

HOUSE No. 1584

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act relative to the estate of homestead

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	2nd Suffolk
John D. Keenan	7th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE ESTATE OF HOMESTEAD.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 188 of the General Laws is hereby amended by striking out sections 1 through 10 and inserting in place thereof the following thirteen sections:

Section 1 (a) For the purposes of this chapter, the following terms shall have the meanings set forth below:

“disabled person”, an individual who has any medically determinable permanent physical or mental impairment that would meet the disability requirements for supplemental security income under the provisions of 42 USC 1382c(a)(3)(A) and (C) as in effect at the time of recording.

“elderly person”, an individual aged sixty-two or older.

“family” and “family members”,

(1) married individuals, both of whom own a home, and any minor child as defined herein;

(2) a married individual who owns a home, his or her non-titled spouse, and any minor child as defined herein; or

(3) an unmarried individual who owns a home, and any minor child as defined herein.

“home”, the aggregate of:

(1) any of the following: (i) a single family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (ii) a two-to-four family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as both terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or otherwise;

(2) the sale proceeds as provided in clause (a) of section 8; and

(3) the proceeds of any policy of insurance insuring the home against fire or other casualty loss as provided in clause (b) of section 8.

“maximum automatic homestead exemption”, \$125,000.00, provided that:

(1) with respect to a home owned as joint tenants or as tenants by the entirety, the maximum automatic homestead exemption shall remain whole and unallocated between the owners, provided that the owners together shall not be entitled to an automatic homestead exemption in excess of \$125,000.00.

(2) with respect to a home owned by multiple owners as tenants in common or as trust beneficiaries, the maximum automatic homestead exemption shall be allocated among all owners in proportion to their respective ownership interests.

“maximum declared homestead exemption”, \$500,000.00, provided that:

(1) with respect to a home owned by joint tenants or as tenants by the entirety, and who are benefited by an estate of homestead declared pursuant to section one, the maximum declared homestead exemption shall remain whole and unallocated, provided that the owners together shall not be entitled to a declared homestead exemption in excess of \$500,000.00.

(2) if a home is owned by tenants in common or trust beneficiaries, the maximum declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section one shall be the product of (i) \$500,000.00 and (ii) such co-tenant's or trust beneficiary's percentage ownership interest.

(3) except as provided in clause (4), each person who owns a home and who is benefited by an estate of homestead declared pursuant to section 1A shall be entitled to the maximum declared homestead exemption without reduction, pro-ratio or allocation between or among other owners of the home.

(4) separate estates of homestead may be declared pursuant to sections one and 1A on the same home, and in such event:

(i) if the home is owned by tenants in common or trust beneficiaries, the maximum declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section one shall be calculated in the manner provided in clause (2), and the maximum declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 1A shall be calculated in the manner provided in clause (3), or

(ii) if the home is owned as joint tenants or as tenants by the entirety, the maximum declared homestead exemption for the owners together shall be the sum of \$500,000.00 multiplied by the number of declarations recorded pursuant to section 1A, plus \$250,000.00. As calculated in accordance with this paragraph, the maximum homestead exemption shall remain whole and unallocated among the owners, provided that no one owner who declares homestead, acting individually, shall be entitled to claim more than a \$500,000.00 exemption.

(5) the calculation of the amount of homestead exemption available to any owner shall not be deemed to sever any joint tenancy or tenancy by the entirety.

“minor child”, a person aged 21 and under, who is the natural or adopted child of an owner or owner's spouse entitled to the benefits of this statute, notwithstanding any provision of law to the contrary.

“mortgage” shall include an instrument granting a security interest in a manufactured home or cooperative housing unit and the term “mortgagee” shall include the secured party under any such instrument.

“owner”, any natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder or holder of a beneficial interest in a trust.

“principal residence”, the home where an owner, and his or her family, if applicable, reside or intend to reside as the primary dwelling. No person may hold concurrent rights under this chapter in more than one home.

“record”, “recording” and “recorded”, the act of recording in the registry of deeds or registry district of the land court for the county or district where the home lies, except that, with respect to a manufactured home located on registered land, recording in the registry of deeds shall be sufficient.

(b) An estate of homestead to the extent of the maximum declared homestead exemption in a home may be acquired subject to the provisions of section two by one or more owners who occupy or intend to occupy said home as a principal residence. Said estate of homestead shall be

created by a written declaration prepared, executed and recorded in compliance with section two. A homestead declaration shall benefit each owner identified as provided in section two and such owner's family members who occupy or intend to occupy the home as a principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as a principal residence.

