

**SENATE . . . . . No. 1619**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Cynthia Stone Creem**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the estate of homestead.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia Stone Creem	First Middlesex and Norfolk
Susan C. Tucker	Second Essex and Middlesex
Bruce E. Tarr	First Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S02653 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT RELATIVE TO THE ESTATE OF HOMESTEAD.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1           **SECTION 1.** Chapter 188 of the General Laws is hereby amended by striking out  
2           sections 1 through 10 and inserting in place thereof the following thirteen sections:  
3           Section 1. (a) For the purposes of this chapter, the following terms shall have the meanings set  
4           forth below.  
5           “disabled person”, an individual who has any medically determinable permanent physical or  
6           mental impairment that would meet the disability requirements for supplemental security  
7           income under the provisions of 42 USC 1382c(a)(3)(A) and (C) as in effect at the time of  
8           recording.  
9           “elderly person”, an individual aged sixty-two or older.  
10          “family” and “family members”,  
11          (1) married individuals, both of whom own a home, and any minor child as defined herein;  
12          (2) a married individual who owns a home, his or her non-titled spouse, and any minor child as  
13          defined herein; or

14 (3) an unmarried individual who owns a home, and any minor child as defined herein.

15 “home”, the aggregate of:

16 (1) any of the following: (i) a single family dwelling, including accessory structures  
17 appurtenant thereto and the land on which it is located; (ii) a two-to-four family dwelling,  
18 including accessory structures appurtenant thereto and the land on which it is located; (iii) a  
19 manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as  
20 both terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v)  
21 a residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or  
22 otherwise;

23 (2) the sale proceeds as provided in clause (a) of section 8; and

24 (3) the proceeds of any policy of insurance insuring the home against fire or other casualty loss  
25 as provided in clause (b) of section 8.

26 “maximum automatic homestead exemption”, \$125,000.00, provided that:

27 (1) with respect to a home owned as joint tenants or as tenants by the entirety, the maximum  
28 automatic homestead exemption shall remain whole and unallocated between the owners,  
29 provided that the owners together shall not be entitled to an automatic homestead exemption in  
30 excess of \$125,000.00.

31 (2) with respect to a home owned by multiple owners as tenants in common or as trust  
32 beneficiaries, the maximum automatic homestead exemption shall be allocated among all  
33 owners in proportion to their respective ownership interests.

34 “maximum declared homestead exemption”, \$500,000.00, provided that:

35 (1) with respect to a home owned by joint tenants or as tenants by the entirety, and who are  
36 benefited by an estate of homestead declared pursuant to section one, the maximum declared

37 homestead exemption shall remain whole and unallocated, provided that the owners together  
38 shall not be entitled to a declared homestead exemption in excess of \$500,000.00.

39 (2) if a home is owned by tenants in common or trust beneficiaries, the maximum declared  
40 homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of  
41 homestead declared pursuant to section one shall be the product of (i) \$500,000.00 and (ii) such  
42 co-tenant's or trust beneficiary's percentage ownership interest.

43 (3) except as provided in clause (4), each person who owns a home and who is benefited by an  
44 estate of homestead declared pursuant to section 1A shall be entitled to the maximum declared  
45 homestead exemption without reduction, pro-ration or allocation between or among other  
46 owners of the home.

47 (4) separate estates of homestead may be declared pursuant to sections one and 1A on the same  
48 home, and in such event:

49 (i) if the home is owned by tenants in common or trust beneficiaries, the maximum declared  
50 homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of  
51 homestead declared pursuant to section one shall be calculated in the manner provided in clause  
52 (2), and the maximum declared homestead exemption for each co-tenant and trust beneficiary  
53 who benefits by an estate of homestead declared pursuant to section 1A shall be calculated in  
54 the manner provided in clause (3), or

55 (ii) if the home is owned as joint tenants or as tenants by the entirety, the maximum declared  
56 homestead exemption for the owners together shall be the sum of \$500,000.00 multiplied by the  
57 number of declarations recorded pursuant to section 1A, plus \$250,000.00. As calculated in  
58 accordance with this paragraph, the maximum homestead exemption shall remain whole and  
59 unallocated among the owners, provided that no one owner who declares homestead, acting

60 individually, shall be entitled to claim more than a \$500,000.00 exemption.

61 (5) the calculation of the amount of homestead exemption available to any owner shall not be  
62 deemed to sever any joint tenancy or tenancy by the entirety.

