

**SENATE . . . . . No. 2406**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
\_\_\_\_\_

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. Section 3A of chapter 60 of the General Laws, as appearing in the 2008  
2 Official Edition, is hereby amended by adding the following paragraph:-

3           Every bill or notice provided pursuant to this section shall include a notice of the right to  
4 declare homestead protection pursuant to chapter 188 of the General Laws. The notice shall  
5 include, but not be limited to, a summary of the differences between the automatic homestead  
6 protection and the enhanced benefits acquired by making a declaration of homestead pursuant to  
7 said chapter 188.       SECTION 2. The General Laws are hereby amended by striking out

8 chapter 188 and inserting in place thereof the following chapter:-

9           CHAPTER 188

10          HOMESTEADS

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

13           “Automatic homestead exemption”, \$125,000, provided, however, that: (1) with respect  
14 to a home owned as joint tenants or as tenants by the entirety, the maximum automatic  
15 homestead exemption shall remain whole and unallocated between the owners, provided that the  
16 owners together shall not be entitled to an automatic homestead exemption in excess of  
17 \$125,000; and (2) with respect to a home owned by multiple owners as tenants in common or as  
18 trust beneficiaries, the maximum automatic homestead exemption shall be allocated among all  
19 owners in proportion to their respective ownership interests.

20           “Declared homestead exemption”, \$500,000; provided, however, that: (1) with respect to  
21 a home owned by joint tenants or tenants by the entirety who are benefited by an estate of  
22 homestead declared pursuant to section 1B, the declared homestead exemption shall remain  
23 whole and unallocated, provided that the owners together shall not be entitled to a declared  
24 homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or  
25 trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary  
26 who benefits by an estate of homestead declared pursuant to said section 1B shall be the product  
27 of: (i) \$500,000; and (ii) the co-tenant’s or trust beneficiary’s percentage ownership interest;  
28 (3) except as provided in clause (4), each person who owns a home and who is benefited by an  
29 estate of homestead declared pursuant to section 1A shall be entitled to the declared homestead  
30 exemption without reduction, proration or allocation among other owners of the home; and (4)  
31 separate estates of homestead may be declared pursuant to sections 1A and 1B on the same  
32 home, and in such event: (i) if the home is owned by tenants in common or trust beneficiaries,  
33 the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an  
34 estate of homestead declared pursuant to section 1B shall be calculated in the manner provided in  
35 clause (2), and the declared homestead exemption for each co-tenant and trust beneficiary who

36 benefits by an estate of homestead declared pursuant to section 1A shall be calculated in the  
37 manner provided in clause (3); or (ii) if the home is owned by joint tenants or tenants by the  
38 entirety, the declared homestead exemption for the owners together shall be the sum of \$500,000  
39 multiplied by the number of declarations recorded pursuant to section 1A, plus \$250,000;  
40 provided, however, that the homestead exemption under this subclause shall remain whole and  
41 unallocated among the owners; and provided further, that no owner who declares a homestead,  
42 acting individually, shall be entitled to claim an exemption of more than \$500,000; and (5) the  
43 calculation of the amount of homestead exemption available to an owner shall not sever a joint  
44 tenancy or tenancy by the entirety.

45 “Disabled person”, an individual who has a medically-determinable, permanent physical  
46 or mental impairment that would meet the disability requirements for Supplemental Security  
47 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  
48 recording.

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

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

54 “Home”, the aggregate of: (1) any of the following: (i) a single-family dwelling,  
55 including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to  
56 4-family dwelling, including accessory structures appurtenant thereto and the land on which it is  
57 located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a

58 condominium, as those terms are defined in section 1 of chapter 183A, that is used for residential  
59 purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B,  
60 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of section 8; and (3) the  
61 proceeds of any policy of insurance insuring the home against fire or other casualty loss as  
62 provided in clause (2) of subsection (a) of said section 8.

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

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

68 Mortgagee, the secured party in a mortgage instrument.

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

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

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

78           Section 1A.   (a) The estate of homestead of each owner who is an elderly or disabled  
79 person, regardless of marital status, shall be protected under this section against attachment,  
80 seizure, execution on judgment and levy, except as provided in subsection (b) of section 1B, to  
81 the extent of the declared homestead exemption provided that the declaration of homestead for  
82 such elderly or disabled person that complies with section 2 has been recorded and provided that  
83 each owner occupies or intends to occupy the home as his principal residence. An owner of a  
84 home who qualifies under this section shall, upon recording of an elderly or disabled person's  
85 declaration of homestead protection, be eligible for protection of such ownership interest to the  
86 extent of the declared homestead exemption as set forth in clauses (3) and (4) of the definition of  
87 “declared homestead exemption” in section 1 regardless of whether such declaration is recorded  
88 individually or jointly with another.

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

97           In the event that an owner records a declaration under this section and then conveys to or  
98 is survived by a spouse who does not have the benefit of an estate of homestead created under  
99 this section or section 1B and the spouse occupies or intends to occupy the home as the principal  
100 residence, then the spouse shall be deemed, as of the time such spouse acquired title, to have the

101 benefit of the declaration previously recorded to the same extent as if such declaration had been  
102 recorded under section 1B, until the spouse becomes eligible for and records a declaration of  
103 homestead pursuant to this section.

