

# BACE LAW REPORT

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## **The Homestead Act: Protecting Your Most Important Asset**

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For the vast majority of Massachusetts residents, one's home is also one's most valuable and important asset. But a home is clearly more than simply an asset; it is where you reside, raise your family, and take pride in the hard work that has afforded one the ability to purchase a home. Taking advantage of the Commonwealth's Homestead Act is proving essential, especially in today's economic climate, when so many find themselves in the grip of the housing crisis. As variable interest mortgage payments rise and home equity moves in the opposite direction, it is critical to protect your home from creditor's claims. Thirty-five dollars (\$35.00), a relatively simple form, and some advice from your attorney is a small fee for the protection that a Homestead filing can potentially afford.

### **What is the Homestead Act?**

The Homestead Act (M.G.L. ch. 188), is a state law, enacted by the Legislature to protect an individual's primary residence against attacks from unsecured creditors. Especially in today's economic climate, the number of individuals having difficulty paying credit cards and other loans is increasing in the Commonwealth. Generally, these creditors seek to recoup losses through the filing of lawsuits, and if successful in their claim, the winning of a court Judgment. The Judgment serves as a court order to the debtor to pay the outstanding balance. Collection procedures, attachment, and unsatisfied Judgments were described in more detail in the February 2008 issue of *The Bace Law Report*, located at: [www.bacelaw.com/newsletter](http://www.bacelaw.com/newsletter).

Unsecured creditors, such as credit cards, and other individuals who are owed money without the benefit of some sort of collateral, often seek attachment or forced sale of a home in order to recoup that Judgment. A debtor's home with a sizeable amount of

equity, quickly becomes a very desirable target for attachment.

The Homestead Act affords protection for the first \$500,000.00 of equity in an individual's primary residence. Generally speaking, this prevents unsecured creditors from attacking that first \$500,000.00 of value, and discourages Judgment-Creditors from attaching to secure a lien, or attempting to force the sale of the home.

#### **Limitations & Qualifiers:**

Generally, in order to be eligible for Homestead protection, the home must meet the following criterion and the Act is subject to the following limitations which is not intended to be an all-inclusive list:

- ▶ It must be your primary residence. Multi-family homes, condominiums, and others are eligible, as long as it is the declarant's primary residence.
- ▶ The Homestead must be filed in the county in which the home is located.
- ▶ Pre-existing Debts: those debts incurred before you file a Homestead Declaration are NOT protected by the Act - Except where the owner is in federal bankruptcy court, for reasons that are beyond the scope of this brief informational newsletter.
- ▶ Sale of the home will automatically terminate a Homestead protection, generally. Refinancing your home may have the SAME effect as a sale,

and may terminate the protection.

- ▶ Federal or state taxes, and liens are not eligible for protection. Neither are MORTGAGES, child support payment orders, and other exemptions. The Act will not protect you from claims from first or second mortgage lenders who hold a security interest in the residence.

What almost always will be protected, are the claims of unsecured creditors of debts you incur after the filing. This can include liability for personal injury Judgments if your insurance coverage is inadequate and the plaintiff attacks your personal assets. It is of critical importance to note, that Homestead Act protection is not a substitute for liability insurance. These are separate and distinct types of protection.

It is clear that the filing of a Homestead protection, is a quick, inexpensive, and relatively straightforward method of protecting your most important asset.

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