SENATE DOCKET, NO. 1108 FILED ON: 2/11/2021

SENATE . . . . . No. 971

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:	DISTRICT/ADDRESS:
Cynthia Stone Creem	*First Middlesex and Norfolk*

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SENATE . . . . . No. 971

By Ms. Creem, a petition (accompanied by bill, Senate, No. 971) of Cynthia Stone Creem for legislation to clarify homestead estates and real estate titles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *884* OF 2019-2020.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

SECTION 1. Section 1 of chapter 188 of the General Laws is hereby amended by striking the definition of “Declared homestead exemption” and inserting in place thereof the following:-

"Declared homestead exemption", an exemption in the amount of $500,000 created by a written declaration, executed and recorded pursuant to section 5; provided, however, that: (1) with respect to a home owned by joint tenants or tenants by the entirety who are benefited by an estate of homestead declared pursuant to section 3, the declared homestead exemption shall remain whole and unallocated, provided that the owners together shall not be entitled to a declared homestead exemption in excess of $500,000; (2) if a home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to said section 3 shall be

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

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

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

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

SECTION 3. Subsection (b) of section 3 of said chapter 188 is hereby amended by striking clause (6) and inserting in place thereof the following:-- (6) upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, duress, undue influence or lack of capacity.

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

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

(1) a deed to a non-family member conveying the home, signed by the owner and, if any, a non-owner spouse or former spouse who resides in the home as a principal residence as of the date of the deed, provided however, that a deed to a trustee of a trust for the benefit of a grantor shall not terminate that grantor’s existing homestead, which shall continue as to the interest of that grantor as trust beneficiary;

(2) a recorded release of the estate of homestead, duly signed and acknowledged by the owner and, if any, a non-owner spouse or former spouse who resides in the home as a principal residence as of the date of the release, which release may be executed by those persons either separately or jointly;

(3) the abandonment of the home as the principal residence by the owner, the owner's spouse, former spouse or minor children, except that such abandonment shall terminate only the

rights of the persons who have abandoned the home; provided, however, that no person in military service as defined in 50 U.S.C. appendix, section 511 shall be deemed to have abandoned the home due to such military service;

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

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

(6) a deed setting forth (i) that the grantor is unmarried or (ii) that the property is either not a home or not the grantor’s home;

(7) a deed that includes a statement certified under the penalties of perjury that (i) there is no spouse or former spouse entitled to an estate of homestead or (ii) the property is not the home of the grantor’s spouse or former spouse.

(8) a recorded affidavit pursuant to section 5B of chapter 183 setting forth that, at the time of delivery of a deed, mortgage or other instrument of conveyance to a non-family member, (i) the grantor was unmarried, or (ii) the grantor had no spouse or former spouse entitled to claim the benefit of an existing estate of homestead, or (iii) the property was not a home, or (iv) the property was not the home of the grantor or the grantor’s spouse or former spouse. The affidavit

may be recorded simultaneously or subsequent to the deed, mortgage or other instrument of conveyance;

(9) a divorce judgment or decree of a court of competent jurisdiction shall release the homestead of a spouse who (a) is required therein to convey title to the home to the other spouse, or (b) was not an owner of the home and was not awarded therein either title or possessory rights in the home;

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

SECTION 5. Section 11 of said chapter 188 is hereby amended by striking subsection (a) and inserting in place thereof the following: (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or involuntarily, taken or damaged by fire or other casualty, then the proceeds of any such sale, taking or damage shall be entitled to the protection of this chapter during the following periods: (1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period ending on the date on which the person benefited by the homestead either acquires another home the person intends to occupy as a principal residence or 1 year after the date on which the sale or taking occurred, whichever first occurs; and (2) in the event of a fire or other casualty, for a period ending on: (i) the date upon which the reconstruction or repair to the home is completed or the date on which the person benefited by

the homestead acquires another home the person intends to occupy as a principal residence; or (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

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

Section 13. A recorded deed, release, mortgage, affidavit or other instrument of conveyance containing a statement of any facts set forth in clauses (6), (7) or (8) of subsection (a) of section 10 may be relied upon by a good faith purchaser for value and shall be conclusive proof of the parties, if any, then entitled to claim an estate of homestead. An affidavit pursuant to clause (7) of subsection (a) of section 10 shall be accepted in the appropriate registry of deeds or registration district of the land court. The subsequent residency or renewal of residency in the home by a grantor or spouse of the grantor, releaser or mortgagor shall not defeat the priority of a mortgage, release or conveyance accepted in reliance on such recorded deed, release, mortgage, affidavit or other instrument of conveyance.

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