



MASSACHUSETTS HOMESTEAD ACT
Revisiting Old Ways to Protect Your Home

Prepared by Attorney Robert Guida
Guida, Spina & Associates LLP
Lakeside Office Park
599 North Ave, Suite 7
Wakefield, MA 01880
781-213-3060

COURTESY OF
RON CARPENITO
Prime Property Team
Keller Williams Realty

www.PrimePropertyTeam.com
617-797-8710 / 978-475-2111





GUIDA, SPINO & ASSOCIATES, LLP ATTORNEYS AT LAW

Homestead Act Information

This information, taken from a pamphlet available at the Registry of Deeds, has been designed to answer some of the basic questions asked every day pertaining to the Homestead Act. It is not designed to provide any legal advice or address the practical effect of a claim of Homestead. As in all areas of the law, to fully understand what your rights are you should consult an attorney.

What is a Declaration of Homestead/Homestead Protection?

An Estate of Homestead is a type of protection for a home or real estate, in the form of a document called a "Declaration of Estate of Homestead". The form is filed at the Registry of Deeds in the county where the property is located, along with the title/deed to the property. It allows homeowners in Massachusetts to protect their property up to five hundred thousand dollars (\$500,000) of the value per residence, per family.

How am I protected if I am 62 or older, or disabled?

The real property or manufactured homes of persons sixty-two (62) years of age or older, regardless of marital status, or of a disabled person or persons, regardless of age, shall be protected against attachment, seizure or execution of judgment to the extent of **five hundred thousand dollars (\$500,000)** each provided the real property or manufactured homes serves as an individual's principal residence.

What does the Homestead Law mean by a "disabled person"?

A disabled person is defined as an individual who has any medically determinable permanent physical or mental impairment which would meet the disability requirement

of **supplemental social security**. You must attach to the Homestead form either the original or a certified copy of the award letter issued by the United States Social Security Administration, or a letter signed by a licensed physician registered with the Massachusetts Board of Registration in Medicine. Disabled persons must meet the disability requirements stated in 42 USC 1382 (a) (3) (A) and (C). Basically, an individual is considered disabled--for the purposes of this law--if he or she **cannot** engage in any **gainful** activity as a result of the physical or mental impairment.

Are my spouse and children covered, should I pass away?

Yes. Should the parent who declares the Homestead die, the law protects the residence until the youngest unmarried child reaches the age of eighteen (18) and until the surviving spouse dies or remarries.

If I am over 62 and my spouse is under 62, should we both file?

No. The law states that only one spouse under 62 years of age can file a Homestead for their family. However, for elderly and disabled individuals, the protection of up to \$500,000 is for each person's ownership interest. Therefore, it is recommended that the person over 62 years old file for an additional \$500,000. As other individual owners turn 62, they should also file an

additional \$500,000 exemption. In some circumstances, unmarried joint owners may each file for the Homestead protection.

Is there anything I will not be protected from?

The following are exempt from the Homestead Law:

- federal, state and local taxes, assessments, claims, and liens;
- first and second mortgages held by financial institutions or others;
- an execution issued from the Probate Court to enforce its judgment that a spouse pay for the support of a spouse or minor children;
- where buildings on land not owned by the owner of a Homestead estate are attached, levied upon or sold for the ground rent of the lot whereon they stand.
- upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

What happens to my Homestead if I should re-mortgage or take out a second mortgage or home equity loan?

In some cases, the lending institution may require that your Homestead be released. In that case, once the mortgage is recorded or registered, you can record a new Homestead.

The statute, in some cases, exempts first and second mortgages from Homestead rights, so the chances are you will not have to release a Homestead to refinance or obtain a home equity loan. Also, most standard mortgage forms used today have a specific release of Homestead rights for that particular transaction, which negates the necessity to file a general release of Homestead.

Does the Homestead protection take the place of home insurance?

Absolutely not! The homestead protection is not a substitute for home insurance or any other type of liability insurance. These are separate and distinct types of protection. The Homestead protection will be effective after any liability insurance is used to pay for any judgments that are related to liability or incurred under that particular insurance policy (e.g. home, automobile, etc.).

How does the Homestead Declaration help protect a home against unsecured creditors in bankruptcy proceedings?

Remember that the Homestead Declaration protects a homeowner only from **unsecured** creditors. It will not offer protection from first or second mortgage lenders and/or equity lenders who possess a security interest in a home. If payments are not current on these forms of secured credit, a homeowner runs the risk of losing the home to foreclosure proceedings.

What is the filing fee?

The cost of filing the Declaration of Homestead is **thirty-five dollars (\$35.00) for recorded land or mobile homes and thirty-five dollars (\$35.00) for registered land**. The form must be **signed** by the declarant filing and his/her signature must be notarized. Remember, all declarants over 62 must sign.

Guida, Spino & Associates, LLP

Lakeside Office Park
599 North Avenue, Suite 7
Wakefield, Massachusetts 01880

Tel: 781-213-3060

Office@gsallp.com