

## HOMESTEADS AND LIFE ESTATES

For most Americans, their home is their largest single asset. As we age, we become increasingly concerned about how its value can be protected and passed on to future generations. It is important for homeowners to educate themselves about how to protect their homes from creditors (by placing a homestead declaration on the home), how to reduce property, how to borrow prudently on equity that has built up during their lifetimes) and how to efficiently transfer property to family and loved ones. Consulting with a knowledgeable elder law attorney is critical to determine what planning steps may be appropriate.

### A. HOMESTEAD DECLARATION DEFINITION

1. A homestead declaration is a document recorded with the Registry of Deeds that protects equity in one's principal residence from certain creditors and their claims.
2. Massachusetts revised its homestead laws in 2011 and again in 2022 to provide homeowners with added protection against creditors. The 2022 amendment to the homestead laws provided clarification to the 2011 law, expanded the class of individuals who could benefit from a homestead declaration, and expanded the ways in which a homestead could be terminated. The law provides homeowners with an automatic \$125,000 homestead exemption. Homeowners may record a declared homestead exemption to extend the exemption amount to \$500,000. This protection extends to the homeowner's spouse and family. Further, multi-family homes and homes in trust are eligible for the homestead protection.
3. Homesteads filed prior to March 2011 are grandfathered into the law and, therefore, homeowners do not have to refile. Caveat: A homestead filed prior to March 2011 may not be grandfathered if a mortgage (or equity line of credit) was subsequently filed before March 2011. If that is the case, it would be wise to file a new homestead now.
4. Older adults (persons 62 years of age or older) have an increased homestead exemption of \$500,000 for single owners and \$1,000,000 for a married couple.
5. Homeowners do not have to refile homesteads when a home is refinanced (after March 2011), which had long been an issue with Massachusetts residents.

### B. CLAIMS NOT PROTECTED

1. Federal, state and local taxes, assessments, claims and liens;
2. Liens on the home recorded prior to the filing of the declaration of homestead;
3. First and second mortgages;
4. A court order that the homeowner pay support to a former spouse or minor children; or
5. A Medicaid (MassHealth) lien if the owner requires nursing home care.

### C. OTHER CONSIDERATIONS

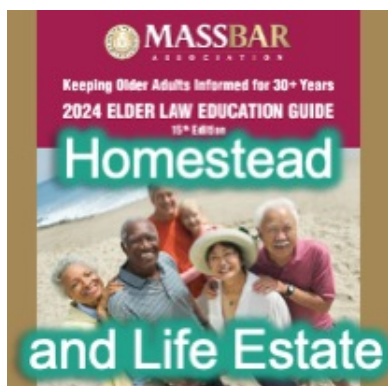
1. If an individual recorded a homestead declaration before attaining age 62, the individual must file a new declaration to gain added protections for older homeowners.
2. Individuals who gift the remainder interest in the property to one or more individuals and reserve a life estate may lose the homestead protection over the entire property. To be safe, the life estate holder should record a new homestead with respect to the life estate.
3. A remainderman may record a declaration of homestead if they use the property as their primary residence.
4. When transferring a home to or from a trust, a new homestead declaration must be recorded.

## D. DEED WITH A LIFE ESTATE

1. An individual may give a future interest in a home to another person by deed, while at the same time reserving the exclusive right to live in the home for life. This transfer is accomplished by executing and recording a deed transferring the remainder interest in the property to another while reserving a life estate. The individual retaining the right to live in the property is the “life tenant,” and the person receiving the future interest in the property is the “remainderman.” In some situations, individuals will give their children or other relatives the remainder interest in their homes.
2. The life tenant has the sole right to live in and operate the property. If the life tenant rents the property, the life tenant has the right to any income generated from the property. The life tenant has the duty to maintain the property.
3. Upon the death of the life tenant, the life estate terminates and the remainderman will then own the property in its entirety, avoiding probate.
4. If a property is owned in this format, then the property cannot be sold or mortgaged without the consent of both the life tenant and the remainderman. The life tenant may still be eligible for a reverse mortgage, provided that the remainderman consents.
5. If the property is sold during the life tenant’s life, the life tenant will not receive the full sales proceeds since they do not entirely own the property. The life tenant will receive a portion of the sales proceeds (the actuarial value of the life estate), and the remainderman will receive the balance.
6. The remainderman may be subject to and have to pay capital gains taxes when the property is sold if they do not qualify for the IRC Sec. 121 capital gains tax exclusion by not using the property as their primary residence. If the property is sold after the life tenant’s death, the value of the entire property is included in the life tenant’s gross estate, and the remainderman would benefit from a stepped up in cost basis in the property for capital gains tax purposes.
7. Under current MassHealth (the term used for Medicaid in Massachusetts) law, certain individuals who receive MassHealth benefits will have a lien placed on any property in which they have an ownership interest, including a life estate. If a MassHealth recipient owns a life estate in a property that has a lien and the property is sold during the life tenant’s life, then MassHealth can collect on the lien from the proceeds of the sale that are attributable to the life estate’s actuarial value, but not the remainderman’s actuarial value. If the property is sold after the life tenant’s death, MassHealth cannot enforce the lien because, under current law, that life estate is extinguished upon the death of the life tenant.
8. A transfer of a remainder interest is a disqualifying transfer under MassHealth regulations and creates a “five-year look-back period” on that transfer. If the transferor applies for MassHealth benefits within five years after making the transfer, then the transferor would be subject to a disqualification period for MassHealth benefits. The disqualification period is a period of time for which an applicant for MassHealth benefits would be ineligible for those benefits as determined by a formula that MassHealth utilizes. (See the section on Transfer Rules in Chapter 9.)
9. A transfer of a remainder interest is a taxable gift that needs to be reported on a federal gift tax return.
10. The remainderman’s interest in the property is subject to their creditors, including a divorce judgment, and the future sale of the property may be further complicated if the remainderman predeceases the life tenant.

**EXAMPLE 1**

Larry retains a life estate and gifts the remainder interest in his home to his son, Robert. Larry needs to file a gift tax return reporting the gift of the remainder interest. Later, Larry decides he wants to sell his home to a third party. Not only does Larry need Robert to agree to sell the home, since Larry does not have full ownership of the property (he only has a life estate), Larry will only receive the actuarial value of his life estate and Robert would receive the balance of the sales proceeds. Larry can use his Section 121 capital gains tax exemption on his portion of the sales proceeds presuming he used the property as his primary residence two out of the last five years, but Robert, presuming he did not use the property as his primary residence two out of the last five years, would have to pay capital gains taxes on his portion of the amount realized less his portion of the property's cost basis.



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