

**HOUSE . . . . . No. 4878**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Ten**  
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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           1) for a sale for federal, state and local taxes, assessments, claims and liens;
- 2           (2) for a lien on the home recorded prior to the creation of the estate of homestead;
- 3           (3) for a mortgage on the home as provided in sections 8 and 9;
- 4           (4) upon an order by a court that a spouse, former spouse or parent shall pay a certain
- 5 amount weekly or otherwise for the support of a spouse, former spouse or minor children;
- 6           (5) where buildings on land not owned by the owner of the estate of homestead are
- 7 attached, levied upon or sold for the ground rent of the lot upon which they are situated; and
- 8           (6) upon an execution issued from a court of competent jurisdiction to enforce its
- 9 judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

10           Section 4. In the absence of a valid declaration of homestead recorded under this chapter,  
11 an estate of homestead to the extent of the automatic homestead exemption shall exist in a home  
12 for the benefit of the owner and the owner’s family members who occupy or intend to occupy the

13 home as a principal residence. The homestead rights of non-titled family members shall consist  
14 of the right to use, occupy and enjoy the home as a principal residence. The estate shall be held  
15 subject to this chapter, except for section 2, 3 and 5. In the event that spouses occupy or  
16 intend to occupy separate homes, then both estates of homestead together shall not exceed the  
17 automatic homestead exemption. The recording of a declaration of homestead under this chapter  
18 shall supersede the automatic homestead exemption provided by this section, but shall not  
19 terminate the automatic homestead exemption applicable to the period between the creation of  
20 the automatic homestead and the later recording of a declaration of homestead. If a superseding  
21 declaration of homestead on the same home is later invalidated or terminated, the estate of  
22 homestead provided in this section shall be reinstated as of the date of its original creation.

23 A homestead created under this section may be subordinated to a subsequent new loan or  
24 line of credit; provided, however, that that new loan or line of credit: (a) is not secured by a  
25 recorded document; (b) does not exceed \$20,000; (c) is exempt from the provisions of chapter  
26 140D; (d) is evidenced by a written agreement executed by all record owners and their non-titled  
27 spouses for the purpose of subordinating the homestead as provided herein; and (e) contains a  
28 statement in substantially the following form, in boldface type and of a minimum size of 12-  
29 point font, "I understand that homestead property is in many cases protected from the claims of  
30 creditors and exempt from judicial sale; and that by signing this contract, I voluntarily give up  
31 my right to this protection for this property with respect to claims up to the principal amount of  
32 the loan or line of credit provided under this contract." The subordination allowed in this  
33 paragraph shall not apply to credit card agreements or to any loan made in anticipation of a  
34 paycheck, tax refund or insurance settlement.

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

38 (1) each owner to be benefited by the homestead, and the owner's non-titled spouse, if  
39 any, shall be identified;

40 (2) the declaration shall state that each person named therein occupies or intends to  
41 occupy the home as their principal residence;

42 (3) if the home is co-owned by a married couple, whether in their names only or as co-  
43 tenants with others, and the home is the principal residence or is intended to be the principal  
44 residence of both spouses, a declaration under section 3 shall be executed by both spouses; and

45 (4) if the home is owned in trust, only the trustee shall execute the declaration.

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

48 (1) a statement that the owner to be benefited is an elderly person or a disabled person;  
49 and

50 (2) with respect to a declaration of homestead benefiting a disabled person: (i) an  
51 original or certified copy of a disability award letter issued to the person by the United States  
52 Social Security Administration; or (ii) a letter signed by a physician registered with the board of  
53 registration in medicine certifying that the person meets the disability requirements stated in 42  
54 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording;

55 provided, however, that the award letter or physician's letter shall be recorded with the  
56 declaration.

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

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

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

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

77 beneficiary of the homestead estate from disposing of the estate until such time as the probate  
78 court revokes the judgment.

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

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

88           Section 9. An estate of homestead shall be subordinate to a mortgage encumbering the  
89 home executed by all the owners of the home. For the purposes of this chapter, a mortgage shall  
90 include an instrument granting a security interest in a manufactured home or cooperative housing  
91 unit. The subordination shall not require the signature of a spouse who is not an owner. A  
92 mortgage executed by fewer than all of the owners of a home that is subject to an estate of  
93 homestead shall be superior only to the homestead estate of the owners who are parties to the  
94 mortgage and their non-titled spouses and minor children, if any.

95           No statement that a homestead estate shall be subordinate to the mortgage shall be  
96 required in the mortgage instrument and nothing contained in a mortgage or any document  
97 executed in connection with the mortgage shall affect or be construed to create, modify or  
98 terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid. A

99 mortgage lender shall not require or record a release of homestead in connection with the making  
100 and recording of a mortgage.

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

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

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

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

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

118 (5) the subsequent recorded declaration of an estate of homestead under section 3 on  
119 other property, except that such declaration shall terminate only the rights of the owner making

120 such subsequent declaration and the rights of that owner's spouse and minor children who reside  
121 or intend to reside in the other property as their principal residence.

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

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

130 (d) Except for the subordination provided in section 6, nothing contained in a mortgage  
131 or any document executed in connection therewith shall terminate or otherwise affect a  
132 homestead estate.

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

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

139 (1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period  
140 ending on the date on which the person benefited by the homestead either acquires another home

141 the person intends to occupy as a principal residence or 1 year after the date on which the sale or  
142 taking occurred, whichever first occurs; and

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

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

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



163 execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in  
164 insolvency, as are allowed to appraisers of land seized upon execution.

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

176           Section 14. In all mortgage transactions, the closing attorney or settlement agent shall  
177 provide the mortgagor with notice of the right to declare homestead protection pursuant to this  
178 chapter, receipt of which shall be acknowledged in writing by the mortgagor. The notice shall  
179 include, but not be limited to, a summary of the differences between the automatic homestead  
180 protection and the enhanced benefits acquired by making a declaration of homestead.

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

184           Section 18. If a judgment creditor requires an execution to be levied on property which is  
185 claimed by the debtor to be as a homestead exempt from such levy and if the officer holding such  
186 execution is of the opinion that the premises are of greater value than an amount equal to either  
187 the automatic homestead exemption or the declared homestead exemption, as applicable, as  
188 defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the  
189 manner provided by section 6. If in the judgment of the appraisers the premises are of greater  
190 value than the amount of either the automatic homestead exemption or the declared homestead  
191 exemption, as applicable, the appraisers shall set off to the judgment debtor so much of the  
192 premises, including the dwelling house, in whole or in part, as shall appear to them to be of the  
193 value of the amount of the exemption and the residue of the property shall be levied upon and  
194 disposed of in like manner as land not exempt from levy on execution; provided, however, that if  
195 the property levied on is subject to a mortgage, it may be set off or sold subject to the mortgage  
196 and to the estate of homestead in the same manner as land subject to a mortgage only. SECTION  
197 3. All existing estates of homestead in effect on the effective date of this act shall continue in  
198 full force and effect notwithstanding the repeal of any law under which they were created and  
199 shall be governed by this act, notwithstanding their failure to comply with the execution  
200 requirements of section 2 of chapter 188 of the General Laws, as appearing in section 2 of this  
201 act.