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

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

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

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

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

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

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

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

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

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

128 Section 1C. In the absence of a valid declaration of homestead recorded under this  
129 chapter, an estate of homestead to the extent of the automatic homestead exemption shall exist in  
130 a home for the benefit of the owner and the owner's family members who occupy or intend to  
131 occupy the home as a principal residence. The homestead rights of non-titled family members  
132 shall consist of the right to use, occupy and enjoy the home as a principal residence. The estate  
133 shall be held subject to this chapter, except for section 1A, 1B and 2. In the event that  
134 spouses occupy or intend to occupy separate homes, then both estates of homestead together  
135 shall not exceed the automatic homestead exemption. The recording of a declaration of  
136 homestead under this chapter shall supersede the automatic homestead exemption provided by  
137 this section, but shall not terminate the automatic homestead exemption applicable to the period  
138 between the creation of the automatic homestead and the later recording of a declaration of  
139 homestead. If a superseding declaration of homestead on the same home is later invalidated or  
140 terminated, the estate of homestead provided in this section shall be reinstated as of the date of  
141 its original creation.

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

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

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

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

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

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

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

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



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

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

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

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

179 Section 3. In a case where a complaint for divorce, separate support, guardianship or  
180 conservatorship has been filed in the probate court by or against a person entitled to the benefit  
181 of an estate of homestead, the spouse and minor children of that person may use, occupy and  
182 enjoy the homestead estate until ordered otherwise by the probate court. The recording of an  
183 order of the probate court, together with the description of the homestead estate, shall prevent a

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

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

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

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

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

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

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

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

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

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

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

224 (5) the subsequent recorded declaration of an estate of homestead under section 1B on  
225 other property, except that such declaration shall terminate only the rights of the owner making

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

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

233 (c) If a subsequent declaration on other property which terminates a homestead under  
234 clause (5) is later invalidated, the prior declaration shall not be reinstated. Except for the  
235 subordination provided in section 6, nothing contained in a mortgage or any document executed  
236 in connection therewith shall terminate or otherwise affect a homestead estate.

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

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

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

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

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

254 Section 9. If the property of a debtor is assigned under the laws relative to insolvent  
255 debtors and debtor claims and it appears to the court wherein the insolvency proceedings are  
256 pending that the debtor is entitled to hold a part thereof as a homestead and that the property in  
257 which estate of homestead exists is of greater value than either the automatic homestead  
258 exemption or the declared homestead exemption, as applicable, the court shall cause the property  
259 to be appraised by 3 disinterested appraisers, 1 of whom shall be appointed by the insolvent  
260 debtor, 1 of whom shall be appointed by the assignee and 1 of whom shall be appointed by the  
261 court; provided, however, that if either the assignee or insolvent debtor fails to make such  
262 appointment, the court shall appoint an appraiser for the assignee or the insolvent debtor. The  
263 appraisers shall be sworn faithfully and impartially to appraise the property and shall appraise  
264 and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in  
265 section 18 of chapter 236 for a judgment debtor and the residue shall vest in and be disposed of  
266 by the assignee in the same manner as property which is not exempt by law from levy on  
267 execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in  
268 insolvency, as are allowed to appraisers of land seized upon execution.

269           Section 10. A deed, release or mortgage containing a statement of the marital status of a  
270 grantor may be relied upon by a good faith purchaser for value. As to acts undertaken in good  
271 faith reliance on such deed, release or mortgage, an affidavit executed and acknowledged by the  
272 grantor, releaser or mortgagor under penalty of perjury stating that, at the time of delivery of the  
273 deed, release or mortgage, the affiant had no spouse then entitled to claim the benefit of an  
274 existing estate of homestead, shall be conclusive proof of the nonexistence of such benefit at that  
275 time. The affidavit may be recorded in connection with the execution and delivery of a deed,  
276 release or mortgage and shall be accepted in the appropriate registry of deeds and registry district  
277 of the land court. The subsequent residency or renewal of residency in the home by a spouse of  
278 the grantor, releaser or mortgagor shall not defeat the priority of a mortgage, release or  
279 conveyance accepted in reliance on such affidavit.

280           Section 11. In all mortgage transactions, the closing attorney or settlement agent shall  
281 provide the mortgagor with notice of the right to declare homestead protection pursuant to  
282 chapter 188 of the General Laws, receipt of which shall be acknowledge in writing by the  
283 mortgagor. The notice shall include, but not be limited to, a summary of the differences between  
284 the automatic homestead protection and the enhanced benefits acquired by making a declaration  
285 of homestead.

286           SECTION 3. Chapter 236 of the General Laws is hereby amended by striking out  
287 section 18, as appearing in the 2008 Official Edition, and inserting in place thereof the following  
288 section:-

289           Section 18. If a judgment creditor requires an execution to be levied on property which is  
290 claimed by the debtor to be as a homestead exempt from such levy and if the officer holding such

291 execution is of the opinion that the premises are of greater value than an amount equal to either  
292 the automatic homestead exemption or the declared homestead exemption, as applicable, as  
293 defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the  
294 manner provided by section 6. If in the judgment of the appraisers the premises are of greater  
295 value than the amount of the declared homestead exemption, the appraisers shall set off to the  
296 judgment debtor so much of the premises, including the dwelling house, in whole or in part, as  
297 shall appear to them to be of the value of the amount of the declared homestead exemption and  
298 the residue of the property shall be levied upon and disposed of in like manner as land not  
299 exempt from levy on execution; provided, however, that if the property levied on is subject to a  
300 mortgage, it may be set off or sold subject to the mortgage and to the estate of homestead in the  
301 same manner as land subject to a mortgage only. SECTION 4. All existing estates of  
302 homestead in effect on the effective date of this act shall continue in full force and effect  
303 notwithstanding the repeal of any law under which they were created and shall be governed by  
304 this act, notwithstanding their failure to comply with the execution requirements of section 2 of  
305 chapter 188 of the General Laws, as appearing in section 2 of this act.