

SENATE No. 1619

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:Section 1. (a)
3 For the purposes of this chapter, the following terms shall have the meanings set forth below.
4 “disabled person”, an individual who has any medically determinable permanent physical or
5 mental impairment that would meet the disability requirements for supplemental security income
6 under the provisions of 42 USC 1382c(a)(3)(A) and (C) as in effect at the time of recording.
7 “elderly person”, an individual aged sixty-two or older.“family” and “family members”, (1)
8 married individuals, both of whom own a home, and any minor child as defined herein;(2) a
9 married individual who owns a home, his or her non-titled spouse, and any minor child as
10 defined herein; or(3) an unmarried individual who owns a home, and any minor child as defined
11 herein.“home”, the aggregate of: (1) any of the following: (i) a single family dwelling, including
12 accessory structures appurtenant thereto and the land on which it is located; (ii) a two-to-four
13 family dwelling, including accessory structures appurtenant thereto and the land on which it is
14 located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a

15 condominium, as both terms are defined in section 1 of chapter 183A, that is used for residential
16 purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B,
17 157B, 180 or otherwise;(2) the sale proceeds as provided in clause (a) of section 8; and (3)
18 the proceeds of any policy of insurance insuring the home against fire or other casualty loss as
19 provided in clause (b) of section 8.“maximum automatic homestead exemption”, \$125,000.00,
20 provided that:(1) with respect to a home owned as joint tenants or as tenants by the entirety, the
21 maximum automatic homestead exemption shall remain whole and unallocated between the
22 owners, provided that the owners together shall not be entitled to an automatic homestead
23 exemption in excess of \$125,000.00.(2) with respect to a home owned by multiple owners as
24 tenants in common or as trust beneficiaries, the maximum automatic homestead exemption shall
25 be allocated among all owners in proportion to their respective ownership interests. “maximum
26 declared homestead exemption”, \$500,000.00, provided that: (1) with respect to a home owned
27 by joint tenants or as tenants by the entirety, and who are benefited by an estate of homestead
28 declared pursuant to section one, the maximum declared homestead exemption shall remain
29 whole and unallocated, provided that the owners together shall not be entitled to a declared
30 homestead exemption in excess of \$500,000.00.(2) if a home is owned by tenants in common or
31 trust beneficiaries, the maximum declared homestead exemption for each co-tenant and trust
32 beneficiary who benefits by an estate of homestead declared pursuant to section one shall be the
33 product of (i) \$500,000.00 and (ii) such co-tenant’s or trust beneficiary’s percentage ownership
34 interest.(3) except as provided in clause (4), each person who owns a home and who is benefited
35 by an estate of homestead declared pursuant to section 1A shall be entitled to the maximum
36 declared homestead exemption without reduction, pro-ration or allocation between or among
37 other owners of the home. (4) separate estates of homestead may be declared pursuant to

38 sections one and 1A on the same home, and in such event:(i) if the home is owned by tenants in
39 common or trust beneficiaries, the maximum declared homestead exemption for each co-tenant
40 and trust beneficiary who benefits by an estate of homestead declared pursuant to section one
41 shall be calculated in the manner provided in clause (2), and the maximum declared homestead
42 exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead
43 declared pursuant to section 1A shall be calculated in the manner provided in clause (3), or (ii)
44 if the home is owned as joint tenants or as tenants by the entirety, the maximum declared
45 homestead exemption for the owners together shall be the sum of \$500,000.00 multiplied by the
46 number of declarations recorded pursuant to section 1A, plus \$250,000.00. As calculated in
47 accordance with this paragraph, the maximum homestead exemption shall remain whole and
48 unallocated among the owners, provided that no one owner who declares homestead, acting
49 individually, shall be entitled to claim more than a \$500,000.00 exemption. (5) the calculation
50 of the amount of homestead exemption available to any owner shall not be deemed to sever any
51 joint tenancy or tenancy by the entirety. “minor child”, a person aged 21 and under, who is the
52 natural or adopted child of an owner or owner’s spouse entitled to the benefits of this statute,
53 notwithstanding any provision of law to the contrary. “mortgage” shall include an instrument
54 granting a security interest in a manufactured home or cooperative housing unit and the term
55 “mortgagee” shall include the secured party under any such instrument. “owner”, any natural
56 person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate
57 holder or holder of a beneficial interest in a trust.“principal residence”, the home where an
58 owner, and his or her family, if applicable, reside or intend to reside as the primary dwelling. No
59 person may hold concurrent rights under this chapter in more than one home.“record”,
60 “recording” and “recorded”, the act of recording in the registry of deeds or registry district of the

