

Massachusetts Homestead Act

What is the Massachusetts Homestead Act?

The Homestead Act protects your home from being attached, secured, or sold to pay off unsecured debts such as credit card debt or claims from a lawsuit. The Homestead Act does not protect your house from mortgage debt or liens on the property, and does not prevent foreclosure. The Homestead Act is found in [Massachusetts General Laws Ch. 188, §1-10](#), as amended by [An Act Relative to the Estate of Homestead](#) that went into effect on March 16, 2011.

Under the amended Homestead Act, up to \$125,000 of a homeowner's equity is automatically protected by law. A homeowner can protect up to \$500,000 in equity by filing a Declaration of Homestead with the Registry of Deeds.

To qualify for Massachusetts Homestead Act protection:

1. You must own a home in Massachusetts. The home can be a:
 - single-family home
 - 2-4 unit multi-family home
 - condominium unit
 - mobile home
 - manufactured home
 - or cooperative housing unit
2. You must occupy the home, or intend to occupy the home, as your principal residence. If you own more than one home, homestead protection only applies to the home that is your principal dwelling.
3. You can be a sole owner, joint owner, or beneficiary of a trust. The protection also applies to the spouse of the homeowner, and family members who live in the house as their principal residence.

What are the Three Types of Homesteads in Massachusetts?

Automatic Homestead (Section 4): If a homeowner does not file a Declaration of Homestead, the homeowner automatically receives homestead protection **up to \$125,000 of equity**. The protection is for the homeowner and the homeowner's family who live in the home as their principal residence.

Declared Homestead (Section 3): Section 3 homesteads are protected for **up to \$500,000 equity** for all owners combined. For Section 3 protection, homeowners must file a Declaration of Homestead with the Registry of Deeds. The protection applies to the homeowner, the spouse of the homeowner, and family members who live in the house as their principal residence. Both spouses must sign the homestead declaration if both are owners. If the homeowner dies, the homestead protection continues for the spouse and minor children if they continue to live in the house as their principal residence.

Homestead for Elderly or Disabled Persons (Section 2): Section 2 applies to homeowners who are age 62 or older, or disabled. To be considered disabled, a homeowner must meet the SSI disability requirements. For Section 2 protection, the homeowner must file a Declaration of Homestead with the Registry of Deeds. Each elderly or disabled owner can file for **up to \$500,000 protection per owner**. A married couple who own a home can get up to \$1,000,000 protection if both spouses qualify as elderly or disabled. Section 2 homestead protection does not extend to other family members and ends upon the homeowner's death.

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What are the Protection Benefits?

The protection applies to all debts, including pre-existing debts, except:

- federal, state, and local taxes and liens
- liens on the property that existed before the homestead protection went into effect
- mortgages on the home
- court orders for spousal support or child support
- attachments to land not owned by the owner of the homestead
- court-ordered judgments based on "fraud, mistake, duress, undue influence or lack of capacity"
- nursing facility paid for by Medicaid. (Medicaid lien is a government lien and is exempt from protection).

Note: If your home was damaged or destroyed by fire or other casualty, the proceeds from your insurance claim are protected until the repairs are completed, or until you buy a new home, or for two years, whichever happens first.

Seller Acknowledgement: Termination of Homestead Protection at Sale

If all principal residents of a home are listed on the deed as owners, the homestead protection will automatically be terminated when the property is conveyed by deed to another party (if it is a non-family sale). Although your homestead rights will terminate, the proceeds of the sale remain protected until you buy a new home, or for one year, whichever happens first.

If a non-owner spouse or former spouse is residing in the home as their principal residence at the time the deed is drafted, they will need to sign a recordable release of the homestead. A release must be signed and acknowledged by the owner and any non-owner spouse or former spouse residing in the home at the time of the sale.*

** Please note: There are a number of deed transfers that do not terminate an already declared homestead. Any transfer of the property between spouses, former spouses, co-owners, a trustee and a beneficiary or a life tenant and a remainderman will not terminate a previously declared homestead. Also, if a conveyance or release is made without the signature and acknowledgement of a non-owner spouse or former spouse who is residing in the home at the time the principal residence is conveyed or released by an owner, it shall not affect the homestead of the spouse who failed to sign.*

Buyer Acknowledgement: Obtaining Homestead Protection at Purchase

If you buy a new home to be used as your principal residence, your closing attorney must notify you about your right to homestead protection and explain the difference between automatic and declared homesteads. You will be asked to sign a form saying that you received the homestead notice.

To get the automatic homestead protection up to \$125,000, you do not have to do anything.

To get the \$500,000 protection for Section 2 or Section 3 homesteads your closing attorney can file a Declaration of Homestead, or you can file the following with the Registry of Deeds in your county:

1. Notarized Declaration of Homestead form, available from www.sec.state.ma.us or the local Registry of Deeds Office
2. Payment of the \$35 filing fee (checks made out to the "Commonwealth of Massachusetts")

If you have questions, call the Citizen Information Service at 1-800-392-6090, or call your Registry of Deeds office.