(c) Said estate shall be exempt from the laws of conveyance, descent, devise, attachment, seizure, execution on judgment, levy and sale for payment of debts or legacies except in the following cases:

- (1) sale for federal, state and local taxes, assessments, claims and liens;
- (2) for a lien on the home recorded prior to the creation of the estate of homestead;
- (3) for any mortgage on the home as provided in sections five and six;
- (4) upon an order by a court that a spouse, former spouse or parent pay a certain amount weekly or otherwise for the support of a spouse, former spouse or minor children;
- (5) where buildings on land not owned by the owner of a homestead estate are attached, levied upon or sold for the ground rent of the lot whereon they stand;
- (6) upon an execution issued from a court of competent jurisdiction to enforce its judgment based upon fraud, mistake, duress, undue influence or lack of capacity.

Section 1A. The estate of homestead of each owner who is an elderly or disabled person, regardless of marital status, shall be protected under this section against attachment, seizure, execution on judgment and levy, except as provided in subsection (c) of section one, to the extent of the maximum declared homestead exemption; provided that a declaration of homestead protection for such elderly or disabled person that complies with section two has been recorded; and, provided further, that such person occupies or intends to occupy such home as his or her principal residence.

An owner of a home who qualifies under the provisions of this section shall, upon recording of an elderly or disabled person's declaration of homestead protection, be eligible for protection of such ownership interest to the extent of the maximum declared homestead exemption as set forth in subsections (3) and (4) of the definition regardless of whether such declaration is recorded individually or jointly with another.

Except as provided in the following paragraph, each elderly or disabled person's estate of homestead shall terminate upon (a) the sale or transfer of that person's ownership interest in the home, except where such elderly or disabled person is also the transferee of all or a portion of the transferred interest; (b) the recorded release of that person's homestead estate; (c) the subsequent declaration of an estate of homestead on other property; (d) the abandonment of the home as the principal residence by the person (e) upon the death of the person, or (f) with respect to a home owned in trust, the execution of a deed or recorded release by the trustee(s).

In the event that an owner records a declaration under this section, and such owner conveys to, or is survived by, a spouse who does not have the benefit of an estate of homestead under either section one or this section, and the spouse occupies or intends to occupy the home as his or her principal residence, then the spouse shall be deemed, as of the time he or she acquired title, to have the benefit of the declaration previously recorded, as if such declaration had been recorded under section one, until the spouse is eligible for and does record a declaration creating an estate of homestead under this section.

No declaration creating an estate of homestead pursuant to section 1A shall terminate the existing homestead rights of a non-titled spouse or minor children.

Nothing in this section shall prohibit an elderly or disabled person from declaring or continuing a

homestead pursuant to section one, but no one person may concurrently hold rights under both section one and this section

Section 2 Each declaration of homestead shall be in writing, signed and acknowledged under penalty of perjury by each owner to be benefited by the homestead, except as provided in subparagraph (d), shall be recorded and shall comply with the following:

(a) Each owner to be benefited by the homestead, and such owner's non-titled spouse, if any, must be identified.

(b) The declaration shall state that each person so identified occupies or intends to occupy the home as his or her principal residence.

(c) If the home is co-owned by a married couple, whether only in their names or as co-tenants with one or more other parties, and the home is or is intended to be both spouses' principal residence, a declaration under section 1 must be executed by both spouses

(d) If the home is owned in trust, only the trustee shall execute the declaration.

(e) In addition to the foregoing, a declaration creating an estate of homestead under section 1A shall include the following:

(1) a statement that the owner to be benefited is either an elderly person or a disabled person, as defined in section 1; and

(2) with respect to a declaration of homestead benefiting a disabled person, there shall be recorded with the declaration either: (i) an original or certified copy of a disability award letter issued to the person by the United States Social Security Administration; or (ii) a letter signed by a licensed physician registered with the Massachusetts Board of Registration in Medicine certifying that the person meets the disability requirements stated in 42 USC 1382c(a)(3)(A) and (C) as in effect at the time of recording.

A single instrument may contain separate homestead declarations by eligible co-owners of the same home, and such instrument shall not be treated as a multifunctional document for purposes of determining the recording fee. A declaration of homestead may not be created within a deed or other instrument vesting title in the owner.

The statement of principal residence required in subparagraph (b) shall be binding upon any identified owner, including one who is a beneficiary of a trust, but may be overcome by an interested third party upon presentation of clear and convincing evidence to the contrary. In the event that spouses occupy or intend to occupy separate homes, and valid declarations are recorded with respect to each, then both estates of homestead together shall not exceed the maximum declared homestead exemption.

The estate of homestead of an individual who records a declaration under section one and who subsequently marries shall automatically be deemed to benefit such individual's spouse.

