

# What is a Declaration of Homestead Exemption?

By: Brandon C. Walecka, Esq.

Walecka Law, P.C.

774-203-9003

Brandon@WaleckaLaw.com

If you own your home, Massachusetts homestead law may protect your home against claims of many creditors. The homestead law protects your home if:

- You live in the house or plan to live in the house
- You use it or plan to use it as your “primary” residence (i.e., where you live most of the time)

Manufactured or mobile homes are also protected by this law. The homestead law does not protect the house from “secured” claims. That is, if you promised to give your house to the lender if you do not pay your loan, your loan is secured. Common examples of secured creditors are mortgages, home equity lines of creditor, or reverse mortgages. If you do not pay your mortgage, homestead protection cannot stop the bank from foreclosing on your home.

A Declaration of Homestead is a way to protect your home from *unsecured* creditors. The Declaration of Homestead protects the equity or cash value in your home. Thus, a Declaration of Homestead protects you from creditors who want to take your equity to repay the debts you owe them. Creditors who have a lien on your property can foreclose if there is no Declaration of Homestead. They can auction your home to obtain the money you owe them.

As previously mentioned, a Declaration of Homestead does NOT

protect your home from mortgage companies or the government for tax or child support obligations. If you do not pay those types of bills, they can foreclose on you.

### **Types of Homestead protection**

*\$125,000 is protected automatically.*

In Massachusetts, a \$125,000 homestead protection is automatically provided on your home. You do not have to file anything to get the \$125,000 homestead protection. That means if you have \$125,000 or less in equity no one can force the sale of your house.

*For \$500,000 protection, file a homestead declaration.*

You can protect up to \$500,000 in equity in your home, but you must file a Declaration of Homestead.

*Extra protection is available for the elderly or disabled.*

In addition, each owner who is 62 or older, or disabled can claim the \$500,000 protection for themselves. So, if you and someone else own your home together and either of you are elderly or disabled, you can protect your property up to \$1,000,000.

### **Does a Homestead declaration protect from the nursing home?**

No. This is a common misconception. The Homestead Declaration will NOT protect your home's equity value from a MassHealth (Medicaid in Massachusetts) lien.

Interested in learning more about filing a Declaration of Homestead? Go to the Registry of Deeds in the county where your property is located or reach out to a qualified attorney to discuss this important document and how it can protect your most valued asset.

*The information contained in this article is not intended to*

*make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*