

SENATE NO. 835

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:*

1 SECTION 1. Chapter 188 of the General Laws is hereby deleted in its entirety, and the following is
2 substituted in its place:

3 CHAPTER 188. HOMESTEADS.

4 §1. Homestead protection generally/ protection automatic/ homestead amount/ elderly and disabled
5 persons/definitions.

6 Homestead protection shall exist in any home, whether real property or manufactured housing (the
7 “homestead premises”), for the benefit of all individual(s) (“qualifying individuals”) who own the
8 home, or who rightfully possess the home by lease under cooperative ownership, community land trust
9 or other similar ownership interest (“ownership interest”), and who occupy the home as their principal
10 residence or have declared in the registry of deeds or Land Registration Office in the district in which
11 the homestead premises lies that they intend to occupy the home as their principal residence.

12 Homestead protection shall remain in effect during a temporary absence where the qualifying

13 individual(s) intends to reoccupy the homestead premises as his or her principal residence. Homestead
14 protection shall exist automatically in the form of a homestead exemption amount (“homestead
15 exemption amount”) without any requirement for recording or filing an instrument declaring the same
16 other than to identify as the homestead premises a property other than that in which the qualifying
17 individual(s) presently reside as their principal residence. Each qualifying individual may have only
18 one homestead premises, and qualifying individuals living together as a household shall have their
19 homestead protection in the same premises.

20 The automatic homestead exemption amount shall be two hundred thousand dollars in the homestead
21 premises. In lieu of the foregoing, the automatic homestead exemption amount for each qualifying
22 individual who is sixty-two years of age or older, or is disabled, or both (“elderly/disabled individual”)
23 shall be two hundred thousand dollars. The total automatic homestead exemption amount in any
24 homestead premises occupied by more than one qualifying individual shall be two hundred thousand
25 dollars for the benefit of each qualifying elderly/disabled individual and the automatic homestead
26 exemption amount of two hundred thousand dollars in the aggregate for the benefit of all non-
27 elderly/disabled qualifying individuals.

28 For purposes of this chapter, a disabled person is defined as an individual who has any medically
29 determinable permanent physical or mental impairment which would meet the disability requirements
30 for supplemental security income under the provisions of 42 USC 1382c(a)(3)(A) and (C). An original
31 or certified copy of a disability award letter issued to the person by the United States Social Security
32 Administrator or a letter signed by a licensed physician registered with the Massachusetts Board of
33 Registration in Medicine certifying that the person meets the disability requirements stated in 42 USC
34 1382c(a)(3)(A) and (C) shall be sufficient to establish disability for the purposes of this chapter.

35 §1 A. Increased homestead exemption amount.

36 Any qualifying individual(s) having an automatic homestead exemption under section one or recording
37 or filing an instrument declaring their homestead premises to be a property other than that in which the
38 qualifying individual(s) presently reside as their principal residence may record or file a notice of
39 increased homestead exemption amount in the same homestead premises with the registry of deeds or
40 land registration office in the district where the homestead premises lies, and the automatic homestead
41 exemption amount and each elderly/disabled individual homestead exemption amount set forth in
42 section one shall be increased to five hundred thousand dollars (“increased homestead exemption
43 amount”). Upon such recording or filing, the total homestead exemption amount shall be five hundred
44 thousand dollars for the benefit of each qualifying elderly/disabled individual and five hundred
45 thousand dollars in the aggregate for the benefit of all non-elderly/disabled qualifying individuals.

46 To acquire an increased homestead exemption amount in a manufactured home, the fact that it is
47 designed to be held as such shall be set forth in a writing duly signed, sealed and acknowledged and
48 filed at the city or town clerk’s office in the city or town in which the manufactured home is located.