Any subsequent recording of a declaration of homestead benefiting (i) a family member identified on a prior declaration on the same home or (ii) the spouse of such person, without an intervening release, shall be deemed to relate back to the filing date of the earliest recorded declaration, but the section of this chapter pursuant to which the later recorded declaration is made shall control the rights of a person identified in such later declaration.

Section 2A In the absence of a valid declaration of homestead recorded under this chapter, an estate of homestead to the extent of the maximum automatic homestead exemption shall exist in any home for the benefit of the owner and the owner's family members who occupy or intend to occupy the home as a principal residence. The homestead rights of non-titled family members shall consist of the right to use, occupy and enjoy the home as a principal residence. Said estate shall be held subject to the provisions of this chapter, except for subsection (b) of section 1 and

sections 1A and two□

In the event that spouses occupy or intend to occupy separate homes, then both estates of homestead together shall not exceed the maximum automatic homestead exemption□

The recordation of a declaration of homestead under this chapter shall supersede the automatic homestead exemption provided by this section, but shall not terminate the automatic homestead exemption applicable to the period between the creation of the automatic homestead and the later recording of a declaration of homestead□ If a superseding declaration of homestead on the same home is later invalidated or terminated, the estate of homestead provided in this section shall be reinstated as of the date of its original creation.

Section 3□□□□□ In a case where a complaint for divorce, separate support, guardianship or conservatorship has been filed in the probate court by or against any person entitled to the benefit of an estate of homestead, his or her spouse and minor children shall have the right to use, occupy and enjoy such homestead estate until ordered otherwise by the probate court. The recording of an order of the probate court, together with the description of the homestead estate, shall operate to prevent any beneficiary of the homestead estate from disposing of said estate until such time as the probate court may revoke said judgment.

Section 4□□□□□ The estate of homestead existing at the death or divorce of a person holding a homestead under sections one or 2A shall continue for the benefit of his or her surviving spouse or former spouse and minor children who occupy or intend to occupy said home as a principal residence□ The estate of homestead of the surviving spouse or former spouse and minor children shall continue notwithstanding the remarriage of the surviving or former spouse□ The right, title and interest of the deceased in the home, except the estate of homestead thus continued, shall be subject to the laws relating to devise, descent, and sale for the payment of debts and legacies.

Section 5□□□□□ No estate of homestead shall affect a mortgage, lien or other encumbrance previously existing, except as provided in this chapter.

Section 6□□□□□ An estate of homestead shall be subordinate to any mortgage encumbering the home executed by all the owners of such home□ Such subordination shall not require the signature of any spouse who is not an owner□ A mortgage executed by fewer than all of the owners of a home that is subject to an estate of homestead shall be superior only to the homestead estate of the owners who are parties to the mortgage, and their non-titled spouses and minor children, if any□

It shall not be necessary to indicate in any mortgage that a homestead estate is subordinate as aforesaid and nothing contained in a mortgage or any document executed in connection therewith shall affect, or be construed to create, modify or terminate, a homestead estate, other than to subordinate it to the mortgage as aforesaid□□□

No mortgage lender shall require or record a release of homestead in connection with the making and recording of any mortgage.

Section 7□□□□□ An estate of homestead created under section one or 2A of this chapter may be terminated by any of the following methods:

- (a)□ a deed to a non-family member conveying the home, signed by the owner and, with respect to estates of homestead created under section one of this chapter, any non-owner spouse or former spouse residing in the home as a principal residence as of the date of such deed;
- (b)□ a recorded release of the estate of homestead, duly signed and acknowledged by the owner and, with respect to estates of homestead created under section one of this chapter, any non-owner spouse or former spouse residing in the home as a principal residence as of the date of such release;

(c) the subsequent recorded declaration of an estate of homestead under section two on other property, except that such declaration shall terminate only the rights of the owner making such subsequent declaration and the rights of that owner's spouse and minor children who reside or intend to reside in the other property as their principal residence;

(d) the abandonment of the home as the principal residence by the owner, the owner's spouse, former spouse or minor children, except that such abandonment shall terminate only the rights of persons who have abandoned the home; or

(e) in the case of a home the title to which is held in trust, by either

(1) the execution of a deed or a release of homestead by the trustee; or

(2) action of a beneficial owner identified in the declaration, who is not a minor child, taken in the same manner as provided in clauses (b), (c) and (d).

No person in "military service" as defined in the Section 511 of the Servicemembers Civil Relief Act, 50 USC App. Section 501 et seq., shall be deemed to have abandoned the home due to such military service.

No deed between spouses or former spouses or co-owners who singly or jointly hold an estate of homestead under sections one or 2A, nor any deed between a trustee and trust beneficiary or between a life tenant and remainderman shall be deemed to terminate said homestead unless each co-owner, spouse, former spouse or trust beneficiary entitled to the benefit of the homestead, has executed an express release thereof pursuant to clause (b).

