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Broad Protections

Homestead Act Updated For 2011

Protection Levels To Rise In Concert With Home Values

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A series of changes to Massachusetts' homestead law are set to go into effect early next year, after Gov. Deval Patrick recently signed a bill revising the commonwealth's Homestead Act.

The act allows homeowners to register their property as a "homestead," or primary residence, enabling them to obtain a number of legal protections allowing them to hang on to their home's equity in the event of a bankruptcy or other civil suit.

"Everyone should do it – it's kind of a no-brainer for the cost and the benefit," said Richard Vetstein, founder of Vetstein law group in Framingham. "God forbid you run into financial trouble, a bankruptcy situation. If you don't have one, you lose the benefit of that equity cushion. It can be the difference between saving the house and losing a house, in a bankruptcy."

Welcome Changes

The new law broadens bankruptcy protections, entitling homeowners to have the first \$125,000 of their home's equity protected automatically, even if they do not formally register a homestead. Those who file a notarized homestead registration form with their local registrar are entitled to up to \$500,000 in protection.

Michael Goldberg, a partner with Boston-based law firm Casner & Edwards, helped draft changes to the law. He said that "over the years, as bankruptcy judges have had to confront the statute in the context of the modern era, it's just become more and more difficult, leading to more and more litigation, and more and more results that were not necessarily planned."

He pointed to several issues the existing statute did not address, including questions about whether property held in trust could be exempted; whether payments from insurance claims on the property were exempt; and what to do when only one spouse in a divorce had signed the homestead exemption. All are addressed by the new law.

"Lawyers, and even judges have felt for years that the statute needed to be modernized," Goldberg told Banker & Tradesman.

Among other changes, the new revisions also extend homestead protection to spouses and other family members, even if the homeowner was single when they first purchased the property.

The increase to the value of property eligible for protection was a welcome change given the overall increase in home values over the past several years.

Contributed photo



Richard Vetstein



"It was something that was needed to update the law," said Gregory Vasil, CEO of the Greater Boston Real Estate Board.

Automatically Subordinate

Real estate attorneys and mortgage brokers have long advocated for changing the law because of quibbles over how registered homesteads affect refinancing. Before allowing a refinancing on properties with homestead exemptions, some lenders had required homeowners to remove the homestead designation, or file a legal document called subordination, in order to ensure the new mortgage debt was first in line for repayment in the event of bankruptcy. After securing a refinance, homeowners would then need to re-file for homestead protections.

The new law makes clear that homesteads are automatically subordinate to mortgages, and lenders are not allowed to force borrowers to waive or release a homestead before refinancing.

"I think there are some positives in here from the perspective of real estate practitioners," said Steve Ryan, general counsel for the Massachusetts Association of Realtors. He pointed to a provision added to the law that stipulates proceeds from the sale of a property are protected for up to one year, and may be redirected into another real estate purchase. In some circumstances, that may help troubled homeowners get a fresh start – and give their agents peace of mind, knowing they can move forward with deals.

"If you're in a position where you've got significant debt-related issues, you may not be in a position to purchase another home, but at least under this law, as I read it, you wouldn't be trapped along with your equity in the home that you own, if there was a job or other reason you had to move," said Ryan. "To the extent that a lot of the ambiguities in this legislation have been cleared up, that's a positive for homeowners."

Attorneys hope the new extension of the law will help create greater awareness among consumers of their ability to gain an exemption.

"If you're not going through a real estate transaction, it's not like there's much publicity out there," said Vetstein.

Attorneys will now be required to inform home purchasers of their ability to file for an exemption during the closing process, and need to make sure they're aware of the changes, said Vetstein.

