
MASSACHUSETTS HOMESTEAD LAW CHANGES
Effective March 16, 2011

January 24, 2011

On December 16, 2010, Governor Deval Patrick signed into law a bill that provides all Massachusetts homeowners an automatic homestead exemption of \$125,000 for protection against certain creditor claims on their principal residence without having to file a declaration of homestead with the Registry of Deeds. The new homestead law goes into effect on March 16, 2011.

As under existing law, all Massachusetts residents are eligible for a \$500,000 “declared homestead exemption” by filing a declaration of homestead at the Registry of Deeds. If a home is co-owned by a married couple, both spouses will now have to sign the form for a new homestead, which is a change from prior practice. If you have a homestead as a single person, and get married, the homestead automatically protects your new spouse. Homesteads also now pass on to the surviving spouse and children who live in the home. The existing “elderly and disabled” homestead will remain available at \$500,000. The new law also permits homestead protection for multi-family homes, making it clear that two to four family homes, condominium units, co-operative housing and manufactured homes may have homesteads declared in them.

In addition, residents do not have to re-file a homestead after a refinance. There has been some confusion here in the past, with lenders requiring homeowners to either subordinate or release homesteads. Under the new law, homesteads are automatically subordinate to mortgages, and lenders are specifically prohibited from having borrowers waive or release a homestead. Proceeds from a home sale will also now be protected from creditors for up to a year, and

insurance payouts would be exempt for two years, up to the applicable homestead exemption amount. Those protections do not exist under the current homestead law.

Another big change is regarding pre-existing debts. The existing homestead law excludes pre-existing debts, meaning debts incurred prior to declaring homestead were excluded from protection. The new law erases the pre-existing debt exclusion altogether.

The new law also allows for homestead protection for properties held in a trust. It allows for a homestead to be declared when a trust owns the home, offering protection to the trust beneficiaries, provided that the home truly is the beneficiaries' principal residence. While courts have previously ruled in some instances that homestead cannot be declared on properties held in trust, the new law clearly allows for equity protection on such properties.

Another important provision to note is that closing attorneys or settlement agents in mortgage transactions must now obtain written proof that they have informed borrowers of their right to declare homestead. The attorney or settlement agent must also discuss the difference between automatic and declared homestead.