If a subsequent declaration on other property which terminates a homestead under clause (c) is later invalidated, the prior declaration shall not be reinstated, but the owner shall have the benefit of the provisions of section 2A of this chapter.

Except for the subordination provided in section six, nothing contained in a mortgage or any document executed in connection therewith shall be construed to terminate or otherwise affect a homestead estate.

A deed reserving said estate of homestead shall convey, according to its terms, any title or interest in the property beyond the estate of homestead.

Section 8 In the event that a home subject to an estate of homestead is sold, whether voluntarily or involuntarily, taken, or damaged due to fire or other casualty, then the proceeds received on account of such event shall be entitled to the protection of this chapter during the following periods:

(a) In the event of a voluntary or involuntary sale or taking, for a period ending on the earlier to occur of (1) the date on which the person benefited by the homestead either acquires another home that he or she intends to occupy as a principal residence, or (2) the expiration of one year after the date on which such sale or taking occurred.

(b) In the event of a fire or other casualty, for a period ending on the earlier to occur of (1) the date upon which (i) the reconstruction or repair to the home is completed, or (ii) the person benefited by the homestead either acquires another home that he or she intends to occupy as a principal residence, or (2) the expiration of two years after the date on which such fire or other casualty occurred. For purposes of this section occupancy of a trailer, manufactured home or other temporary housing shall not establish principal residency in a reconstructed or replacement home.

Section 9 If the property of a debtor is assigned under the laws relative to insolvent debtors, and such debtor claims, and it appears to the court wherein the proceedings in insolvency are pending, that he or she is entitled to hold a part thereof as a homestead and that the property in which such estate of homestead exists is of greater value than either the maximum declared

homestead exemption or maximum automatic homestead exemption, as applicable, the court shall cause the property to be appraised by three disinterested appraisers, one of whom shall be appointed by the insolvent, one by the assignee and the third by the court; or if either the assignee or insolvent neglects to appoint, the court shall appoint for him or her. The appraisers shall be sworn faithfully and impartially to appraise the property, and shall appraise and set off an estate of homestead therein to the insolvent debtor in the manner prescribed in section eighteen of chapter two hundred and thirty-six in case of a judgment debtor; and the residue shall vest in and be disposed of by the assignee in the same manner as property which is not exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be paid out of the estate in insolvency, as are allowed to an appraiser of land seized upon execution.

Section 10. All existing estates of homestead which have been acquired under any law heretofore in force shall continue to be held and enjoyed notwithstanding the repeal of such law.

Section 11. A deed containing a statement of the marital status of the grantor may be relied upon by a good faith purchaser for value. As to acts undertaken in good faith reliance thereon, an affidavit executed and acknowledged by a grantor, releasor or mortgagor under penalty of perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant had no spouse who was then entitled to claim the benefit of an existing declaration of homestead, shall be conclusive proof of the nonexistence of such benefit. Such affidavit may be recorded in connection with the execution and delivery of any deed, release or mortgage, and shall be accepted in all registries of deeds and registry districts of the land court. The subsequent residency or renewal of residency in the home by a spouse of the grantor, releasor or mortgagor shall not defeat the priority of any mortgage, release or conveyance accepted in reliance on such affidavit.

SECTION 2. Chapter 236 of the General Laws is hereby amended by striking out section 18 and inserting in place thereof the following section:

Section 18. If a judgment creditor requires an execution to be levied on property which is claimed by the debtor to be as a homestead exempt from such levy and if the officer holding such execution is of the opinion that the premises are of greater value than an amount equal to either the maximum declared homestead exemption or the maximum automatic homestead exemption, as applicable, as defined in section 1 of chapter 188, appraisers shall be appointed to appraise the property in the manner provided by section six. If, in the judgment of the appraisers, the premises are of greater value than said amount, they shall set off to the judgment debtor so much of the premises, including the dwelling house, in whole or in part, as shall appear to them to be of the value of said amount; and the residue of the property shall be levied upon and disposed of in like manner as land not exempt from levy on execution; and if the property levied on is subject to a mortgage, it may be set off or sold subject to the mortgage and to the estate of homestead, in like manner as land subject to a mortgage only.

SECTION 3. This act shall apply to all estates of homestead arising or created prior to, on and after the effective date hereof, provided that estates of homestead acquired under any law heretofore in force shall not be deemed invalid for failure to comply with the execution requirements of section 2 of chapter 188 of the General Laws, as appearing in section one of this act. An estate of homestead that arises under section 2A of said chapter 188, as appearing in section one of this act, shall not have priority over, and shall be subordinate to, any lien, right or interest recorded or filed for registration before the effective date of this act.

