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Unraveling the Mystery of the "Elderly Homestead Protection"

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Your older neighbors or friends may occasionally talk about homestead protections on their houses, or that they can protect their home up to $1,000,000 against their creditors. Have you ever wondered how they did that, or if that is accurate? Are you eligible for the same amount of protection? This article may give you an answer.

What is homestead protection?

Under the Massachusetts Homestead Act, homestead protection shields up to a certain amount of equity in your primary residence against claims by your creditors.

In Massachusetts, the automatic homestead exemption of $125,000 may be sufficient if the equity value of your home is less than $125,000, after amounts due for taxes and mortgages. However, if $125,000 is insufficient to protect your primary residence, you can further safeguard the equity value of your home up to $500,000 by filing a document called a "Declaration of Homestead" under Section 3 of the Massachusetts Homestead Act. ("Section 3 Declaration").

All owners who live at the residence are eligible to file the Section 3 Declaration, and to get to share of the $500,000 protection. If the home is owned in trust, only the trustee(s) can sign the declaration. Once a Section 3 Declaration is filed, it will continue to protect the declarant's family members who reside in the same house, even after the declarant dies.

Extra Protection for persons 62 or older

The Massachusetts Homestead Act has a separate section that allows individuals 62 years or older to obtain additional protection up to $500,000 *per person* in their primary residence under Section 2. (This provision also applies to disabled persons.)

In order to obtain this additional homestead protection, you must affirmatively execute and record a Declaration under Section 2 ("Section 2 Declaration"). It is important to know that

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a prior Section 3 Declaration will not automatically convert into a Section 2 Declaration when you turn 62. However, filing a new Section 2 Declaration, or a second Section 3 Declaration will not invalidate previous declarations you filed. Instead, a later homestead declaration shall relate back to the first declaration.

Now let's consider three scenarios to better understand how elderly homestead protection works; in each scenario, the equity value of the house is presumed to be over $500,000. First, Bob is the sole owner of the house, and he is over 62. In this case, Bob can choose to file either a Section 3 or Section 2 Declaration; either will give him up to $500,000 in protection. Although apparently it makes no difference to Bob, Section 3 Declaration may be a better choice here, because a Section 2 Declaration terminates upon death of the declarant, leaving any heirs who live in the home with no protection. However if Bob's spouse, Betty, inherits the home, and lives there, then Bob's Section 2 Declaration will convert into a Section 3 Declaration for the benefit of the spouse. Betty can thereafter declare under Section 2 if she is eligible.

In the second scenario, the house is owned by Bob and Betty, and Bob is 62 but Betty is only 58. In this case, Bob can file a Section 2 Declaration and Betty can still file Section 3 Declaration. Together they will have a total of $750,000 protection, calculated at $500,000 for Bob's Section 2 and $250,000 for Betty's Section 3. However, neither may use more than $500,000 and the remaining balance of the $750,000 will be available for the other.

In the third scenario, Bob and Betty own a house and both of them are over 62 years old. In this case they can protect the house for an amount up to $1,000,000 as a family by each filing a Section 2 Declaration. However, each of them can only use up to $500,000 of protection. So even if Bob does not use his full $500,000 exemption, the maximum protection for Betty is still $500,000.

Conclusion

It is true that the elderly homestead protection can sometimes provide additional protection for a family. Nevertheless, one needs to consider factors, such as home equity value, number of owners, marriage status of cotenant, etc., to make the best decision regarding homestead declarations. If you have further questions about homestead declarations, please contact Rich May, P.C. attorney Yana Zheng.

Special thanks to Rich May's own Erica Bigelow and Lisa Delaney, drafters of the Massachusetts Homestead Act, for reviewing and contributing to this article.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Danielle Justo.