

The Homestead Declaration: Simple protection for your most valuable asset

Gina M. Barry, Esq.



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 Homestead Declaration.

Basic homestead protection

A Homestead Declaration declares your primary residence, whether a house or condominium, 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.

Increasing your coverage

In addition to the automatic homestead, a Massachusetts homeowner can take further action to protect their primary residence. Recording a written Homestead

Declaration at the Registry of Deeds for the county where the home is located increases the automatic protection amount from \$125,000 to \$500,000. The elderly are personally exempt up to \$500,000 each, so if two owners qualify, then the total protection could be up to \$1 million according to state regulations.

How to begin

A fill-in-the-blank Homestead Declaration 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 Homestead Declaration 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.

Are you already homesteaded?

Currently, if you were to purchase a primary residence, your closing attorney would be highly likely to prepare a Homestead Declaration to be recorded as part of the closing. Thus, many elders do not have recorded Homestead Declarations 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.

Why you need it

A common instance in which a Homestead Declaration 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.

What it doesn't protect

It is important to note that a Homestead Declaration 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 Homestead Declaration 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

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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 homestead declaration, 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.

Gina M. Barry is a Partner with the law firm of Bacon Wilson, P.C., Attorneys at Law. She is a member of the National Association of Elder Law Attorneys, the Estate Planning Council, and the Western Massachusetts Elder Care Professionals Association. She concentrates her practice in the areas of Estate and Asset Protection Planning, Probate Administration and Litigation, Guardianships, Conservatorships and Residential Real Estate. Gina may be reached at (413) 781-0560 or gbarry@baconwilson.com