63 “minor child”, a person aged 21 and under, who is the natural or adopted child of an owner or  
64 owner’s spouse entitled to the benefits of this statute, notwithstanding any provision of law to  
65 the contrary.

66 “mortgage” shall include an instrument granting a security interest in a manufactured home or  
67 cooperative housing unit and the term “mortgagee” shall include the secured party under any  
68 such instrument.

69 “owner”, any natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in  
70 common, life estate holder or holder of a beneficial interest in a trust.

71 “principal residence”, the home where an owner, and his or her family, if applicable, reside or  
72 intend to reside as the primary dwelling. No person may hold concurrent rights under this  
73 chapter in more than one home.

74 “record”, “recording” and “recorded”, the act of recording in the registry of deeds or registry  
75 district of the land court for the county or district where the home lies, except that, with respect  
76 to a manufactured home located on registered land, recording in the registry of deeds shall be  
77 sufficient.

78 (b) An estate of homestead to the extent of the maximum declared homestead exemption in a  
79 home may be acquired subject to the provisions of section two by one or more owners who  
80 occupy or intend to occupy said home as a principal residence. Said estate of homestead shall be  
81 created by a written declaration prepared, executed and recorded in compliance with section  
82 two. A homestead declaration shall benefit each owner identified as provided in section two

83 and such owner's family members who occupy or intend to occupy the home as a principal  
84 residence. The homestead rights of non-titled family members shall consist of the right to use,  
85 occupy and enjoy the home as a principal residence.

86 (c) Said estate shall be exempt from the laws of conveyance, descent, devise, attachment,  
87 seizure, execution on judgment, levy and sale for payment of debts or legacies except in the  
88 following cases:

- 89 (1) sale for federal, state and local taxes, assessments, claims and liens;
- 90 (2) for a lien on the home recorded prior to the creation of the estate of homestead;
- 91 (3) for any mortgage on the home as provided in sections five and six;
- 92 (4) upon an order by a court that a spouse, former spouse or parent pay a certain amount  
93 weekly or otherwise for the support of a spouse, former spouse or minor children;
- 94 (5) where buildings on land not owned by the owner of a homestead estate are attached, levied  
95 upon or sold for the ground rent of the lot whereon they stand;
- 96 (6) upon an execution issued from a court of competent jurisdiction to enforce its judgment  
97 based upon fraud, mistake, duress, undue influence or lack of capacity.

98 Section 1A. The estate of homestead of each owner who is an elderly or disabled person,  
99 regardless of marital status, shall be protected under this section against attachment,  
100 seizure, execution on judgment and levy, except as provided in subsection (c) of section one, to  
101 the extent of the maximum declared homestead exemption; provided that a declaration of  
102 homestead protection for such elderly or disabled person that complies with section two has  
103 been recorded; and, provided further, that such person occupies or intends to occupy such home  
104 as his or her principal residence.

105 An owner of a home who qualifies under the provisions of this section shall, upon recording of

106 an elderly or disabled person's declaration of homestead protection, be eligible for protection of  
107 such ownership interest to the extent of the maximum declared homestead exemption as set  
108 forth in subsections (3) and (4) of the definition regardless of whether such declaration is  
109 recorded individually or jointly with another.

110 Except as provided in the following paragraph, each elderly or disabled person's estate of  
111 homestead shall terminate upon (a) the sale or transfer of that person's ownership interest in the  
112 home, except where such elderly or disabled person is also the transferee of all or a portion of  
113 the transferred interest; (b) the recorded release of that person's homestead estate; (c) the  
114 subsequent declaration of an estate of homestead on other property; (d) the abandonment of the  
115 home as the principal residence by the person (e) upon the death of the person, or (f) with  
116 respect to a home owned in trust, the execution of a deed or recorded release by the trustee(s).

117 In the event that an owner records a declaration under this section, and such owner conveys to,  
118 or is survived by, a spouse who does not have the benefit of an estate of homestead under either  
119 section one or this section, and the spouse occupies or intends to occupy the home as his or her  
120 principal residence, then the spouse shall be deemed, as of the time he or she acquired title, to  
121 have the benefit of the declaration previously recorded, as if such declaration had been recorded  
122 under section one, until the spouse is eligible for and does record a declaration creating an estate  
123 of homestead under this section.

124 No declaration creating an estate of homestead pursuant to section 1A shall terminate the  
125 existing homestead rights of a non-titled spouse or minor children.

