

New state homestead law gives expanded protection

By *Linda T. Cammuso*

Until now, Massachusetts homeowners had to choose between homestead protection — which safeguards the equity in one's home from attachment by general creditors — or the benefits of owning their home in a trust. That changed on Dec. 14, when Gov. Deval Patrick signed the state's pension reform bill into law, which included the long awaited and sweeping changes to the Massachusetts Homestead Act (Senate Bill 2406).

The law goes into effect on March 16.



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Some highlights of the new law include:

- Homeowners receive an automatic homestead exemption of up to \$125,000 of the equity in their homes from seizure by general creditors — without the homeowner having to sign or file any documents.

- Homeowners who record a “Declaration of Homestead” at the registry of deeds are eligible for up to \$500,000 of homestead exemption.

- Spouses who own their home jointly may now each record a Declaration of Homestead — previously, only one spouse could file.

- The “elderly and disabled” Declaration of Homestead remains available to each owner who is disabled or age 62 or older at \$500,000.

- Homes owned in trust are available for homestead protection for the beneficiaries of the trust who occupy the home as their primary residence.

- If a homeowner marries, an existing Declaration of Homestead automatically protects the new spouse.

- The question of whether you must file a new Declaration of Homestead after



refinancing has been clarified: if there is an existing Homestead, a new one need not be filed.

Closing attorneys are now required to notify clients in writing with a signed receipt of the “declared homestead” availability.

Homeowners should be aware that certain claims or debts continue to be exempt from

Homestead protection — that is, the home is not protected from such claims. These include mortgages used to purchase the home and federal, state and local taxes, assessments, claims and liens.

Additionally, homesteads continue to offer no protection against the costs of long-term care, including a nursing home stay. If you are a homeowner and are relying on your Homestead Declaration to protect your home from being sold to pay for nursing home care, you should pursue other

avenues of protection, since a Medicaid lien can be placed on a home despite an existing Declaration of Homestead.

Homestead protection is a fundamental part of comprehensive estate planning. The new Massachusetts Homestead Act brings much-needed clarification to the previously murky homestead laws, ensures that all homeowners have an opportunity to protect at least a portion of the equity in their home and opens the door to new estate planning opportunities by protecting homes owned in certain types of trusts. To ensure that you have the maximum homestead protection — and equally as important, to understand what Homestead does not protect — contact an attorney soon.

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