49 §2. Exemptions from homestead protection

50 Except as provided in section eighteen of chapter 236 of the General Laws, a qualifying individual’s
51 interest in a homestead premises shall be exempt from sale pursuant to levy on execution for the
52 payment of debts and legacies and from sale for the payment of legacies. The homestead exemption
53 amount shall be an interest in the homestead premises superior to claims on the homestead premises
54 except the following claims:

55 (1) for federal, state and local taxes, assessments, claims and liens;

- 56 (2) for a debt contracted prior to the acquisition of the homestead premises;
- 57 (3) for a debt contracted for the purchase of the homestead premises;
- 58 (4) upon an execution issued from the probate and family court to enforce its order or judgment that a
59 spouse pay a certain amount weekly or otherwise for the support of a spouse or minor children;
- 60 (5) where buildings on land not owned by the owner of homestead premises are attached, levied upon
61 or sold for the ground rent of the lot whereon they stand;
- 62 (6) upon an execution issued from a court of competent jurisdiction to enforce its order or judgment
63 based upon fraud, mistake, duress, undue influence or lack of capacity;
- 64 (7) for a debt secured by a mortgage on the homestead premises or a debt incurred primarily for a
65 business, commercial or agricultural purpose within the meaning of section two (a) of chapter one
66 hundred forty D, to the extent any person with a homestead exemption specifically executes, either
67 within such mortgage or by a separate written, sealed and acknowledged document, a release or
68 subordination releasing, subordinating, limiting or waiving that person's homestead exemption as to
69 said debt in consideration for and as a condition to such person's obtaining the loan or other
70 consideration creating the debt;
- 71 (8) for mortgages existing and duly recorded under prior law unless the same are subject to a duly
72 recorded or duly filed declaration of homestead under said law;
- 73 (9) for enforcement of liens arising under General Laws, Chapter 254;
- 74 (10) for enforcement of liens arising under General Laws, Chapter 183A; and

75 (11) for enforcement of liens arising under General Laws, Chapter 118E.

76 A release or subordination of a homestead exemption contained in or given in connection with a
77 debt on which the debtor has given a waiver under subsection (7) above shall apply only to claims
78 made for the debt secured thereby. The complete satisfaction and discharge of a debt shall render all
79 releases and subordinations of homestead exemptions contained therein void.

80 § 3. Termination of homestead protection.

81 A qualifying individual's homestead protection in a homestead premises shall be terminated upon
82 any of the following:

83 a) the sale or transfer of the qualifying individual's ownership interest in the homestead
84 premises during the individual's lifetime;

85 b) when the homestead premises ceases to be the principal residence of the qualifying
86 individual;

87 c) the death of the qualifying individual without a surviving spouse or minor children or other
88 family members described in section five; or

89 d) the sale, transfer of ownership, or release of homestead survivors benefits set forth in
90 section five by the surviving spouse not having an ownership interest and the minor children, acting
91 through the legal guardian of said children pursuant to a license issued by the probate and family
92 court. Notwithstanding the above, the sale, transfer of ownership, or release of a homestead premises
93 or of homestead rights by a surviving spouse having an ownership interest in the homestead premises

94 shall thereby terminate all such homestead survivors benefits, including those of the surviving
95 spouse's minor children and other family members described in section five.

96 § 4. Use of homestead premises by spouse or minor children.

97 When a qualifying individual ceases to occupy the homestead premises as his or her principal
98 residence, the homestead right to use, occupy and enjoy such homestead premises shall continue for
99 the benefit of the spouse, minor children and other family members, as defined in section five, who
100 continue to occupy the homestead premises as their principal residence for the period specified in the
101 second sentence of section five provided such occupancy is observable and reasonably continuous,
102 unless otherwise ordered by the probate and family court. In a case in which the probate and family
103 court has entered an order or judgment with respect to the homestead rights of a spouse, minor
104 children or other family members entitled to occupy the homestead premises under the preceding
105 sentence, on the recording or filing of the order or judgement of the probate and family court, together
106 with the description of the homestead premises, in the registry of deeds or the Land Registration
107 Office in the district where the real property is located, the terms of the order or judgment shall operate
108 instead of the rights granted in the preceding sentence until such time as the probate and family court
109 may revoke or modify said order or judgment.

110 §5 Homestead survivors benefit.