126 Nothing in this section shall prohibit an elderly or disabled person from declaring or continuing  
127 a homestead pursuant to section one, but no one person may concurrently hold rights under both  
128 section one and this section.

129 Section 2. Each declaration of homestead shall be in writing, signed and acknowledged under  
130 penalty of perjury by each owner to be benefited by the homestead, except as provided in  
131 subparagraph (d), shall be recorded and shall comply with the following:

132 (a) Each owner to be benefited by the homestead, and such owner's non-titled spouse, if any,  
133 must be identified.

134 (b) The declaration shall state that each person so identified occupies or intends to occupy the  
135 home as his or her principal residence.

136 (c) If the home is co-owned by a married couple, whether only in their names or as co-tenants  
137 with one or more other parties, and the home is or is intended to be both spouses' principal  
138 residence, a declaration under section 1 must be executed by both spouses.

139 (d) If the home is owned in trust, only the trustee shall execute the declaration.

140 (e) In addition to the foregoing, a declaration creating an estate of homestead under section 1A  
141 shall include the following:

142 (1) a statement that the owner to be benefited is either an elderly person or a disabled person, as  
143 defined in section 1; and

144 (2) with respect to a declaration of homestead benefiting a disabled person, there shall be  
145 recorded with the declaration either: (i) an original or certified copy of a disability award letter  
146 issued to the person by the United States Social Security Administration; or (ii) a letter signed  
147 by a licensed physician registered with the Massachusetts Board of Registration in Medicine  
148 certifying that the person meets the disability requirements stated in 42 USC 1382c(a)(3)(A)  
149 and (C) as in effect at the time of recording.

150 A single instrument may contain separate homestead declarations by eligible co-owners of the  
151 same home, and such instrument shall not be treated as a multifunctional document for purposes



152 of determining the recording fee. A declaration of homestead may not be created within a deed  
153 or other instrument vesting title in the owner.

154 The statement of principal residence required in subparagraph (b) shall be binding upon any  
155 identified owner, including one who is a beneficiary of a trust, but may be overcome by an  
156 interested third party upon presentation of clear and convincing evidence to the contrary. In the  
157 event that spouses occupy or intend to occupy separate homes, and valid declarations are  
158 recorded with respect to each, then both estates of homestead together shall not exceed the  
159 maximum declared homestead exemption.

160 The estate of homestead of an individual who records a declaration under section one and who  
161 subsequently marries shall automatically be deemed to benefit such individual's  
162 spouse. Any subsequent recording of a declaration of homestead benefiting (i) a family  
163 member identified on a prior declaration on the same home or (ii) the spouse of such person,  
164 without an intervening release, shall be deemed to relate back to the filing date of the earliest  
165 recorded declaration, but the section of this chapter pursuant to which the later recorded  
166 declaration is made shall control the rights of a person identified in such later declaration.

167 Section 2A. In the absence of a valid declaration of homestead recorded under this chapter, an  
168 estate of homestead to the extent of the maximum automatic homestead exemption shall exist in  
169 any home for the benefit of the owner and the owner's family members who occupy or intend to  
170 occupy the home as a principal residence. The homestead rights of non-titled family members  
171 shall consist of the right to use, occupy and enjoy the home as a principal residence. Said estate  
172 shall be held subject to the provisions of this chapter, except for subsection (b) of section 1 and  
173 sections 1A and two.

174 In the event that spouses occupy or intend to occupy separate homes, then both estates of

175 homestead together shall not exceed the maximum automatic homestead exemption.  
176 The recordation of a declaration of homestead under this chapter shall supersede the automatic  
177 homestead exemption provided by this section, but shall not terminate the automatic homestead  
178 exemption applicable to the period between the creation of the automatic homestead and the  
179 later recording of a declaration of homestead. If a superseding declaration of homestead on the  
180 same home is later invalidated or terminated, the estate of homestead provided in this section  
181 shall be reinstated as of the date of its original creation.

182 Section 3. In a case where a complaint for divorce, separate support, guardianship or  
183 conservatorship has been filed in the probate court by or against any person entitled to the  
184 benefit of an estate of homestead, his or her spouse and minor children shall have the right to  
185 use, occupy and enjoy such homestead estate until ordered otherwise by the probate court. The  
186 recording of an order of the probate court, together with the description of the homestead estate,  
187 shall operate to prevent any beneficiary of the homestead estate from disposing of said estate  
188 until such time as the probate court may revoke said judgment.

