

**SENATE . . . . . No. 2401**

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

3 CHAPTER 188

4 HOMESTEADS

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

7 “Declared homestead exemption”, \$500,000; provided, however, that: (1) with respect to  
8 a home owned by joint tenants or tenants by the entirety who are benefited by an estate of  
9 homestead declared pursuant to section 1B, the declared homestead exemption shall remain  
10 whole and unallocated, provided that the owners together shall not be entitled to a declared  
11 homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or  
12 trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary  
13 who benefits by an estate of homestead declared pursuant to said section 1B shall be the product

14 of: (i) \$500,000; and (ii) the co-tenant's or trust beneficiary's percentage ownership interest;  
15 (3) except as provided in clause (4), each person who owns a home and who is benefited by an  
16 estate of homestead declared pursuant to section 1A shall be entitled to the declared homestead  
17 exemption without reduction, proration or allocation among other owners of the home; and (4)  
18 separate estates of homestead may be declared pursuant to sections 1A and 1B on the same  
19 home, and in such event: (i) if the home is owned by tenants in common or trust beneficiaries,  
20 the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an  
21 estate of homestead declared pursuant to section 1B shall be calculated in the manner provided in  
22 clause (2), and the declared homestead exemption for each co-tenant and trust beneficiary who  
23 benefits by an estate of homestead declared pursuant to section 1A shall be calculated in the  
24 manner provided in clause (3); or (ii) if the home is owned by joint tenants or tenants by the  
25 entirety, the declared homestead exemption for the owners together shall be the sum of \$500,000  
26 multiplied by the number of declarations recorded pursuant to section 1A, plus \$250,000.00;  
27 provided, however, that the homestead exemption under this subclause shall remain whole and  
28 unallocated among the owners; and provided further, that no owner who declares a homestead,  
29 acting individually, shall be entitled to claim an exemption of more than \$500,000; and provided  
30 further, the calculation of the amount of homestead exemption available to an owner shall not  
31 sever a joint tenancy or tenancy by the entirety.

32 "Disabled person", an individual who has a medically-determinable, permanent physical  
33 or mental impairment that would meet the disability requirements for Supplemental Security  
34 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  
35 recording.

36 "Elderly person", an individual 62 years of age or older.

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

41           “Home”, the aggregate of: (1) any of the following: (i) a single-family dwelling,  
42 including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to  
43 4-family dwelling, including accessory structures appurtenant thereto and the land on which it is  
44 located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a  
45 condominium, as those terms are defined in section 1 of chapter 183A, that is used for residential  
46 purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B,  
47 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of section 8; and (3) the  
48 proceeds of any policy of insurance insuring the home against fire or other casualty loss as  
49 provided in clause (2) of subsection (a) of said section 8.

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

53           “Mortgage”, an instrument granting a security interest in a manufactured home or  
54 cooperative housing unit.

55           Mortgagee, the secured party in a mortgage instrument.

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

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

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

65           Section 1A.   (a) The estate of homestead of each owner who is an elderly or disabled  
66 person, regardless of marital status, shall be protected under this section against attachment,  
67 seizure, execution on judgment and levy, except as provided in clause (1) of subsection (b) of  
68 section 1B, to the extent of the declared homestead exemption provided that the declaration of  
69 homestead for such elderly or disabled person that complies with section 2 has been recorded  
70 and provided that such occupy or intend to occupy the home as his principal residence. An owner  
71 of a home who qualifies under this section shall, upon recording of an elderly or disabled  
72 person's declaration of homestead protection, be eligible for protection of such ownership  
73 interest to the extent of the declared homestead exemption as set forth in clauses (3) and (4) of  
74 the definition of “declared homestead exemption” in section 1 regardless of whether such  
75 declaration is recorded individually or jointly with another.

76           (b) Except as provided in the following paragraph, each elderly or disabled person's  
77 estate of homestead shall terminate upon: (i) the sale or transfer of that person’s ownership  
78 interest in the home, except where the elderly or disabled person is also the transferee of all or a  
79 portion of the transferred interest; (ii) the recorded release of that person’s homestead estate;

80 (iii) the subsequent declaration of an estate of homestead on other property; (iv) the  
81 abandonment of the home as the principal residence by the person; (v) upon the death of the  
82 person; or (vi) with respect to a home owned in trust, the execution of a deed or recorded release  
83 by the trustees.