61 land court for the county or district where the home lies, except that, with respect to a
62 manufactured home located on registered land, recording in the registry of deeds shall be
63 sufficient. (b) An estate of homestead to the extent of the maximum declared homestead
64 exemption in a home may be acquired subject to the provisions of section two by one or more
65 owners who occupy or intend to occupy said home as a principal residence. Said estate of
66 homestead shall be created by a written declaration prepared, executed and recorded in
67 compliance with section two. A homestead declaration shall benefit each owner identified as
68 provided in section two and such owner's family members who occupy or intend to occupy the
69 home as a principal residence. The homestead rights of non-titled family members shall consist
70 of the right to use, occupy and enjoy the home as a principal residence. (c) Said estate shall be
71 exempt from the laws of conveyance, descent, devise, attachment, seizure, execution on
72 judgment, levy and sale for payment of debts or legacies except in the following cases: (1) sale
73 for federal, state and local taxes, assessments, claims and liens; (2) for a lien on the home
74 recorded prior to the creation of the estate of homestead; (3) for any mortgage on the home as
75 provided in sections five and six;(4) upon an order by a court that a spouse, former spouse or
76 parent pay a certain amount weekly or otherwise for the support of a spouse, former spouse or
77 minor children; (5) where buildings on land not owned by the owner of a homestead estate are
78 attached, levied upon or sold for the ground rent of the lot whereon they stand; (6) upon an
79 execution issued from a court of competent jurisdiction to enforce its judgment based upon
80 fraud, mistake, duress, undue influence or lack of capacity. Section 1A. The estate of
81 homestead of each owner who is an elderly or disabled person, regardless of marital status, shall
82 be protected under this section against attachment, seizure, execution on judgment and levy,
83 except as provided in subsection (c) of section one, to the extent of the maximum declared

84 homestead exemption; provided that a declaration of homestead protection for such elderly or
85 disabled person that complies with section two has been recorded; and, provided further, that
86 such person occupies or intends to occupy such home as his or her principal residence. An owner
87 of a home who qualifies under the provisions of this section shall, upon recording of an elderly
88 or disabled person's declaration of homestead protection, be eligible for protection of such
89 ownership interest to the extent of the maximum declared homestead exemption as set forth in
90 subsections (3) and (4) of the definition regardless of whether such declaration is recorded
91 individually or jointly with another. Except as provided in the following paragraph, each elderly
92 or disabled person's estate of homestead shall terminate upon (a) the sale or transfer of that
93 person's ownership interest in the home, except where such elderly or disabled person is also the
94 transferee of all or a portion of the transferred interest; (b) the recorded release of that person's
95 homestead estate; (c) the subsequent declaration of an estate of homestead on other property; (d)
96 the abandonment of the home as the principal residence by the person (e) upon the death of the
97 person, or (f) with respect to a home owned in trust, the execution of a deed or recorded release
98 by the trustee(s). In the event that an owner records a declaration under this section, and such
99 owner conveys to, or is survived by, a spouse who does not have the benefit of an estate of
100 homestead under either section one or this section, and the spouse occupies or intends to occupy
101 the home as his or her principal residence, then the spouse shall be deemed, as of the time he or
102 she acquired title, to have the benefit of the declaration previously recorded, as if such
103 declaration had been recorded under section one, until the spouse is eligible for and does record a
104 declaration creating an estate of homestead under this section. No declaration creating an estate
105 of homestead pursuant to section 1A shall terminate the existing homestead rights of a non-titled
106 spouse or minor children. Nothing in this section shall prohibit an elderly or disabled person