189 Section 4. The estate of homestead existing at the death or divorce of a person holding a  
190 homestead under sections one or 2A shall continue for the benefit of his or her surviving spouse  
191 or former spouse and minor children who occupy or intend to occupy said home as a principal  
192 residence. The estate of homestead of the surviving spouse or former spouse and minor  
193 children shall continue notwithstanding the remarriage of the surviving or former spouse. The  
194 right, title and interest of the deceased in the home, except the estate of homestead thus  
195 continued, shall be subject to the laws relating to devise, descent, and sale for the payment of  
196 debts and legacies.

197 Section 5. No estate of homestead shall affect a mortgage, lien or other encumbrance

198 previously existing, except as provided in this chapter.

199 Section 6. An estate of homestead shall be subordinate to any mortgage encumbering the home  
200 executed by all the owners of such home. Such subordination shall not require the signature of  
201 any spouse who is not an owner. A mortgage executed by fewer than all of the owners of a  
202 home that is subject to an estate of homestead shall be superior only to the homestead estate of  
203 the owners who are parties to the mortgage, and their non-titled spouses and minor children, if  
204 any.

205 It shall not be necessary to indicate in any mortgage that a homestead estate is subordinate as  
206 aforesaid and nothing contained in a mortgage or any document executed in connection  
207 therewith shall affect, or be construed to create, modify or terminate, a homestead estate, other  
208 than to subordinate it to the mortgage as aforesaid.

209 No mortgage lender shall require or record a release of homestead in connection with the  
210 making and recording of any mortgage.

211 Section 7. An estate of homestead created under section one or 2A of this chapter may be  
212 terminated by any of the following methods:

213 (a) a deed to a non-family member conveying the home, signed by the owner and, with respect  
214 to estates of homestead created under section one of this chapter, any non-owner spouse or  
215 former spouse residing in the home as a principal residence as of the date of such deed;

216 (b) a recorded release of the estate of homestead, duly signed and acknowledged by the owner  
217 and, with respect to estates of homestead created under section one of this chapter, any non-  
218 owner spouse or former spouse residing in the home as a principal residence as of the date of  
219 such release;

220 (c) the subsequent recorded declaration of an estate of homestead under section two on other

221 property, except that such declaration shall terminate only the rights of the owner making such  
222 subsequent declaration and the rights of that owner's spouse and minor children who reside or  
223 intend to reside in the other property as their principal residence;

224 (d) the abandonment of the home as the principal residence by the owner, the owner's spouse,  
225 former spouse or minor children, except that such abandonment shall terminate only the rights  
226 of persons who have abandoned the home; or

227 (e) in the case of a home the title to which is held in trust, by either

228 (1) the execution of a deed or a release of homestead by the trustee; or

229 (2) action of a beneficial owner identified in the declaration, who is not a minor child, taken in  
230 the same manner as provided in clauses (b), (c) and (d).

231 No person in "military service" as defined in the Section 511 of the Servicemembers Civil  
232 Relief Act, 50 USC App. Section 501 et seq., shall be deemed to have abandoned the home due  
233 to such military service.

234 No deed between spouses or former spouses or co-owners who singly or jointly hold an estate  
235 of homestead under sections one or 2A, nor any deed between a trustee and trust beneficiary or  
236 between a life tenant and remainderman shall be deemed to terminate said homestead unless  
237 each co-owner, spouse, former spouse or trust beneficiary entitled to the benefit of the  
238 homestead, has executed an express release thereof pursuant to clause (b).

239 If a subsequent declaration on other property which terminates a homestead under clause (c) is  
240 later invalidated, the prior declaration shall not be reinstated, but the owner shall have the  
241 benefit of the provisions of section 2A of this chapter.

242 Except for the subordination provided in section six, nothing contained in a mortgage or any  
243 document executed in connection therewith shall be construed to terminate or otherwise affect a

244 homestead estate.

245 A deed reserving said estate of homestead shall convey, according to its terms, any title or  
246 interest in the property beyond the estate of homestead.

247 Section 8. In the event that a home subject to an estate of homestead is sold, whether  
248 voluntarily or involuntarily, taken, or damaged due to fire or other casualty, then the proceeds  
249 received on account of such event shall be entitled to the protection of this chapter during the  
250 following periods:

251 (a) In the event of a voluntary or involuntary sale or taking, for a period ending on the earlier to  
252 occur of (1) the date on which the person benefited by the homestead either acquires another  
253 home that he or she intends to occupy as a principal residence, or (2) the expiration of one year  
254 after the date on which such sale or taking occurred.

