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## Point of View

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### THE 2010 HOMESTEAD ACT

by Deborah A. Basile, Esq.

The Massachusetts Homestead Law was originally enacted in 1851 and has remained unchanged but for amendments to increase the dollar amount of protection to reflect increasing home values and amendments to benefit elderly homeowners.

On December 16, 2010, Governor Patrick signed into law, the 2010 Homestead Act, which represents an overhaul of the statute and clarifies its provisions.

The new law became effective March 16, 2011. Most importantly, it creates the “automatic” homestead, which provides all homeowners in the Commonwealth with \$125,000 in protection for the equity in their homes without the need for filing a “Declaration of Homestead”. To avail themselves of the full \$500,000 exemption, homeowners may file a Declaration of Homestead with the Registry of Deeds. Without the filing, however, assuming a down

payment of 20% of the home’s original price, homes with values of up to \$625,000 will be fully protected under the 2010 Homestead Act against claims of creditors.

The 2010 Homestead Act provides additional modifications to the current law to render it more applicable to modern home ownership, including the following:

1. Under the new law, new mortgages resulting from refinancing will no longer terminate a previously existing homestead declaration;
2. The form of homestead declaration will require the signature of both spouses when they hold title as tenants by the entirety;
3. Proceeds from the sale of the home will be entitled to homestead protection;
4. Beneficiaries of trusts will be entitled to homestead protection;

5. Transfers among family members will not terminate a previously declared homestead;
6. Preexisting debts are not excluded from homestead protection;
7. Manufactured homes are eligible for homestead protection;
8. The homestead declaration of an individual who subsequently marries shall be deemed to benefit the individual's spouse;
9. Homestead rights are terminated by:
  - a) The recording of a deed to a non-family member conveying the home, signed by the owner and non-owner spouse or former spouse residing in the home as principal residence as of the date of the deed.
  - b) The recording of a release of the homestead signed by spouse or former spouse residing in the home as principal residence as of the date of the deed.
  - c) The abandonment of the home as the principal residence by the owner, the owner's spouse or former spouse or minor children.
  - d) The recording of a new Declaration of Homestead terminates a prior declared estate of homestead, but does not terminate an existing automatic homestead exemption.

In the next column is a sample of a Declaration of Homestead form.

**The Commonwealth of Massachusetts**  
 William Francis Galvin, Secretary of the Commonwealth

**Declaration of Homestead** (General Law Chapter 188, Sections 1 and 1A)  
 Instructions: Complete all applicable information and sign before an active Notary Public. Recording fee is \$35.00. Make checks payable to the Commonwealth of Massachusetts. Please contact your Registry of Deeds district office for mailing instructions and fee amounts. A complete listing of all Registries can be found at [www.sec.state.ma.us/rod](http://www.sec.state.ma.us/rod).

1. Name: \_\_\_\_\_, and  
 \_\_\_\_\_  
*(Add a second name only if ELDERLY (over 62 years of age) or DISABLED)*

2. Property Address: \_\_\_\_\_  
 \_\_\_\_\_  
*(street number and street name)*  
 \_\_\_\_\_, Massachusetts.  
*(city or town)*

3. Select ONE of the following:  
 For Recorded Land (Deed/Inheritance): The deed being recorded in \_\_\_\_\_ (book) \_\_\_\_\_ (page)  
 or \_\_\_\_\_ (docket number) from \_\_\_\_\_ (county) Probate Court.  
 OR  
 For Registered Land (Certificate of Title): As Certificate of Title \_\_\_\_\_ (number) registered in the Land  
 Registration Office in \_\_\_\_\_ (book) \_\_\_\_\_ (page).

4. Check if ELDERLY (over 62 years of age) or DISABLED:  
 I (We), being 62 years of age or older or being physically or mentally disabled and because of such disability, am (are) not able to engage in substantial, gainful employment, which disability is evidenced by the attached award letter from the Social Security Administration or certification by a physician licensed by the Commonwealth of Massachusetts.

I (We) hereby declare that I (we) am (are) possessed of, and occupy said premises as a residence and Homestead as provided in Chapter 188, Section 1 or 1A, of the Massachusetts General Laws, as amended. I (We) expressly reserve the right to myself and my spouse, or to the survivor of us, our legal representatives, to revoke and rescind this Homestead as to ourselves and the rights of our minor, unmarried children.

**To be Signed by Applicants in Front of Notary Public:**  
 Witness my (our) hand(s) and seal this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_.

Signature(s): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**For Use by Notary Public Only:**  
 COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.  
 before me, the undersigned notary public, personally appeared \_\_\_\_\_  
*(name(s) of the document signer(s))*  
 proved to me through satisfactory evidence of identification,  
 which were \_\_\_\_\_  
*(drivers license, passport, etc.)*  
 to be the person(s) whose name is (are) signed on the preceding or attached document in my presence and acknowledged to me that (he, she or they) signed it voluntarily for its stated purpose.

Notary Public: \_\_\_\_\_  
 My commission expires: \_\_\_\_\_

**Deborah A. Basile**, a shareholder, is primarily involved in the firm's real estate, intellectual property and business practice. Deborah is registered to practice before the United States Patent and Trademark Office and works in all areas of general business and commercial transactions, with a specialty in intellectual property, including patent prosecution, copyright and trademark.

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