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Client Advisory

Amendment to Homestead Act has Real Financial Implications for Homeowners and Creditors

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The Massachusetts Homestead Act (M.G.L. c. 188) has been on the books since the 1800s. Through a simple declaration recorded in the registry of deeds, homeowners can exempt as much as \$500,000 of equity in their principal residence from creditors. Effective March 16, 2011, the Homestead Act has been completely revamped, providing even greater protection for homeowners and placing affirmative disclosure obligations on closing attorneys and settlement agents.

There are some big changes in the new Act. It used to be that one had to record a Declaration of Homestead in order to claim an exemption. Now, homeowners have an automatic \$125,000 exemption on their principal home, without having to record anything. If a homeowner wishes to increase the amount of the exemption to \$500,000, a Declaration of Homestead still has to be recorded. Homesteads are available on single-family homes, 2-4 family homes, condominiums, manufactured homes and even for homes where title is held in trust.

Disabled or elderly persons (age 62 and up) also have a right to declare a homestead on their property. Unlike other owners, where the \$500,000 exemption is the maximum amount regardless of whether the property is jointly owned, each disabled or elderly person who is an owner is entitled to the full \$500,000 exemption. If the disabled/elderly persons own the property as joint tenants or tenants by the entirety, each can file a declaration of homestead under both sections of the Act (disabled/elderly exemption and non-disabled/elderly exemption). In that case, the amount exempted will be the number of disabled/elderly declarations times \$500,000, plus an additional \$250,000.

Under the old statute, the homestead exemption protected only the declarants' equity in a property, not the proceeds from the sale of a property. Thus, although a creditor might not have been able to force a sale of the property to satisfy a debt, once sold, creditors could reach the proceeds from the sale. The new Act now extends the homestead protection to the proceeds from the sale of the underlying property for up to a one-year period if sold in the ordinary course,

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and up to two years if it is the result of an insurance payout where the home has been damaged by fire or other casualty.

If all persons who signed a declaration of homestead also sign a mortgage, the homestead will automatically be subordinated to the new mortgage without the need for recording any additional subordination agreement.

The new statute also places an affirmative obligation on mortgage closing attorneys and settlement agents to provide mortgagors with written information about their right to declare a homestead. The notice must, at a minimum, explain the difference between the automatic homestead protection and the enhanced benefits which require filing of a declaration of homestead.

There are multiple other technical changes, though the changes summarized above are some of the most significant. The recording of a homestead declaration is an inexpensive way to protect one's equity in a home. Persons buying or owning a home should consult with their counsel about filing a homestead declaration so as to increase the \$125,000 automatic exemption to \$500,000. Moreover, closing attorneys and settlement agents must take care to revise their standard closing documents to incorporate mandatory disclosures about the new Homestead Act.

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