255 (b) In the event of a fire or other casualty, for a period ending on the earlier to occur of (1) the  
256 date upon which (i) the reconstruction or repair to the home is completed, or (ii) the person  
257 benefited by the homestead either acquires another home that he or she intends to occupy as a  
258 principal residence, or (2) the expiration of two years after the date on which such fire or other  
259 casualty occurred. For purposes of this section occupancy of a trailer, manufactured home or  
260 other temporary housing shall not establish principal residency in a reconstructed or  
261 replacement home.

262 Section 9. If the property of a debtor is assigned under the laws relative to insolvent debtors,  
263 and such debtor claims, and it appears to the court wherein the proceedings in insolvency are  
264 pending, that he or she is entitled to hold a part thereof as a homestead and that the property in  
265 which such estate of homestead exists is of greater value than either the maximum declared  
266 homestead exemption or maximum automatic homestead exemption, as applicable, the court

267 shall cause the property to be appraised by three disinterested appraisers, one of whom shall be  
268 appointed by the insolvent, one by the assignee and the third by the court; or if either the  
269 assignee or insolvent neglects to appoint, the court shall appoint for him or her. The appraisers  
270 shall be sworn faithfully and impartially to appraise the property, and shall appraise and set off  
271 an estate of homestead therein to the insolvent debtor in the manner prescribed in section  
272 eighteen of chapter two hundred and thirty-six in case of a judgment debtor; and the residue  
273 shall vest in and be disposed of by the assignee in the same manner as property which is not  
274 exempt by law from levy on execution. The appraisers shall be entitled to the same fees, to be  
275 paid out of the estate in insolvency, as are allowed to an appraiser of land seized upon  
276 execution.

277 Section 10. All existing estates of homestead which have been acquired under any law  
278 heretofore in force shall continue to be held and enjoyed notwithstanding the repeal of such law.

279 Section 11. A deed containing a statement of the marital status of the grantor may be relied  
280 upon by a good faith purchaser for value. As to acts undertaken in good faith reliance thereon,  
281 an affidavit executed and acknowledged by a grantor, releasor or mortgagor under penalty of  
282 perjury stating that, at the time of delivery of the deed, release or mortgage, the affiant had no  
283 spouse who was then entitled to claim the benefit of an existing declaration of homestead, shall  
284 be conclusive proof of the nonexistence of such benefit at that time. Such affidavit may be  
285 recorded in connection with the execution and delivery of any deed, release or mortgage, and  
286 shall be accepted in all registries of deeds and registry districts of the land court. The  
287 subsequent residency or renewal of residency in the home by a spouse of the grantor, releasor or  
288 mortgagor shall not defeat the priority of any mortgage, release or conveyance accepted in  
289 reliance on such affidavit.

290           **SECTION 2.** Chapter 236 of the General Laws is hereby amended by striking out  
291 section 18 and inserting in place thereof the following section:  
292 Section 18. If a judgment creditor requires an execution to be levied on property which is  
293 claimed by the debtor to be as a homestead exempt from such levy and if the officer holding  
294 such execution is of the opinion that the premises are of greater value than an amount equal to  
295 either the maximum declared homestead exemption or the maximum automatic homestead  
296 exemption, as applicable, as defined in section 1 of chapter 188, appraisers shall be appointed to  
297 appraise the property in the manner provided by section six. If, in the judgment of the  
298 appraisers, the premises are of greater value than said amount, they shall set off to the judgment  
299 debtor so much of the premises, including the dwelling house, in whole or in part, as shall  
300 appear to them to be of the value of said amount; and the residue of the property shall be levied  
301 upon and disposed of in like manner as land not exempt from levy on execution; and if the  
302 property levied on is subject to a mortgage, it may be set off or sold subject to the mortgage and  
303 to the estate of homestead, in like manner as land subject to a mortgage only.

304           **SECTION 3.** This act shall apply to all estates of homestead arising or created prior to,  
305 on and after the effective date hereof, provided that estates of homestead acquired under any  
306 law heretofore in force shall not be deemed invalid for failure to comply with the execution  
307 requirements of section 2 of chapter 188 of the General Laws, as appearing in section one of  
308 this act. An estate of homestead that arises under section 2A of said chapter 188, as appearing  
309 in section one of this act, shall not have priority over, and shall be subordinate to, any lien, right  
310 or interest recorded or filed for registration before the effective date of this act.