84 In the event that an owner records a declaration under this section and then conveys to or  
85 is survived by a spouse who does not have the benefit of an estate of homestead created under  
86 this section or section 1B and the spouse occupies or intends to occupy the home as the principal  
87 residence, then the spouse shall be deemed, as of the time such spouse acquired title, to have the  
88 benefit of the declaration previously recorded to the same extent as if such declaration had been  
89 recorded under section 1B, until the spouse becomes eligible for and records a declaration of  
90 homestead pursuant to this section.

91 (c) No declaration of homestead created under section 1A shall terminate the existing  
92 homestead rights of a non-titled spouse or any minor children.

93 (d) Nothing in this section shall prohibit an elderly or disabled person from declaring or  
94 continuing a homestead pursuant to section 1B, but no person shall concurrently hold rights  
95 under both this section and section 1B.

96 (e) A deed, release or mortgage containing a statement of the marital status of a grantor  
97 may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith  
98 reliance on such deed, release or mortgage, an affidavit executed and acknowledged by the  
99 grantor, releaser or mortgagor under penalty of perjury stating that, at the time of delivery of the  
100 deed, release or mortgage, the affiant had no spouse then entitled to claim the benefit of an  
101 existing estate of homestead, shall be conclusive proof of the nonexistence of such benefit at that

102 time. The affidavit may be recorded in connection with the execution and delivery of a deed,  
103 release or mortgage and shall be accepted in all registries of deeds and registry districts of the  
104 land court. The subsequent residency or renewal of residency in the home by a spouse of the  
105 grantor, releaser or mortgagor shall not defeat the priority of any mortgage, release or  
106 conveyance accepted in reliance on such affidavit.

107           Section 1B (a) An estate of homestead to the extent of \$500,000 in a home may be  
108 acquired by 1 or more owners who occupy or intend to occupy the home as a principal residence.  
109 The estate of homestead shall be created by a written declaration prepared, executed and  
110 recorded in accordance with section 2. A homestead declaration shall benefit each owner  
111 signing the declaration and the owner's family members who occupy or intend to occupy the  
112 home as their principal residence. The homestead rights of non-titled family members shall  
113 consist of the right to use, occupy and enjoy the home as their principal residence.

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

117           (1) for the payment of federal, state and local taxes, assessments, claims and liens;

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

119           (3) for a mortgage on the home as provided in sections 5 and 6;

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

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

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

126 Section 2. (a) A declaration of homestead shall be in writing, signed and acknowledged  
127 under penalty of perjury by each owner to be benefited by the homestead, except as provided in  
128 clause (4), shall be recorded and shall comply with the following:

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

131 (2) the declaration shall state that each person named therein occupies or intends to  
132 occupy the home as their principal residence.

133 (3) if the home is co-owned by a married couple, whether in their names only or as co-  
134 tenants with others, and the home is the principal residence or is intended to be the principal  
135 residence of both spouses, a declaration under section 1B shall be executed by both spouses; and

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

137 (b) A declaration of homestead under section 1A shall, in addition to the requirements of  
138 subsection (a), include the following:

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

141 (2) with respect to a declaration of homestead benefiting a disabled person: (i) an  
142 original or certified copy of a disability award letter issued to the person by the United States  
143 Social Security Administration; or (ii) a letter signed by a physician registered with the board of  
144 registration in medicine certifying that the person meets the disability requirements stated in 42  
145 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording;  
146 provided, however, that the award letter or physician's letter shall be recorded with the  
147 declaration.

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

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

156 The estate of homestead of an individual who records a declaration of homestead under  
157 section 1B and who subsequently marries shall automatically be deemed to benefit that  
158 individual's spouse. Any subsequent recording of a declaration of homestead benefiting: (i) a  
159 family member identified on a prior declaration on the same home; or (ii) the spouse of that  
160 person, without an intervening release, shall relate back to the filing date of the earliest recorded  
161 declaration, but the provisions of this chapter pursuant to which the later recorded declaration  
162 was made shall control the rights of a person identified in the later declaration.



