

# GILMORE, REES & CARLSON, P.C.

## CLIENT ADVISORY

### CHANGES RESULTING FROM THE NEW MASSACHUSETTS HOMESTEAD ACT

On March 16, 2011, the new Homestead Act (M.G.L. c. 188) became effective, and it brought some welcome changes to the prior homestead law. A summary of the highlights of the new law are as follows:

- ***Automatic Homestead*** - Massachusetts homeowners will receive an automatic homestead exemption which will protect up to \$125,000 of equity in a principal residence without the necessity of filing any declaration.
- ***Declared Homestead*** - All Massachusetts residents remain eligible to protect up to \$500,000 of equity in a principal residence by filing a declaration of homestead at the appropriate registry of deeds.
- ***Signatures*** - If a married couple intends to file a declaration of homestead, each spouse will be required to sign the declaration.
- ***Refinances*** – A new mortgage will not terminate a homestead (even if its language indicates otherwise), which means borrowers will not have to re-file their homesteads after a refinance.
- ***Trusts*** - Beneficiaries of trusts will be entitled to homestead protection if they intend to occupy the home held in trust as their principal residence. However, only trustees may execute a declaration of homestead which protects trust beneficiaries.
- ***A Second Homestead*** - A later filed declaration of homestead on the same residence will not terminate an earlier filed homestead. Rather, the later filed homestead will relate back to the earlier filed homestead.
- ***Subsequent Marriage*** - If you file a declaration of homestead and subsequently get married, the estate of homestead will automatically be deemed to benefit your new spouse.
- ***Transfers*** - Deeds between spouses, former spouses, co-owners, trustees and beneficiaries, and/or life tenants and remaindermen will not terminate an estate of homestead unless a party explicitly releases the homestead in the instrument.

- ***Stacking*** – If at least one owner of a principal residence is over 62 or disabled, that owner's homestead exemption amount may be added to the homestead exemption amount allotted to the other owner(s) such that their joint protection is greater than \$500,000.00. This is a benefit which is not afforded to the owners of a home who are all under 62 and not disabled.
- ***Home Sale Proceeds*** - Proceeds from the sale of a home subject to an estate of homestead will be entitled to the continued homestead protection for up to one year, and insurance proceeds from home casualty will be entitled to the homestead protection for up to two years.
- **IF YOU HAD AN EXISTING ESTATE OF HOMESTEAD IN EFFECT ON MARCH 16, 2011, YOU DO NOT HAVE TO RE-FILE YOUR HOMESTEAD. IT WILL AUTOMATICALLY BE GOVERNED BY THE NEW HOMESTEAD ACT NOTWITHSTANDING ANY FAILURE OF THE OLD HOMESTEAD TO COMPLY WITH THE NEW REQUIREMENTS.**

We stand ready to work with you, your other advisors and those whom you advise to consider the impact of these circumstances and to assist you in taking advantage of the opportunities available under these and other changes in the law. If we can be of assistance, please contact your GR&C attorney.

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