107 from declaring or continuing a homestead pursuant to section one, but no one person may
108 concurrently hold rights under both section one and this section. Section 2. Each declaration of
109 homestead shall be in writing, signed and acknowledged under penalty of perjury by each owner
110 to be benefited by the homestead, except as provided in subparagraph (d), shall be recorded and
111 shall comply with the following: (a) Each owner to be benefited by the homestead, and such
112 owner's non-titled spouse, if any, must be identified.(b) The declaration shall state that each
113 person so identified occupies or intends to occupy the home as his or her principal residence.(c)
114 If the home is co-owned by a married couple, whether only in their names or as co-tenants with
115 one or more other parties, and the home is or is intended to be both spouses' principal residence,
116 a declaration under section 1 must be executed by both spouses. (d) If the home is owned in
117 trust, only the trustee shall execute the declaration.(e) In addition to the foregoing, a declaration
118 creating an estate of homestead under section 1A shall include the following: (1) a statement
119 that the owner to be benefited is either an elderly person or a disabled person, as defined in
120 section 1; and (2) with respect to a declaration of homestead benefiting a disabled person, there
121 shall be recorded with the declaration either: (i) an original or certified copy of a disability award
122 letter issued to the person by the United States Social Security Administration; or (ii) a letter
123 signed by a licensed physician registered with the Massachusetts Board of Registration in
124 Medicine certifying that the person meets the disability requirements stated in 42 USC
125 1382c(a)(3)(A) and (C) as in effect at the time of recording.A single instrument may contain
126 separate homestead declarations by eligible co-owners of the same home, and such instrument
127 shall not be treated as a multifunctional document for purposes of determining the recording fee.
128 A declaration of homestead may not be created within a deed or other instrument vesting title in
129 the owner.The statement of principal residence required in subparagraph (b) shall be binding

130 upon any identified owner, including one who is a beneficiary of a trust, but may be overcome
131 by an interested third party upon presentation of clear and convincing evidence to the contrary.
132 In the event that spouses occupy or intend to occupy separate homes, and valid declarations are
133 recorded with respect to each, then both estates of homestead together shall not exceed the
134 maximum declared homestead exemption. The estate of homestead of an individual who records
135 a declaration under section one and who subsequently marries shall automatically be deemed to
136 benefit such individual's spouse. Any subsequent recording of a declaration of homestead
137 benefiting (i) a family member identified on a prior declaration on the same home or (ii) the
138 spouse of such person, without an intervening release, shall be deemed to relate back to the filing
139 date of the earliest recorded declaration, but the section of this chapter pursuant to which the
140 later recorded declaration is made shall control the rights of a person identified in such later
141 declaration. Section 2A. In the absence of a valid declaration of homestead recorded under this
142 chapter, an estate of homestead to the extent of the maximum automatic homestead exemption
143 shall exist in any home for the benefit of the owner and the owner's family members who occupy
144 or intend to occupy the home as a principal residence. The homestead rights of non-titled family
145 members shall consist of the right to use, occupy and enjoy the home as a principal residence.
146 Said estate shall be held subject to the provisions of this chapter, except for subsection (b) of
147 section 1 and sections 1A and two. In the event that spouses occupy or intend to occupy separate
148 homes, then both estates of homestead together shall not exceed the maximum automatic
149 homestead exemption. The recordation of a declaration of homestead under this chapter shall
150 supersede the automatic homestead exemption provided by this section, but shall not terminate
151 the automatic homestead exemption applicable to the period between the creation of the
152 automatic homestead and the later recording of a declaration of homestead. If a superseding

