

**REAL ESTATE AND ENVIRONMENTAL ALERT
MARCH 2011**

**HOME SWEET HOMESTEAD: NEW CHANGES TO THE
MASSACHUSETTS HOMESTEAD ACT**

The venerable Massachusetts Homestead Act has been completely rewritten and the revised statute went into effect on March 16, 2011.

A homestead exemption provides protection to homeowners and their families from some – but not all – debts. A homestead may be declared if the property is a one- to four-family dwelling, including manufactured homes, residential condominiums or residential cooperatives; and the property is the principal residence of the person who is entitled to homestead protection. A homeowner can have only one principal residence.

There are now three types of homestead exemptions:

- ▶ **Automatic homestead exemption.** Prior to March 16, homeowners were required to record a homestead declaration in the registry of deeds in order to receive protection from creditors' claims. The revised act institutes an automatic exemption in the amount of \$125,000. No documentation or filing is required to secure this automatic homestead exemption.
- ▶ **Declared homestead exemption.** In order to receive homestead protection of \$500,000, homeowners must sign a declaration of homestead and file it in the registry of deeds where the deed to the home is recorded.
- ▶ **Elderly or disabled homestead exemption.** This is available to homeowners age 62 or older, and to disabled homeowners. Each "elderly" or disabled homeowner may file a separate declaration of homestead, each of which will provide \$500,000 in protection. Hence, if two people, both elderly and/or disabled, own a home, the homestead protection would be \$1 million.

Trust Property. While there was previously no homestead protection for trust property, the new legislation affords homestead protection to the beneficiary of a trust. The declaration of homestead is signed by the trustee. An important caveat is that the beneficiary of the trust must be identified in the homestead declaration.

Mortgage Transactions. Prior to the enactment of the new bill, there was confusion as to whether a new homestead declaration had to be filed after each mortgage transaction. The new statute eliminates any doubt, because the act provides that no language contained in a mortgage instrument can terminate a homestead (although it can subordinate the homestead to the mortgage). Therefore, there should be no occasion to have to file a new homestead declaration after a refinancing.

Homestead Termination. The revised law also solves the so-called “silent deed termination issue.” Previously, if one co-owner deeded his/her interest in the home to another co-owner(s), the homestead estate would terminate (unless the deed expressly stated otherwise). Under the new statute, a deed from one co-owner to another will no longer automatically terminate the homestead.

Sale and Insurance Proceeds. Proceeds from the sale of a home and insurance proceeds recovered if the home is damaged by casualty are now entitled to homestead protection – one year for sale proceeds and two years for insurance proceeds.

Who must sign? Each co-owner who wishes to benefit from the homestead exemption to sign a homestead declaration. As mentioned previously, if the property is held in trust, the trustee must sign the declaration.

Under the new law, all homestead declarations recorded prior to March 16, 2011 will remain in effect and be entitled to the provisions of the new statute.

CONTACT

This alert is a summary of some of the important provisions of the new law. If you have questions about the Homestead Act or would like more detailed information, please do not hesitate to contact the author, [Robert J. Galvin](#), or a member of our [Real Estate Practice](#).

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