

SENATE No. 795

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to clarify homestead estates.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 795

By Ms. Creem, a petition (accompanied by bill, Senate, No. 795) of Cynthia S. Creem for legislation to clarify homestead estates and real estate titles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 754 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to clarify homestead estates.

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 1 of chapter 188 of the General Laws is hereby amended by striking
2 the definition of “Declared homestead exemption” and inserting in place thereof the following:-
3 "Declared homestead exemption", an exemption in the amount of \$500,000 created by a
4 written declaration, executed and recorded pursuant to section 5; provided, however, that: (1)
5 with respect to a home owned by joint tenants or tenants by the entirety who are benefited by an
6 estate of homestead declared pursuant to section 3, the declared homestead exemption shall
7 remain whole and unallocated, provided that the owners together shall not be entitled to a
8 declared homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in
9 common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust
10 beneficiary who benefits by an estate of homestead declared pursuant to said section 3 shall be

11 the product of: (i) \$500,000 divided by (ii) the number of co-tenants or trust beneficiaries who
12 reside in the home as a principal residence; (3) except as provided in clause (4), each person who
13 owns a home and who is benefited by an estate of homestead declared pursuant to section 2 shall
14 be entitled to the declared homestead exemption without reduction, proration or allocation
15 among other owners of the home; and (4) separate estates of homestead may be declared
16 pursuant to sections 2 and 3 on the same home, and in such event: (i) if the home is owned by
17 tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant
18 and trust beneficiary who benefits by an estate of homestead declared pursuant to section 3 shall
19 be calculated in the manner provided in clause (2), and the declared homestead exemption for
20 each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to
21 section 2 shall be calculated in the manner provided in clause (3); or (ii) if the home is owned by
22 joint tenants or tenants by the entirety, the declared homestead exemption for the owners
23 together shall be the sum of \$500,000 multiplied by the number of declarations recorded
24 pursuant to section 2, plus \$250,000; provided, however, that the homestead exemption under
25 this subclause shall remain whole and unallocated among the owners; and provided further, that
26 no owner who declares a homestead, acting individually, shall be entitled to claim an exemption
27 of more than \$500,000; and (5) the calculation of the amount of homestead exemption available
28 to an owner shall not sever a joint tenancy or tenancy by the entirety.

29 SECTION 2. Said section 1 of chapter 188 is hereby amended by striking the definition
30 of "Owner" and inserting in place thereof the following:-

31 "Owner", a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant
32 in common, life estate holder, remainderman or holder of a present, vested and non-contingent

33 beneficial interest in a trust, including any of the foregoing who is a lessee-shareholder of a
34 residential cooperative housing unit.

35 SECTION 3. Subsection (b) of section 3 of said chapter 188 is hereby amended by
36 striking clause (6) and inserting in place thereof the following:--

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

39 SECTION 4. Section 10 of said chapter 188 is hereby amended by striking subsections
40 (a) and (b) and inserting in place thereof the following two subsections:

41 (a) An estate of homestead created under section 3 or 4 may be terminated by any of the
42 following methods:

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

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

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

54 (4) in the case of a home the title to which is held in trust, by either: (i) the execution of a
55 deed or a release of homestead by the trustee; or (ii) action of a beneficial owner identified in the
56 declaration, who is not a minor child, taken in the same manner as provided in clauses (2) and
57 (3);

58 (5) the subsequent recorded declaration of an estate of homestead under section 3 on
59 other property, except that such declaration shall terminate only the rights of the owner making
60 such subsequent declaration and the rights of that owner's spouse and minor children who reside
61 or intend to reside in the other property as their principal residence;

62 (6) a deed setting forth that that (i) the grantor(s) is unmarried; or (ii) there is no spouse
63 or former spouse entitled to an estate of homestead; or (iii) the property is not a home; or (iv) the
64 property is not the home of the grantor or the grantor's spouse or former spouse.

65 (7) a recorded affidavit pursuant to section 5B of chapter 183 setting forth that, at the
66 time of delivery of a deed, mortgage or other instrument of conveyance to a non-family member,
67 (i) the grantor was unmarried, or (ii) the grantor had no spouse or former spouse entitled to claim
68 the benefit of an existing estate of homestead, or (iii) the property was not a home, or (iv) the
69 property was not the home of the grantor or the grantor's spouse or former spouse. The affidavit
70 may be recorded simultaneously or subsequent to the deed, mortgage or other instrument of
71 conveyance.

72 (b) No deed between spouses or former spouses or co-owners who individually or jointly
73 hold an estate of homestead under section 3 or section 4 and no deed between a trustee and a
74 trust beneficiary or between a life tenant and a remainderman shall terminate the homestead
75 unless each co-owner, spouse, former spouse, trust beneficiary or remainderman entitled to the

76 benefit of the homestead has executed an express release thereof pursuant to clause (2) or clause
77 (4) of subsection (a).

78 SECTION 5. Section 11 of said chapter 188 is hereby amended by striking subsection (a)
79 and inserting in place thereof the following:

80 (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or
81 involuntarily, taken or damaged by fire or other casualty, then the proceeds of any such sale,
82 taking or damage shall be entitled to the protection of this chapter during the following periods:

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

87 (2) in the event of a fire or other casualty, for a period ending on:

88 (i) the date upon which the reconstruction or repair to the home is completed or the date
89 on which the person benefited by the homestead acquires another home the person intends to
90 occupy as a principal residence; or

91 (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

92 SECTION 6. Said chapter 188 is hereby amended by striking section 13 and inserting in
93 place thereof the following section:

94 Section 13. A recorded deed, release, mortgage, affidavit or other instrument of
95 conveyance containing a statement of any facts set forth in clauses (6) or (7) of subsection (a) of
96 section 10 may be relied upon by a good faith purchaser for value and may be conclusive proof

97 of the parties, if any, then entitled to claim an estate of homestead. An affidavit pursuant to
98 clause (7) of subsection (a) of section 10 shall be accepted in the appropriate registry of deeds or
99 registration district of the land court. The subsequent residency or renewal of residency in the
100 home by a grantor or spouse of the grantor, releaser or mortgagor shall not defeat the priority of
101 a mortgage, release or conveyance accepted in reliance on such recorded deed, release,
102 mortgage, affidavit or other instrument of conveyance.

103 SECTION 7. The provisions of this Act shall apply to estates of homestead arising or
104 created before, on or after said effective date, except with respect to the subject matter of any
105 final judgment to the contrary by a court of competent jurisdiction prior to said effective date.