



Homestead Protection

Important and inexpensive protection
for the investment you have in your home

What is the Basic Protection that a Declaration of Homestead provides the homeowner?

A Declaration of Homestead will protect the investment that you have in your home from the claims of any unsecured debts you may have to a maximum of \$500,000, as of October 26, 2004.

What is an unsecured debt?

Any loan that you have that is NOT secured by something such as a house or a car. Credit card debt, personal loans, and education loans are examples of unsecured debt. Anyone who has loaned you money that is unsecured has the right to sue you if you cannot pay the money back. If a judge allows it, all of your assets can be sold to pay off these unsecured debts. But NOT your primary residence if you have made a Declaration of Homestead.

What is a secured debt?

A secured debt is usually one that is secured by something of value such as a house or a car. For example, you may have bought a house for \$200,000 by putting down \$50,000 and taking out a mortgage of \$150,000. The lender that made you the loan secured the loan with the house you bought. If you cannot pay the mortgage the lender has the right to sell the house in order to recoup the money that was loaned to you. Whatever additional money results from the sale will be given to you after all of the related expenses have been paid.



Who can file a Homestead Declaration?

Any homeowner can file a Declaration of Homestead.

Where is the Homestead filed?

The Declaration of Homestead is filed in the county in which your home is located.



Is there anything I will not be protected from?

Yes. The Homestead Law cannot protect you from:

- 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.
- Any court judgment against you that is based on fraud, mistake, duress, undue influence, or lack of capacity

Does Homestead protection take the place of homeowners insurance?

No. Homestead protection is not a substitute for homeowner's insurance or any other type of liability insurance. The Homestead protection *could* be effective after your liability or homeowner's insurance has been used to pay for any judgments against you.

What if I live in a manufactured home?

A Declaration of Homestead may be filed for manufactured homes.

Can I declare a Homestead on both my winter and summer homes?

No. A Declaration of Homestead can only be made on your "principal residence". If you have more than one home, the statute only allows the protection for your legal residence. A husband cannot declare a Homestead exemption on one residence while the wife declares the exemption on the other residence, unless each can prove that the residence is their "principal residence".

What happens to my Homestead if I remortgage or get a second mortgage or a home equity loan?

In some cases, the lending institution may require that your Homestead be released. If that is the case, you can record a new Homestead when the mortgage is recorded or registered. Often first and second mortgages are unaffected by Homestead rights, so it is possible that you will not have to release the Homestead to refinance or obtain a home equity loan. Most standard mortgage forms in use today have a specific release of Homestead rights thereby eliminating the need to file a general release of Homestead. be sure to check with your attorney or the Registry of Deeds.



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

A Chapter 7 bankruptcy is an asset liquidation in which all of your possessions may be sold to satisfy

your debts. A homeowner is allowed to claim certain exemptions which act as asset protection allowances. If a Homestead Declaration is in place, and the state exemptions are claimed, a homeowner would be allowed to retain a much greater proportion of the proceeds from a liquidation sale of the home than he or she would be allowed to keep under federal bankruptcy law exemptions. This factor in decreases (or even eliminates) the possibility that your home would have to be sold as a part of Chapter 7 proceeding.



In all 13 bankruptcy proceedings, the court will require a homeowner to repay some or all of the unsecured debt over a three- to five-year period. By increasing the amount of the home's exemption, the Homestead Declaration decreases the proceeds which would become available for repaying unsecured creditors through Chapter 7. This may decrease the percentage of the unsecured debt the homeowner would be required to repay through a Chapter 13 proposal.

What if I am Single?

A Homestead Declaration may be made by single person or a couple.

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

The primary home of persons who are 62 or older or who are disabled is eligible for Homestead protection. In fact, people who are 62 and who file jointly, regardless of their marital status, will be protected from attachment up to \$300,000 each.



How does the Homestead Law define a “disabled person”?

There are a number of definitions and the following apply:

- Anyone whose physical or mental condition has made them eligible for Supplemental Social Security. (A copy of the award letter issued by the Social Security Administration, or a letter signed by a physician registered with the Massachusetts Board of Registration in Medicine must be attached with the Homestead application.)
- 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 purpose of this law – if he or she cannot engage in any gainful activity as a result of the physical or mental impairment.

If I am 62 or older 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 up to \$500,000 is for each person’s ownership interest. Therefore, it is recommended that the persons 62 or older file for an additional \$500,000. As other individuals turn 62, they should also file a \$500,000 exemption. In some circumstances, unmarried joint owners may each file for the Homestead protection.

Are my spouse and children covered if I die?

Yes. Should the parent who declares the Homestead die, the law protects the residence until the youngest unmarried child

reaches the age of 18 and until the surviving spouse dies or remarries.

Will my Homestead Declaration continue to protect my home if I go into a nursing home?

Liens on your home imposed by the Massachusetts Department of Public Welfare for the payment of Medicaid benefits, are exempt from Homestead protection. However, as of the printing of this brochure, the Commonwealth will not look to your home for reimbursement of Medicaid benefits while the owner is still alive. If the surviving spouse is also the recipient of Medicaid benefits, the Commonwealth will file a claim for reimbursement from the estate for the entire amount of the Medicaid benefits paid, once the surviving recipient has died. The rules and regulations regarding Medicaid are complicated and constantly changing. You should seek competent counsel to address your specific concerns regarding Medicaid.

Can a trustee file for Homestead protection?

The Massachusetts Supreme Judicial court has determined that registered land held in trust cannot be given Homestead protection. The case did not address recorded land. Until there is a court clarification, it would be prudent to file a Declaration of Homestead even if your property is in trust and not registered land.

Can my Homestead be terminated?

The Declaration of Homestead will be terminated upon the sale or transfer of your home during your the declarant’s lifetime, upon the death of the declarant and the marriage of the declarant’s surviving spouse, and upon each child reaching the age of majority or by a release of Homestead estate duly signed, sealed, and acknowledged by the declarant and recorded at the Registry of Deeds, or when the property ceases to be a principal residence.

Chapter 174 of the Acts of 2000

This law guarantees that this act shall apply to declarations of Homestead recorded or filed for registration pursuant to Section 1 or 1A of Chapter 188 of the General Laws before, on, or after the effective date of this act, but the increase in the amount of Homestead Protection for the declarations recorded or filed for registration before the effective date of this act shall not have priority over, and shall be subordinate to, any lien, right, or interest recorded or filed for registration before the effective date of this act.