

Merrimack Valley

housingreport

An e-publication of UMass Lowell and the Middlesex North Registry of Deeds



University of
Massachusetts
Lowell

MIDDLESEX NORTH
REGISTRY OF DEEDS

Volume 3, Issue 12 December 2010

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Changes Coming to Homestead Law

By Richard P. Howe Jr

For more than a century, homeowners in Massachusetts have been able to protect the equity in the family home by recording a declaration of homestead at the registry of deeds. Covered by Massachusetts General Laws chapter 188, the homestead exempts a certain value in the family home – that value is now \$500,000 – from the laws of debt collection. There are actually two different homesteads; one for the disabled and elderly (62 years old and up); the other for everyone else. Years ago, the amount of the exemption for the “Elderly and Disabled Homestead” was greater than the regular one, but now they are both \$500,000.

The current homestead contains a number of ambiguous provisions. For instance, spouses 62 and older may each file an individual homestead while married couples under the age of 62 may only file a single

homestead. There is also a split in legal authorities over the need to file a new homestead after refinancing a mortgage. Some attorneys believe the new mortgage voids an existing homestead while others maintain that the homestead remains intact. A third ambiguity is whether property held by a trust is properly the subject of the homestead. Here at the registry of deeds, we will allow a homestead to be recorded for such a property, but there is no guarantee it would work as intended.

Fortunately, the state legislature has enacted a major revision to the Commonwealth’s homestead statute. The new law is now on the governor’s desk and will become law ninety days after he signs it.

Perhaps the biggest change in the new law is the creation of an automatic homestead exemption that

Con’t on pg 3

Deeds, Mortgages, Foreclosures and Orders of Notice Recorded

November 2009 and November 2010 compared

	Haverhill		Lawrence		Lowell		Methuen	
	Nov-09	Nov-10	Nov-09	Nov-10	Nov-09	Nov-10	Nov-09	Nov-10
Deeds	96	90	84	79	148	110	111	64
Mortgages	179	195	104	108	221	226	178	216
Foreclosure Deeds	7	7	12	4	18	9	9	2
Orders of Notice	31	9	36	10	57	17	22	10

Why Smoke-Free Housing?

By Joann Vaillette

In a 2006 report entitled “Health Consequences of Involuntary Exposure to Tobacco Smoke,” the US Surgeon General concluded that the home is “a major location of secondhand smoke exposure.” The report found that nonsmokers who are exposed to secondhand smoke at home increase their risk of developing lung cancer by 20% to 30% and their risk of heart disease by 25% to 30%. The report also concluded that the “home is the place where children are most exposed to secondhand smoke.” Then, earlier this month, the Surgeon General released a landmark report that shows how tobacco smoke causes lung disease. The report, “How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking Attributable Disease” focuses on tobacco use and its harmful effects. The report contains many significant findings, including that there is no safe level of exposure to tobacco smoke.

While some people are able to avoid exposure by simply prohibiting smoking in their homes, this solution may not be enough to protect residents of multi-unit buildings, as secondhand smoke is often not contained inside an apartment or condominium unit. Instead, the smoke seeps under doors, through ventilation ducts, wall chases, electrical sockets, light fixtures, cracks in building walls or other openings. After seeping into neighboring condominium units or apartments, secondhand smoke can stay in the air for hours, exposing nonsmokers and their families for long periods of time

Another breakthrough study entitled “Tobacco-Smoke Exposure in Children Who Live in Multiunit

Housing,” provides evidence that children living in multi-unit apartments have higher levels of cotinine, a byproduct of tobacco smoke exposure, compared to children living in attached and detached houses, and that no ventilation system or other alternative provides adequate protection from the harmful effects of tobacco smoke. Even at very low levels of exposure to secondhand tobacco smoke, vulnerable populations, including people with heart disease and lung disease such as asthma, the elderly and children, are at greater risk for a variety of tobacco-related illnesses and complications.

In February 2010 Mayor Thomas Menino declared that Boston would be the first major city in the United States to transition all of its public housing to smoke-free. Last October, the housing authority piloted 14 smoke-free units at the Franklin Hill public housing development in Dorchester. After much success, the Washington-Beech development in Roslindale followed and now has 100 smoke-free units. Before going smoke-free, the BHA conducted several surveys with housing authority residents, finding that between 75% - 90% of residents preferred to live in a smoke-free unit.

Officials realize it will be difficult for some residents to give up smoking and will, in some cases, take into consideration extenuating circumstances. For example, elderly or disabled residents unable to leave their homes might be granted waivers from the rule. In addition, outreach and education efforts, including smoking cessation programs, are currently underway. █

Changes Coming to Homestead Law Con't from pg 1

automatic exemption is for only \$125,000, still it will protect against all but the most catastrophic debts. The new law also contains a “declared homestead exemption” for \$500,000 – the current amount of coverage – that requires the homeowner to record a declaration of homestead form at the registry of deeds. Homesteads already in existence will be grandfathered into this new law, so there is no need to record a new declaration simply because of the change in the law.

The new law clarifies the ambiguities of the existing law that are described above and contains a number of new, consumer-friendly provisions. For example, the revision specifically states that property held in trust may be the subject of a homestead for those who use it as a personal residence. The law also makes it emphatically clear that a new mortgage has no effect on an existing homestead except as it relates to the new mortgage.

New consumer provisions specifically extend homestead protection to non-owner spouses and minor children. Homestead protection also extends to the

proceeds of the sale of the personal residence. Under the former law, if a homeowner went deeply into debt, the homestead would prevent creditors from forcing the sale of the house but the homeowner would be trapped in the house. At the instant he (voluntarily) sold the property, he would no longer have a home, but would have cash which would be immediately exposed to creditors. This new law protects the proceeds of a homestead-protected sale for up to a year or until a new home is purchased and a new homestead is declared, whichever comes sooner. Finally, at every real estate closing, attorneys must notify clients in writing of the availability of the “declared homestead exemption” and assist the client in obtaining such an exemption should he so desire.

With this major revision of Massachusetts homestead law, the state legislature has made major strides in resolving decade-old ambiguities about the existing law and has infused the homestead with a number of new, consumer-friendly provisions which are especially important in these times of economic distress. █

The Merrimack Valley Housing Report thanks its major sponsors for 2010:

**Merrimack Valley Regional Network to End Homelessness
&
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The *Merrimack Valley Housing Report* is published by UMass Lowell and the Middlesex North Registry of Deeds

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This project is funded in part by the Office of the Chancellor and the Office of Outreach. UMASS LOWELL

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