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Point of View

A Quarterly Newsletter

Spring 2006

DECLARATION OF HOMESTEAD AND THE CARBON MONOXIDE DETECTOR LAW by Brenda S. Doherty, Esq.

A Declaration of Homestead, also sometimes referred to as a Declaration of "Homestead Protection" or of "an Estate of Homestead," provides certain protection from creditors for real estate or a manufactured home that serves as an individual's personal residence. The law is contained in Massachusetts General Laws Chapter 188, sections 1-10. Protection is obtained by filing a Declaration of Homestead, with a description of the property, at the Registry of Deeds in the county where the property is located. As of October 26, 2004, homeowners in Massachusetts can protect their property from unsecured creditors up to the amount of \$500,000 of equity per residence. Homesteads existing before that date (the amount of protection was previously \$300,000, and before that \$100,000) automatically get the increased protection, provided the homestead has not been terminated either explicitly by the homeowner or by subsequent events effectively terminating it.

The protection is against attachment, levy on execution or sale to satisfy debts asserted after the filing of the homestead declaration, with some important exceptions. Those exceptions include:

- Debts incurred or contracted prior to the

acquisition of the homestead;

- Mortgages used to purchase the residence;
- Federal, state and local taxes, assessments, claims, and liens;
- An execution issued from a court of competent jurisdiction to enforce its judgment based on fraud, mistake, duress, undue influence or lack of capacity;
- An execution from the probate court to enforce a judgment that a spouse pay for the support of a spouse or minor child; and
- In the case of a renter of land who owns a homestead in a building on the land, where those buildings are attached, levied upon or sold in connection with the ground rent of the lot on which they stand.

A homestead declaration protects the homeowner only from unsecured creditors. Thus, it does not offer protection from first or second mortgage lenders or other equity lenders who possess a security interest in the home. Similarly, liens imposed by the Massachusetts Department of Public Welfare in connection with the payment of Medicaid benefits are exempt from homestead protection. Under current law and practice, as long as the recipient of those benefits,

or the spouse of the recipient, is alive, the Department will not try to attach the residence for reimbursement of Medicaid benefits. If the surviving spouse is also a recipient of Medicaid, the Commonwealth will file a claim for reimbursement from the estate for the entire amount of Medicaid benefits paid, once both spouses have died. There are special rules governing the effect and extent of homestead protection where the homeowner is in bankruptcy.

A homestead can only be declared on an individual's "principal residence," so no homestead can be filed on a vacation home unless it is the principal residence of the filer. The law provides that only one spouse under the age of 62 can file a homestead on behalf of themselves and his or her family, but that the protection will extend to the spouse or minor children (under age 18) for so long as the property remains the primary residence. There is an exception for elderly and disabled individuals, who are each entitled to protection of \$500,000.

A homestead will be terminated:

- upon the sale or transfer of the real property or mobile home during the homestead holder's lifetime;
- if the holder dies, his or her surviving spouse remarries, and each child reaches the age of eighteen, or if a release of homestead is signed, sealed, acknowledged and recorded at the registry of deeds;
- if the property ceases to be the individual's principal residence; or
- upon the subsequent filing of a declaration of homestead by the holder.

The Carbon Monoxide Detector Law (Nicole's Law)

Effective March 31, 2006 a new law went into effect requiring that every building or structure occupied in whole or in part for residential purposes that either contains fossil fuel burning equipment or a closed parking area within its structure (i.e., an attached garage) must be equipped by the owner with approved carbon monoxide alarms in conformance with the requirements of the Board of Fire Protection Regulations. This will cover most

Massachusetts residences. The law is named Nicole's Law in memory of seven year old Nicole Garofalo who died after a snowdrift blocked an exhaust vent from her family's propane boiler, filling the house with an odorless, colorless, lethal gas.

Nicole's Law is very similar to a smoke detector mandate enacted 20 years ago and requires installation in most residences of a battery operated or plug-in detector by March 31, 2006. Like the smoke detector requirement, Nicole's Law will be enforced by local fire departments during home inspections prior to the sale or transfer of the property. A seller of a home will not be able to sell the property if it does not meet the new requirement.

Symptoms of carbon monoxide poisoning resemble those of the flu, and can include nausea, headache and fatigue. Since the gas gives little or no warning, the type of detector required by Nicole's Law is necessary. According to the Federal Center for Disease Control and Prevention, about 480 people die each year from unintentional carbon monoxide poisoning. There were nearly 3,000 carbon monoxide cases reported in Massachusetts in 2003. The cost of carbon monoxide detectors starts at about \$30.

Brenda joined Doherty, Wallace, Pillsbury & Murphy in 2001, and practices in the areas of corporate, real estate, tax planning, and education law. She serves as Vice Chair of the Springfield Board of Appeals, and is a member of the Education Committee of the Community Foundation of Western Massachusetts and the Board of Directors of Western Mass. Legal Services. Brenda graduated from Brown University in 1984 and Harvard Law School in 1987, and is currently pursuing an LLM in taxation at Boston University.

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