Understanding how Homestead protects homeowners

By Linda T. Cammuso

If you own your own home and believe that it is protected because you have a Declaration of Homestead it is important that you and your loved ones fully understand the law. The Massachusetts Homestead law allows homeowners to protect up to $500,000 of value in their homes from creditors.

Legal Briefs

While the law offers significant protection, it can be a source of confusion and misunderstanding for homeowners and even legal professionals. This confusion can lead to a loss of Homestead protection, and in some cases, can mislead homeowners who fail to protect against certain exposures not addressed by the Homestead laws.

As a homeowner, you should understand some basic but important aspects of the Homestead law. First, unlike many other states, Homestead protection in Massachusetts is not automatic: homeowners must file a "Declaration of Homestead" at the registry of deeds in the county where the home is located. Without this filing, the protection does not apply. Additionally, in most cases only one Homestead can be recorded per household or family. A subsequent Declaration will invalidate an existing Declaration, which may leave your home exposed to any claims that arose during the timeframe of the prior Declaration. Finally, a Homestead can only be filed on the "principal residence"; the protection is not available for second or vacation homes.

Homestead protection applies to the claims of most creditors. However, certain claims or debts are exempt from the Homestead law — that is to say, your home is not protected from such claims. These include mortgages used to purchase the home, debts contracted prior to the filing of the Homestead, and federal, state and local taxes, assessments, claims and liens.

The use of trusts can be a trap for the unwary when it comes to Homestead protection. Although this is a gray area of the law, it is the prevailing opinion that Homestead protection is likely not available for homes that are owned by a trust. There are many good reasons why a trust would be used to own a home, but the risk of losing this important creditor protection should always be carefully considered before transferring the home into a trust.

A common misconception among homeowners is that a Declaration of Homestead provides protection from nursing home and long-term care exposure. In reality, the Homestead laws do not protect your home from exposure to nursing home costs. Medicaid (or MassHealth as it is called in Massachusetts) can place a lien on the home despite a Homestead Declaration. If you are a homeowner who is relying on your Homestead to protect your home from exposure to nursing homes, you should pursue other avenues of protection.

Older homeowners should also be aware that the law allows homeowners who are age 62 or older, or who are disabled (regardless of age), to each file a Declaration. This allows multiple owners of the same home to each claim $500,000 of protection. This special protection applies regardless of marital status.

Most people believe that a Homestead Declaration cannot be utilized once an accident occurs or a liability arises. However, in most cases the Homestead protection may only be barred for claims that have actually been filed against the home. If you have any doubts about how you are protected consult a qualified attorney soon.

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➤ Birthdays

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because of Medicare. Most relieved are those who are retired and either don't have insurance or had no option but to get an expensive plan. That includes millions who have been denied proper health insurance because of preexisting health problems.

Just be aware that Medicare isn't a cure-all for high health care costs. People age 65 and over spent an average of $4,888 per capita annually out of pocket for expenses not covered by insurance, according to a 2004 study by the National Center for Policy Analysis.

"There's still a misunderstanding about continuing health costs for retirees," said Denning. "A lot of people think, 'Oh, I hit 65, I don't have to pay for medical care now.' No — that doesn't go away."

Perhaps the biggest milestone for older workers is full retirement age, although it's not always on a birthday. It's 66 if you were born from 1943-54 and 67 if you were born in 1960 or later. In between, it's 66 and two months if you were born in 1955, 66 and four months if born in 1956, and so on up to 66 and 10 months for those born in 1959.

While that's worth celebrating, you can afford a bigger birthday party and a more prosperous retirement if you wait until 70.

If you postpone taking Social Security until then, your monthly check will reach its maximum amount. The benefit increases by 8 percent for each year you delay beyond normal retirement age. That could make it close to a third larger taking it at 70 than at full retirement. — AP