163           Section 3. In a case where a complaint for divorce, separate support, guardianship or  
164 conservatorship has been filed in the probate court by or against a person entitled to the benefit  
165 of an estate of homestead, the spouse and minor children of that person may use, occupy and  
166 enjoy the homestead estate until ordered otherwise by the probate court. The recording of an  
167 order of the probate court, together with the description of the homestead estate, shall prevent a  
168 beneficiary of the homestead estate from disposing of the estate until such time as the probate  
169 court revokes the judgment.

170           Section 4. The estate of homestead existing at the death or divorce of a person holding a  
171 homestead under section 1B shall continue for the benefit of the surviving spouse or the former  
172 spouse and minor children who occupy or intend to occupy the home as their principal  
173 residence. The estate of homestead of the surviving spouse or former spouse and minor children  
174 shall continue notwithstanding the remarriage of the surviving or former spouse. The right, title  
175 and interest of the deceased in the home, except the estate of homestead thus continued, shall be  
176 subject to the laws relating to devise, descent and sale for the payment of debts and legacies.

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

179           Section 6. An estate of homestead shall be subordinate to a mortgage encumbering the  
180 home executed by all the owners of the home. The subordination shall not require the signature  
181 of a spouse who is not an owner. A mortgage executed by fewer than all of the owners of a  
182 home that is subject to an estate of homestead shall be superior only to the homestead estate of  
183 the owners who are parties to the mortgage and their non-titled spouses and minor children, if  
184 any.

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

191 Section 7. (a) An estate of homestead created under section 1B may be terminated by  
192 any of the following methods:

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

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

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

204 (4) in the case of a home the title to which is held in trust, by either: (i) the execution of a  
205 deed or a release of homestead by the trustee; or (ii) action of a beneficial owner identified in the

206 declaration, who is not a minor child, taken in the same manner as provided in clauses (2) and  
207 (3).

208 (b) No deed between spouses or former spouses or co-owners who individually or jointly  
209 hold an estate of homestead under section 1B and no deed between a trustee and a trust  
210 beneficiary or between a life tenant and a remainderman shall terminate the homestead unless  
211 each co-owner, spouse, former spouse, trustee or trust beneficiary entitled to the benefit of the  
212 homestead has executed an express release thereof pursuant to clause (2) or clause (4).

213 (c) Except for the subordination provided in section 6, nothing contained in a mortgage  
214 or any document executed in connection therewith shall terminate or otherwise affect a  
215 homestead estate.

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

218 Section 8. (a) If a home that is subject to an estate of homestead is sold, whether  
219 voluntarily or involuntarily, taken or damaged by fire or other casualty, then the proceeds  
220 received on account of any such sale, taking or damage shall be entitled to the protection of this  
221 chapter during the following periods:

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

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

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

233 Section 9. If the property of a debtor is assigned under the laws relative to insolvent  
234 debtors and debtor claims and it appears to the court wherein the insolvency proceedings are  
235 pending that the debtor is entitled to hold a part thereof as a homestead and that the property in  
236 which estate of homestead exists is of greater value than the declared homestead exemption, the  
237 court shall cause the property to be appraised by 3 disinterested appraisers, 1 of whom shall be  
238 appointed by the insolvent debtor, 1 of whom shall be appointed by the assignee and 1 of whom  
239 shall be appointed by the court; provided, however, that if either the assignee or insolvent debtor  
240 fails to make such appointment, the court shall appoint an appraiser for the assignee or the  
241 insolvent debtor. The appraisers shall be sworn faithfully and impartially to appraise the property  
242 and shall appraise and set off an estate of homestead therein to the insolvent debtor in the manner  
243 prescribed in section 18 of chapter 236 for a judgment debtor and the residue shall vest in and be  
244 disposed of by the assignee in the same manner as property which is not exempt by law from  
245 levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in  
246 insolvency, as are allowed to appraisers of land seized upon execution. SECTION 2.  
247 Chapter 236 of the General Laws is hereby amended by striking out section 18, as appearing in  
248 the 2008 Official Edition, and inserting in place thereof the following section:-

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

261 SECTION 3. All existing estates of homestead in effect on the effective date of this act shall  
262 continue in full force and effect notwithstanding the repeal of any law under which they were  
263 created and shall be afforded all of the protections granted to them under this act.