153 declaration of homestead on the same home is later invalidated or terminated, the estate of
154 homestead provided in this section shall be reinstated as of the date of its original
155 creation. Section 3. In a case where a complaint for divorce, separate support, guardianship or
156 conservatorship has been filed in the probate court by or against any person entitled to the benefit
157 of an estate of homestead, his or her spouse and minor children shall have the right to use,
158 occupy and enjoy such homestead estate until ordered otherwise by the probate court. The
159 recording of an order of the probate court, together with the description of the homestead estate,
160 shall operate to prevent any beneficiary of the homestead estate from disposing of said estate
161 until such time as the probate court may revoke said judgment. Section 4. The estate of
162 homestead existing at the death or divorce of a person holding a homestead under sections one or
163 2A shall continue for the benefit of his or her surviving spouse or former spouse and minor
164 children who occupy or intend to occupy said home as a principal residence. The estate of
165 homestead of the surviving spouse or former spouse and minor children shall continue
166 notwithstanding the remarriage of the surviving or former spouse. The right, title and interest of
167 the deceased in the home, except the estate of homestead thus continued, shall be subject to the
168 laws relating to devise, descent, and sale for the payment of debts and legacies. Section 5. No
169 estate of homestead shall affect a mortgage, lien or other encumbrance previously existing,
170 except as provided in this chapter. Section 6. An estate of homestead shall be subordinate to any
171 mortgage encumbering the home executed by all the owners of such home. Such subordination
172 shall not require the signature of any spouse who is not an owner. A mortgage executed by
173 fewer than all of the owners of a home that is subject to an estate of homestead shall be superior
174 only to the homestead estate of the owners who are parties to the mortgage, and their non-titled
175 spouses and minor children, if any. It shall not be necessary to indicate in any mortgage that a

176 homestead estate is subordinate as aforesaid and nothing contained in a mortgage or any
177 document executed in connection therewith shall affect, or be construed to create, modify or
178 terminate, a homestead estate, other than to subordinate it to the mortgage as aforesaid. No
179 mortgage lender shall require or record a release of homestead in connection with the making
180 and recording of any mortgage. Section 7. An estate of homestead created under section one or
181 2A of this chapter may be terminated by any of the following methods: (a) a deed to a non-
182 family member conveying the home, signed by the owner and, with respect to estates of
183 homestead created under section one of this chapter, any non-owner spouse or former spouse
184 residing in the home as a principal residence as of the date of such deed; (b) a recorded release
185 of the estate of homestead, duly signed and acknowledged by the owner and, with respect to
186 estates of homestead created under section one of this chapter, any non-owner spouse or former
187 spouse residing in the home as a principal residence as of the date of such release; (c) the
188 subsequent recorded declaration of an estate of homestead under section two on other property,
189 except that such declaration shall terminate only the rights of the owner making such subsequent
190 declaration and the rights of that owner's spouse and minor children who reside or intend to
191 reside in the other property as their principal residence; (d) the abandonment of the home as the
192 principal residence by the owner, the owner's spouse, former spouse or minor children, except
193 that such abandonment shall terminate only the rights of persons who have abandoned the home;
194 or (e) in the case of a home the title to which is held in trust, by either (1) the execution of a deed
195 or a release of homestead by the trustee; or (2) action of a beneficial owner identified in the
196 declaration, who is not a minor child, taken in the same manner as provided in clauses (b), (c)
197 and (d). No person in "military service" as defined in the Section 511 of the Servicemembers
198 Civil Relief Act, 50 USC App. Section 501 et seq., shall be deemed to have abandoned the home

199 due to such military service. No deed between spouses or former spouses or co-owners who
200 singly or jointly hold an estate of homestead under sections one or 2A, nor any deed between a
201 trustee and trust beneficiary or between a life tenant and remainderman shall be deemed to
202 terminate said homestead unless each co-owner, spouse, former spouse or trust beneficiary
203 entitled to the benefit of the homestead, has executed an express release thereof pursuant to
204 clause (b). If a subsequent declaration on other property which terminates a homestead under
205 clause (c) is later invalidated, the prior declaration shall not be reinstated, but the owner shall
206 have the benefit of the provisions of section 2A of this chapter. Except for the subordination
207 provided in section six, nothing contained in a mortgage or any document executed in connection
208 therewith shall be construed to terminate or otherwise affect a homestead estate. A deed reserving
209 said estate of homestead shall convey, according to its terms, any title or interest in the property
210 beyond the estate of homestead. Section 8. In the event that a home subject to an estate of
211 homestead is sold, whether voluntarily or involuntarily, taken, or damaged due to fire or other
212 casualty, then the proceeds received on account of such event shall be entitled to the protection
213 of this chapter during the following periods: (a) In the event of a voluntary or involuntary sale or
214 taking, for a period ending on the earlier to occur of (1) the date on which the person benefited
215 by the homestead either acquires another home that he or she intends to occupy as a principal
216 residence, or (2) the expiration of one year after the date on which such sale or taking occurred.
217 (b) In the event of a fire or other casualty, for a period ending on the earlier to occur of (1) the
218 date upon which (i) the reconstruction or repair to the home is completed, or (ii) the person
219 benefited by the homestead either acquires another home that he or she intends to occupy as a
220 principal residence, or (2) the expiration of two years after the date on which such fire or other
221 casualty occurred. For purposes of this section occupancy of a trailer, manufactured home or

