

THE NEW MASSACHUSETTS HOMESTEAD LAW TAKES EFFECT
MARCH 16, 2011

The long awaited and much needed revision to the Massachusetts Homestead Law will be taking effect on March 16, 2011. The text of the new law can be found at [Massachusetts General Law Ch 188 §1-10](#). The homestead law which was previously in effect (the "Old Homestead Law") has caused more debate among real estate practitioners than almost any other statute. Confusion seemed to be the only consensus that was ever reached when construing the Old Homestead Law. Basic controversial issues such as. "was a mortgage release a release of the homestead?", "was a spouse required to sign a deed even if the spouse was a non-title holder?", "what effect did the filing of a subsequent homestead have on an existing homestead"? The statute which goes into effect on March 16, 2011, (the "New Homestead Act") would seem to have been enacted to resolve these, and other, issues.

There are now three types of Homesteads available under the New Homestead Law. One is automatic and two must be created by the filing of a Homestead with the Registry of Deeds of the County where the Homestead property is located.

I. **"Automatic Homestead"**

There is an automatic protection in the amount of \$125,000.00 for an individual's principal residence against subsequent attachment. The property must be occupied, or intended to be occupied, as a principal

residence of the property's owner. The protection is provided to the individual and the other family members of his or her family living at the property.

II. The two Non-Automatic Homesteads available are as follows:

A. **"Basic Homestead"**

The protection provided to those who file a Homestead. The amount of protection is equal to \$500,000.00 if the property is occupied, or intended to be occupied, as the owner's principal residence.

B. **"Elderly\Disabled Homestead"**

This protection is provided only to the person making the Elderly or Disabled filing. The protection provided is in the amount of \$500,000.00. The filer must be either 62 or older or meet the definition of "disabled" that is included in the statute. The property must also be occupied, or intended to be occupied, as the filer's principal residence.

How do you establish an Automatic Homestead?

As long as you meet the requirements set forth above, nothing needs to be filed.

How do you establish a Basic Homestead?

In order to establish the Basic Homestead, the requirements of Section 5 of the Statute must be complied with. An outline of these requirements is as follows:

1. The Declaration of Homestead must be signed by each owner of the property.
2. If there is a non-titled spouse, that individual must be identified in the Declaration.
3. The Declaration shall state that the each person named in it occupies, or intends to occupy the home, as their principal residence.
4. Trustees of property held in trust can now file a declaration of Homestead on behalf of the beneficiaries of the trust who occupy the property as their principal residence.

The Homestead can no longer be created as part of a deed; the Declaration of Homestead must be a separate filing.

How do you establish an Elderly\Disabled Homestead?

1. The same requirements for the Basic Homestead must be complied with and also:
 1. a. There must be a statement that the owner to be benefited is an elderly person or a disabled person and
 - b. An original or certified copy of a disability award letter

issued to the person by the United States Social Security Administration or a letter signed by a physician registered with the board of registration of medicine certifying that the person meets the disability requirements as set forth in the New Homestead Act. The award letter or the physician's letter shall be recorded with the declaration

How can any Homestead be terminated?

1. A deed signed by the owners, or by the owner and the non-title holder spouse or former spouse who reside at the home as a principal residence
2. If a Trustee established the Homestead. then a deed signed by the trustee
3. A release signed by any of the above
4. A new Basic Homestead declaration being filed or
5. An abandonment of the home as a principal residence

How can an Elderly\Disabled Homestead be terminated?

1. Deed or release signed by the person who declared the Elderly\Disabled Homestead
2. Acquisition of a new Homestead

3. An abandonment of the home as a principal residence

If property is purchased by a single person who later marries the new spouse is automatically protected by the Declaration of Homestead right. As a result of this, every deed should include the marital status of the grantor and, if married, then the non-title spouse must also execute the deed.

Important Highlights:

Does the non-title spouse have to execute a mortgage?

No, only the title spouse needs to execute the mortgage and no additional language needs to be added to the mortgage for the Homestead to be subordinated to the mortgage. The requirement by the lender that the Homestead be released is now prohibited.

How do you handle a change in marital status when a document is executed?

The New Homestead Act requires the identification of the non-title spouse as part of the Declaration. The subsequent divorce, death or remarriage can alter the current information of those protected by the Homestead. The change in status can be resolved by including the current information in the deed, release or mortgage. The document containing the statement regarding the marital status of the grantor may be relied upon in good faith. An affidavit must be executed by the grantor, releaser or mortgagor under the penalties of perjury, stating that at the time the document was executed that the affiant had no spouse or partner entitled to claim the homestead. The affidavit may be recorded with the deed, release or mortgage containing the recital.

If the single owner marries, do they need a new Homestead?

What happens to existing Homesteads?

All existing homesteads in effect as of March 16, 2011, shall continue in full force and effect, and shall be governed by the New Homestead Act notwithstanding the failure of the owner or owners to comply with the new execution requirements.

This is not a complete evaluation of the new law but only a brief summary. A person that desires to create a Homestead should seek the assistance of a Massachusetts Attorney with an understanding of the New Homestead Act. We, at Topkins & Bevans, can provide this service to you.

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