111 At the death of a qualifying individual, the right to use, occupy and enjoy the homestead premises
112 shall continue for the benefit of the surviving spouse, the minor children, any children over the age of
113 eighteen years of age who are unemancipated as provided under section twenty-eight of chapter two
114 hundred eight ("unemancipated" children), and any other family members who were living with and

115 were dependent on the deceased at the time of death, provided such occupancy is observable and
116 reasonably continuous. The homestead survivors benefit shall remain in effect so long as such
117 individuals continue to occupy the homestead premises as their principal residence and, as to minors
118 and unemancipated children, until the youngest unmarried child or other family member is either
119 eighteen years of age or is unemancipated and reaches the age of twenty-three years, until the
120 remarriage or death of the spouse, and until the death of any elderly/disabled family members referred
121 to above, and the benefit may be set off to them in the same manner as dower. But all the right, title
122 and interest of the deceased in the homestead premises, except the homestead survivors benefit, shall
123 be subject to the laws relating to devise, descent, dower and sale for the payment of debts and legacies.
124 “Family member” for these purposes shall include a parent, grandparent or sibling, and a child or
125 grandchild under eighteen years of age or unemancipated and under twenty-three years of age, in each
126 case whether related by blood, marriage or adoption.

127 §6. Protection of Proceeds from Sale of Homestead Premise.

128 In the event homestead premises are involuntarily sold, or are destroyed or otherwise rendered
129 uninhabitable due to destruction or other physical loss or damage, and proceeds from such sale of the
130 homestead premises or proceeds payable on account of its destruction or loss are paid to or for the
131 benefit of a qualifying individual(s) or any person(s) claiming that person’s interest under section four
132 or five, that individual(s) or person(s) may enjoy continuation of the aforesaid homestead benefits in
133 such proceeds to the extent of the individual’s or person’s homestead protection. To the extent such
134 proceeds are deposited with a bank lawfully operating in the Commonwealth of Massachusetts in an
135 account designated a “homestead account” as the only funds deposited therein, and such proceeds, or
136 what remain thereof, are held in the homestead account either for use in reconstructing the homestead

137 premises or in purchasing or constructing other homestead premises or for payment of the person's
138 current cost of their principal residence, and not for other purposes, homestead protection shall
139 continue as to funds in the homestead account to the extent of the amount of the homestead exemption
140 until such person owns new homestead premises or can lawfully occupy the existing homestead
141 premises. That portion of the individual's rights in new homestead premises, or the constructed or
142 reconstructed existing homestead premises, purchased with proceeds from a homestead account shall
143 relate back to the date the homestead exemption from which such proceeds were obtained was created.

144 §7 Continuing Rights.

145 All existing estates of homestead which have been acquired under any law heretofore in force shall
146 continue to be held and enjoyed as homestead exemptions hereunder notwithstanding the repeal or
147 expiration of such law, except as provided in chapter two hundred and thirty-six; provided, however,
148 the total homestead exemption amount for a single homestead premises shall not exceed the greater of
149 either (a) the homestead exemption amount under section one or (b) the amount provided under prior
150 homestead law. Except as provided in section one, no homestead rights shall be acquired by
151 designation in a deed of conveyance or by declaration, unless prior to the effective date of this act such
152 deed or declaration is duly recorded with the registry of deeds or duly filed with the registry district of
153 the land court for the county or district in which the homestead premises is situated.

154 SECTION 2. Chapter 236, section 18 of the General Laws is hereby deleted, and the following is
155 substituted in its place:

156 § 18. Homestead property; levy of execution.

157 **If, following levy on execution, a judgment creditor requires the sale of a judgment debtor's property, but the**
158 **property is claimed by the debtor to be as a homestead exempt from such sale, and if the officer holding such**
159 **execution is of the opinion that (a) the premises are of greater value than the total homestead exemption amount set**
160 **forth in section one of chapter one hundred eighty-eight and (b) the homestead premises can be physically set off**
161 **from the residue of the property in a manner that does not effectively eliminate the benefit of the homestead**
162 **premises, appraisers shall be appointed to appraise the property in the manner provided by section six. If, in the**
163 **judgment of the appraisers, the premises are of greater value than the aforesaid homestead exemption amount, they**
164 **shall set off to the judgment debtor so much of the premises, including the dwelling house, in whole or in part, as**
165 **shall appear to them to be of the value of said total homestead exemption amount; and the residue of the property**
166 **shall be levied upon and disposed of in like manner as land not exempt from sale pursuant to levy on execution; and**
167 **if the aforesaid residue of the property is subject to a mortgage, such interest may be sold subject to the mortgage**
168 **and to the estate of homestead, in like manner as land subject to a mortgage only.**