222 other temporary housing shall not establish principal residency in a reconstructed or replacement
223 home. Section 9. If the property of a debtor is assigned under the laws relative to insolvent
224 debtors, and such debtor claims, and it appears to the court wherein the proceedings in
225 insolvency are pending, that he or she is entitled to hold a part thereof as a homestead and that
226 the property in which such estate of homestead exists is of greater value than either the
227 maximum declared homestead exemption or maximum automatic homestead exemption, as
228 applicable, the court shall cause the property to be appraised by three disinterested appraisers,
229 one of whom shall be appointed by the insolvent, one by the assignee and the third by the court;
230 or if either the assignee or insolvent neglects to appoint, the court shall appoint for him or her.
231 The appraisers shall be sworn faithfully and impartially to appraise the property, and shall
232 appraise and set off an estate of homestead therein to the insolvent debtor in the manner
233 prescribed in section eighteen of chapter two hundred and thirty-six in case of a judgment debtor;
234 and the residue shall vest in and be disposed of by the assignee in the same manner as property
235 which is not exempt by law from levy on execution. The appraisers shall be entitled to the same
236 fees, to be paid out of the estate in insolvency, as are allowed to an appraiser of land seized upon
237 execution. Section 10. All existing estates of homestead which have been acquired under any
238 law heretofore in force shall continue to be held and enjoyed notwithstanding the repeal of such
239 law. Section 11. A deed containing a statement of the marital status of the grantor may be relied
240 upon by a good faith purchaser for value. As to acts undertaken in good faith reliance thereon,
241 an affidavit executed and acknowledged by a grantor, releasor or mortgagor under penalty of
242 perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant had no
243 spouse who was then entitled to claim the benefit of an existing declaration of homestead, shall
244 be conclusive proof of the nonexistence of such benefit at that time. Such affidavit may be

245 recorded in connection with the execution and delivery of any deed, release or mortgage, and
246 shall be accepted in all registries of deeds and registry districts of the land court. The subsequent
247 residency or renewal of residency in the home by a spouse of the grantor, releasor or mortgagor
248 shall not defeat the priority of any mortgage, release or conveyance accepted in reliance on such
249 affidavit.

SECTION 2. Chapter 236 of the General Laws is hereby amended by striking
250 out section 18 and inserting in place thereof the following section:Section 18. If a judgment
251 creditor requires an execution to be levied on property which is claimed by the debtor to be as a
252 homestead exempt from such levy and if the officer holding such execution is of the opinion that
253 the premises are of greater value than an amount equal to either the maximum declared
254 homestead exemption or the maximum automatic homestead exemption, as applicable, as
255 defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the
256 manner provided by section six. If, in the judgment of the appraisers, the premises are of greater
257 value than said amount, they shall set off to the judgment debtor so much of the premises,
258 including the dwelling house, in whole or in part, as shall appear to them to be of the value of
259 said amount; and the residue of the property shall be levied upon and disposed of in like manner
260 as land not exempt from levy on execution; and if the property levied on is subject to a mortgage,
261 it may be set off or sold subject to the mortgage and to the estate of homestead, in like manner as
262 land subject to a mortgage only.

SECTION 3. This act shall apply to all estates of
263 homestead arising or created prior to, on and after the effective date hereof, provided that estates
264 of homestead acquired under any law heretofore in force shall not be deemed invalid for failure
265 to comply with the execution requirements of section 2 of chapter 188 of the General Laws, as
266 appearing in section one of this act. An estate of homestead that arises under section 2A of said
267 chapter 188, as appearing in section one of this act, shall not have priority over, and shall be

268 subordinate to, any lien, right or interest recorded or filed for registration before the effective
269 date of this act.