

Protect Your Home with a Declaration of Homestead



Very often, a person's home is their most valuable asset. As the homeowner's equity grows, they take many steps to protect their investment, including securing homeowner's insurance and spending countless hours and dollars maintaining the home. Unfortunately, many Massachusetts homeowners are unaware of an inexpensive, yet highly effective, way to protect the equity in their primary residence, which is the Declaration of Homestead.

A Declaration of Homestead declares your primary residence to be your homestead. In Massachusetts, there is an automatic homestead that protects up to \$125,000 of the equity in your home from executions of judgments by unsecured creditors. In this context, a judgment is a decision of a court establishing the right of a creditor (person owed money) to be paid by the debtor (person owing money). Once the judgment enters, the execution is the legal process of enforcing that judgment, usually by selling the property of the debtor.

In addition to the automatic homestead, a Massachusetts homeowner can take further action to protect their primary residence. Recording a written Declaration of Homestead at the Registry of Deeds for the county where the home is located increases the automatic protection amount from \$125,000 to \$500,000. Individuals who are 62 years of age or older and individuals of any age who are disabled receive an increased protection amount of \$500,000 each, so if two owners qualify, then the total equity protection could be up to \$1 million according to state regulations.

A fill-in-the-blank Declaration of Homestead form can be obtained at the Registry of Deeds or on the Registry's web page, and the recording fee is presently \$35.00. A Declaration of Homestead must (1)

reference the statute under which homestead protection is claimed; (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.

Currently, if you were to purchase a primary residence, your closing attorney would be highly likely to prepare a Declaration of Homestead to be recorded as part of the closing. Thus, many older people do not have recorded Declaration of Homesteads because they purchased their homes before this was common practice. If you are unsure, it is always best to check if a declaration has actually been recorded. If you are able to access the internet, all of the Registries of Deeds in Massachusetts are accessible via www.masslandrecords.com, and you can complete a free search to verify your status. Alternatively, you could reach out to your attorney to verify whether a proper declaration has been recorded.

A common instance in which a Declaration of Homestead would protect the equity in a primary residence would be when the homeowner is found to be at fault in a motor vehicle accident or an accident at the home with the cost of injuries exceeding the homeowner's or automobile insurance. Nonetheless, the declaration is not a substitute for having appropriate coverage with these insurances, and thus, should not be the sole protection relied on for these concerns.

It is also important to note that a Declaration of Homestead will not protect a primary residence from every debt. It will not protect a home from a debt secured by the home, such as a mortgage, or from a debt incurred prior to the declaration (with some exceptions in the context of bankruptcy). A Declaration of Homestead also will not prevent a sale to collect delinquent taxes or to pay spousal/child support obligations. Similarly, the declaration will not protect a home from having to be sold to pay for nursing home costs, and it is generally settled that it will not protect against any liens imposed by the government, such as for repayment of Medicaid (nursing home) benefits paid. Likewise, if the home is located on land that the declarant does not

own, as is common with many mobile homes, and the landowner is seeking ground rent, the homestead will afford no protection.

Despite the limitations of the Declaration of Homestead, it still provides valuable and inexpensive protection from a variety of claims for very little cost. 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, it is best to contact your attorney, who can assist you with ensuring you have obtained the greatest amount of protection available to you.

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