deed, release or mortgage, and
287 shall be accepted in all registries of deeds and registry districts of the land court. The subsequent
288 residency or renewal of residency in the home by a spouse of the grantor, releasor or mortgagor
289 shall not defeat the priority of any mortgage, release or conveyance accepted in reliance on such
290 affidavit.

291 SECTION 2. Chapter 236 of the General Laws is hereby amended by striking out
292 section 18 and inserting in place thereof the following section:

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

305 SECTION 3. This act shall apply to all estates of homestead arising or created prior to,
306 on and after the effective date hereof, provided that estates of homestead acquired under any law
307 heretofore in force shall not be deemed invalid for failure to comply with the execution
308 requirements of section 2 of chapter 188 of the General Laws, as appearing in section one of this
309 act. An estate of homestead that arises under section 2A of said chapter 188, as appearing in
310 section one of this act, shall not have priority over, and shall be subordinate to, any lien, right or
311 interest recorded or filed for registration before the effective date of this act.