

# Massachusetts Homestead Now Available to Trust Beneficiary

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The Bankruptcy Court for the District of Massachusetts recently issued an interesting decision for those using trusts to hold title to real estate. Judge Feeney, the author of *In re: Rodriques*, declared a Massachusetts Homestead valid though title was held by a recorded revocable living trust.

Before the *Rodriques* decision, it was widely accepted that even if the party residing in the property was both a Trustee and a beneficiary of a self-settled trust, the party could not avail himself or herself of a Massachusetts Homestead. The theory had been that the interest of a beneficiary was personal property and not real estate. Thus, such personal property interest was not capable of Homestead protection.

Instead, in her decision Judge Feeney focused on the precise language of the Homestead statute. Specifically, Judge Feeney found that the phrase "...or one or all who rightfully possess the premises by lease or otherwise and who occupy or intend to occupy said home as a principal residence..." was decisive. This means that there are two types of individuals who could have homestead protection under the statute. The first is an owner or owners of a home who occupy or intend to occupy the home as a principal residence and the second is one or all who rightfully possess the premises by lease or otherwise and occupy or intend to occupy the house as a principal residence.

Judge Feeney further concluded that Ms. Rodriques had "rightful possession" due to the specific language of the trust instrument which contained broad Trustee powers.

The "take away" from the *Rodriques* decision is that for those who own their principal residence in a trust and who have filed a Declaration of Homestead or want to file a Declaration of Homestead, the following must be done:

- Carefully review the terms of the trust to ensure that the Trustee's powers enable the beneficiary to enjoy a right of possession; and
- Carefully review or draft the Declaration of Homestead to take advantage of the disjunctive phrase of the Homestead statute. It is suggested that the language in the trust, especially nominee trusts in Massachusetts, contain specific authorization allowing the Trustee to give possession and occupancy to a life tenant or beneficiary.