

Homestead Declaration Sweet Homestead Declaration

By Gina M. Barry, Esquire

Very often, a person's home is their most valuable asset, and they take many steps to protect their investment. These steps include securing homeowner's insurance and spending countless hours and dollars maintaining the home. Unfortunately, many of these same people are unaware of a very inexpensive, yet very powerful, way to protect the equity in their home, which is the homestead declaration.

A homestead declaration declares the primary residence, whether a house or condominium, to be the homestead of the person declaring homestead rights. The homestead declaration may protect up to \$500,000 of the equity in the home from executions of judgments by creditors. In this context, a judgment is a decision of a court with respect to the rights and claims of the debtor (the person owing money) and the creditor (the person money is owed to) that establishes an amount owed by the debtor. An execution is the legal process of enforcing that judgment, usually by selling the property of the debtor.

Homestead protection is not automatically granted to the owner of a primary residence; however, it may be obtained through various means. Most commonly, homestead rights are declared in a one-page document recorded in the Registry of Deeds in which the property is located, although homestead rights may be declared in the deed in which title is taken to the property. The

form can be obtained at the Registry of Deeds, and the fee for recording a homestead declaration at the Registry of Deeds is presently \$35.00. For manufactured homes, the declaration should be filed in the Town Clerk's office of the town where the home is located. A homestead declaration must (1) reference the statute under which homestead protection is claimed, including the applicable section as will be discussed hereinafter, (2) reference the book and page of the deed in which the declarant obtained the interest to be protected, (3) include a statement of the interest being protected, and (4) be recorded.

Chapter 188 of the Massachusetts General Laws creates homestead protections. Section 1 sets forth the general protection provided, and Section 1A sets forth the protection for elderly or disabled persons. Both sections now provide for up to \$500,000 of equity protection. To be eligible to declare homestead, the homeowner must own and occupy the real property as a principal residence. Section 1 limits homesteads declarations to one per family, which is defined as a parent and children, a husband, wife and children, or a sole owner. Fortunately, a declaration filed by one family member under this section protects the declarant's spouse and children. Section 1A is not limited to one family member, but one declaration will not protect the other family members. As such, if a Section 1A

declaration is to be filed, all members of the family entitled to Section 1A protections (i.e. elderly or disabled) must declare homestead separately.

A homestead declaration will not protect the home from every debt. It will not protect the home from a debt secured by the home, such as a mortgage, or from a debt incurred prior to the declaration, excepting some in the context of bankruptcy. It will also not prevent a sale to collect delinquent taxes or to pay spousal or child support obligations, and it is generally settled that it will not protect against any liens imposed by the government, such as liens for repayment of Medicaid (nursing home) benefits paid. Likewise, if the home is located on land that the declarant does not own and the landowner is seeking ground rent, the homestead will afford no protection. Further, if the judgment is based on fraud, mistake, duress, undue influence, or lack of capacity, a homestead filed under Section 1 will offer no protection.

Further, the homestead may be terminated in a variety of ways, which leaves the equity in the property completely exposed to creditors. In order to avoid inadvertently terminating the homestead, anyone declaring homestead should be familiar with the various means of termination, including (1) any transfer of the property that does not reserve homestead protection, (2) a written recordable release by

the declarant terminating the protection; (3) acquisition of a subsequent homestead; (4) termination of use of the property as a principal residence; (5) failure to qualify under either Section 1 or 1A, or (6) death, except where protection continues for the spouse and minor children under Section 1.

Despite the limitations of the homestead declaration, it still provides very valuable and inexpensive protection from a variety of claims. If you own a

primary residence in Massachusetts, you should be certain that you have obtained this protection. If you are unsure whether you have this protection, or under which section to file, it is best to contact your attorney to be sure that you will obtain the greatest amount of protection available to you.

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