

SENATE No. 884

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 adoption of the accompanying bill:

An Act to clarify homestead estates.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 884

By Ms. Creem, a petition (accompanied by bill, Senate, No. 884) of Cynthia Stone Creem for legislation to clarify homestead estates and real estate titles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 795 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to clarify homestead estates.

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. Section 1 of Chapter 188 of the General Laws is hereby amended by
2 striking the definition of “Declared homestead exemption” and inserting in place thereof the
3 following:-

4 "Declared homestead exemption", an exemption in the amount of \$500,000 created by a
5 written declaration, executed and recorded pursuant to section 5; provided, however, that: (1)
6 with respect to a home owned by joint tenants or tenants by the entirety who are benefited by an
7 estate of homestead declared pursuant to section 3, the declared homestead exemption shall
8 remain whole and unallocated, provided that the owners together shall not be entitled to a
9 declared homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in
10 common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust

11 beneficiary who benefits by an estate of homestead declared pursuant to said section 3 shall be
12 the product of: (i) \$500,000 divided by (ii) the number of co-tenants or trust beneficiaries who
13 reside in the home as a principal residence; (3) except as provided in clause (4), each person who
14 owns a home and who is benefited by an estate of homestead declared pursuant to section 2 shall
15 be entitled to the declared homestead exemption without reduction, proration or allocation
16 among other owners of the home; and (4) separate estates of homestead may be declared
17 pursuant to sections 2 and 3 on the same home, and in such event: (i) if the home is owned by
18 tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant
19 and trust beneficiary who benefits by an estate of homestead declared pursuant to section 3 shall
20 be calculated in the manner provided in clause (2), and the declared homestead exemption for
21 each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to
22 section 2 shall be calculated in the manner provided in clause (3); or (ii) if the home is owned by
23 joint tenants or tenants by the entirety, the declared homestead exemption for the owners
24 together shall be the sum of \$500,000 multiplied by the number of declarations recorded
25 pursuant to section 2, plus \$250,000; provided, however, that the homestead exemption under
26 this subclause shall remain whole and unallocated among the owners; and provided further, that
27 no owner who declares a homestead, acting individually, shall be entitled to claim an exemption
28 of more than \$500,000; and (5) the calculation of the amount of homestead exemption available
29 to an owner shall not sever a joint tenancy or tenancy by the entirety.

30 SECTION 2. Said Section 1 of Chapter 188 is hereby amended by striking the definition
31 of “Owner” and inserting in place thereof the following:-

32 “Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant
33 in common, life estate holder, remainderman or holder of a present, vested and non-contingent

34 beneficial interest in a trust, including any of the foregoing who is a lessee-shareholder of a
35 residential cooperative housing unit.

36 SECTION 3. Subsection (b) of Section 3 of said Chapter 188 is hereby amended by
37 striking clause (6) and inserting in place thereof the following:--

38 (6) upon an execution issued from a court of competent jurisdiction to enforce its
39 judgment based upon fraud, duress, undue influence or lack of capacity.

40 SECTION 4. Section 10 of said Chapter 188 is hereby amended by striking subsections
41 (a) and (b) and inserting in place thereof the following two subsections:

42 (a) An estate of homestead created under section 3 or 4 may be terminated by any of the
43 following methods:

44 (1) a deed to a non-family member conveying the home, signed by the owner and a non-
45 owner spouse or former spouse residing in the home as a principal residence as of the date of the
46 deed;

47 (2) a recorded release of the estate of homestead, duly signed and acknowledged by the
48 owner and a non-owner spouse or former spouse residing in the home as a principal residence as
49 of the date of the release;

50 (3) the abandonment of the home as the principal residence by the owner, the owner's
51 spouse, former spouse or minor children, except that such abandonment shall terminate only the
52 rights of the persons who have abandoned the home; provided, however, that no person in
53 military service as defined in 50 U.S.C. appendix, section 511 shall be deemed to have
54 abandoned the home due to such military service;

55 (4) in the case of a home the title to which is held in trust, by either: (i) the execution of a
56 deed or a release of homestead by the trustee; or (ii) action of a beneficial owner identified in the
57 declaration, who is not a minor child, taken in the same manner as provided in clauses (2) and
58 (3);

59 (5) the subsequent recorded declaration of an estate of homestead under section 3 on
60 other property, except that such declaration shall terminate only the rights of the owner making
61 such subsequent declaration and the rights of that owner's spouse and minor children who reside
62 or intend to reside in the other property as their principal residence;

63 (6) a deed setting forth that that (i) the grantor(s) is unmarried; or (ii) there is no spouse
64 or former spouse entitled to an estate of homestead; or (iii) the property is not a home; or (iv) the
65 property is not the home of the grantor or the grantor's spouse or former spouse.

66 (7) a recorded affidavit pursuant to section 5B of chapter 183 setting forth that, at the
67 time of delivery of a deed, mortgage or other instrument of conveyance to a non-family member,
68 (i) the grantor was unmarried, or (ii) the grantor had no spouse or former spouse entitled to claim
69 the benefit of an existing estate of homestead, or (iii) the property was not a home, or (iv) the
70 property was not the home of the grantor or the grantor's spouse or former spouse. The affidavit
71 may be recorded simultaneously or subsequent to the deed, mortgage or other instrument of
72 conveyance.

73 (b) No deed between spouses or former spouses or co-owners who individually or jointly
74 hold an estate of homestead under section 3 or section 4 and no deed between a trustee and a
75 trust beneficiary or between a life tenant and a remainderman shall terminate the homestead
76 unless each co-owner, spouse, former spouse, trust beneficiary or remainderman entitled to the

77 benefit of the homestead has executed an express release thereof pursuant to clause (2) or clause
78 (4) of subsection (a).

79 SECTION 5. Section 11 of said Chapter 188 is hereby amended by striking subsection
80 (a) and inserting in place thereof the following:

81 (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or
82 involuntarily, taken or damaged by fire or other casualty, then the proceeds of any such sale,
83 taking or damage shall be entitled to the protection of this chapter during the following periods:

84 (1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period
85 ending on the date on which the person benefited by the homestead either acquires another home
86 the person intends to occupy as a principal residence or 1 year after the date on which the sale or
87 taking occurred, whichever first occurs; and

88 (2) in the event of a fire or other casualty, for a period ending on:

89 (i) the date upon which the reconstruction or repair to the home is completed or the date
90 on which the person benefited by the homestead acquires another home the person intends to
91 occupy as a principal residence; or

92 (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

93 SECTION 6. Said Chapter 188 is hereby amended by striking section 13 and inserting in
94 place thereof the following section:

95 Section 13. A recorded deed, release, mortgage, affidavit or other instrument of
96 conveyance containing a statement of any facts set forth in clauses (6) or (7) of subsection (a) of
97 section 10 may be relied upon by a good faith purchaser for value and may be conclusive proof

98 of the parties, if any, then entitled to claim an estate of homestead. An affidavit pursuant to
99 clause (7) of subsection (a) of section 10 shall be accepted in the appropriate registry of deeds or
100 registration district of the land court. The subsequent residency or renewal of residency in the
101 home by a grantor or spouse of the grantor, releaser or mortgagor shall not defeat the priority of
102 a mortgage, release or conveyance accepted in reliance on such recorded deed, release,
103 mortgage, affidavit or other instrument of conveyance.

104 SECTION 7. The provisions of this Act shall apply to estates of homestead arising or
105 created before, on or after said effective date, except with respect to the subject matter of any
106 final judgment to the contrary by a court of competent jurisdiction prior to said effective date.