

SENATE NO. 878

AN ACT TO CLARIFY THE LAW RELATED TO HOMESTEADS

*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. The fourth paragraph of section 1A of chapter 188 of the General is hereby amended by
2 striking the words “first and second mortgages held by financial institutions or others.”

3 SECTION 2. Said section 1A is hereby further amended by striking the word “sealed” wherever
4 appearing in the last sentence.

5 SECTION 3. Said section 1A is hereby further amended by adding the following sentence at the end
6 of the last paragraph: A mortgage, or an instrument granting a security interest in a manufactured
7 home, shall not be deemed a sale, transfer, deed or release within the meaning of this paragraph.

8 SECTION 4. Section 2 of said chapter 188 is hereby amended by striking the word “sealed”
9 wherever it appears.

10 SECTION 5. Section 6 of said chapter 188 is hereby amended by striking the caption thereto and
11 inserting in place thereof the following: Property subject to mortgage.

12 SECTION 6. Said Section 6 is hereby further amended by striking the first sentence thereof and
13 inserting the following two paragraphs:

14 Property which is subject to a mortgage, whether recorded before or after an estate of
15 homestead was acquired therein, shall be subject to an estate of homestead , except, as provided

16 hereinafter, as against the mortgagee and those claiming under the mortgagee, in the same manner as
17 if there were no such mortgage. If the mortgage was recorded before the homestead was acquired, the
18 rights of the mortgagee and those claiming under the mortgagee shall be superior to the homestead
19 estate. If the mortgage was recorded after the homestead was acquired, the rights of the mortgagee
20 and those claiming under the mortgagee shall be superior to the homestead estate, but only to the
21 homestead estate of those who are party to the mortgage; provided, that if both parents having a
22 homestead estate, or the survivor of the parents, are party to the mortgage, the homestead estate of
23 their child or children under section 4 shall also be subordinate to the mortgage.

24 It shall not be necessary to indicate in any mortgage that a homestead estate is subordinate as
25 aforesaid and nothing contained in a mortgage shall have effect, or be construed, to create, modify or
26 terminate a homestead estate, other than to subordinate it to the mortgage as aforesaid. The term
27 “mortgage” as used in this section shall be deemed to include an instrument granting a security interest
28 in a manufactured home and the term “mortgagee” shall be deemed to include the secured party under
29 any such instrument.

30 SECTION 7. Section 7 of said chapter 188 is amended by deleting the word “sealed” as appearing in
31 the first paragraph thereof.

32 SECTION 8. Said section 7 is further amended by adding the following sentence at the end of the first
33 paragraph: A mortgage, or an instrument granting a security interest in a manufactured home, shall
34 not be deemed a deed or release within the meaning of this paragraph.