
By Mr. Bulger, a petition (accompanied by bill, Senate, No. 612) of William M. Bulger and members of the House of Representatives for legislation to amend the homestead act. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Six.

AN ACT AMENDING THE HOMESTEAD ACT.

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, as most re-
2 cently amended by chapter 407 of the acts of 1975, is hereby
3 further amended by striking sections one through eight and
4 inserting in place thereof the following: —

5 *Section 1.* Every person owning a home or rightly possessing
6 premises by lease or otherwise, whether sole, or in common
7 jointly with another person, and occupying or intending to
8 occupy said home or premises as a residence, shall hold in said
9 home or premises an estate of homestead to the extent of: —

- 10 1. \$30,000 of the value in the land and buildings constitu-
11 ting the homestead estate in the case of any head of
12 family of any person 65 years of age and older; and
13 2. \$20,000 of value in the land and buildings constituting
14 the homestead estate in the case of all other persons.

15 For the purpose of determining whether the extent of a
16 debtor's homestead estate is \$30,000 or \$20,000 as provided
17 herein, the debtor's age, marital status, and other relevant
18 factors are to be determined as of either the date of attach-
19 ment levy against the homestead property or the date of com-
20 mencement of the action against the debtor which results in
21 a judgment pursuant to which levy is made on the homestead
22 property, whichever occurs first.

23 *Section 2.* Estate of homestead shall be exempt from the
24 laws of conveyance, descent and devise and from attachment,
25 levy on execution and sale arising from any debt, contract or
26 civil obligation entered into or incurred except attachment

27 levy and sale in the following cases: —

- 28 1. for a debt contracted previous to the acquisition of said
29 estate for homestead;
- 30 2. for debts secured by encumbrances on the premises, ex-
31 ecuted and acknowledged by husband and wife, or by an
32 unmarried owner of a homestead estate;
- 33 3. upon an execution issued from the probate court to en-
34 force its decree that a husband pay a certain amount
35 weekly or otherwise to support his wife or minor chil-
36 dren; and
- 37 4. where buildings or land not owned by the homestead
38 owner are attached levied upon or sold for the ground
39 rent of the lot of land whereon they stand.

40 The acquisition of a new estate of homestead shall defeat
41 and discharge any such previous estate.

42 *Section 3.* In a case in which the probate court has entered
43 a decree that a person is, for justifiable cause, living apart
44 from a spouse who owns a homestead estate as the head of a
45 family, or the custody of the homestead owner's minor chil-
46 dren, or both, the right to use, occupy, and enjoy such home-
47 stead estate until the further order of the court. The record-
48 ing of the order of the probate court granting to the homestead
49 estate owner's spouse or minor children, or to both, the right
50 to use, occupy and enjoy said homestead estate, together with
51 the description thereof, in the registry of deeds for the county
52 or district where the land lies, shall operate to prevent the
53 homestead owner from disposing of said estate until such time
54 as the probate court may revoke said decree.

55 *Section 4.* The estate of homestead existing at the death of
56 a person holding such an estate shall continue for the benefit
57 of the surviving spouse and children and shall be hold and en-
58 joyed by them, if one of them or a purchaser under Section 8
59 occupies the premises, until the youngest unmarried child is
60 eighteen and until the *marriage* or death of the surviving
61 spouse; and if the surviving spouse or minor children are en-
62 titled to an estate of homestead as provided herein, it may be
63 set off to them in the same manner as dower. But all the right,
64 title and interest of the deceased in the premises in which
65 such estate exists, except the estate of homestead thus con-

66 tinued, shall be subject to the laws relating to devise, descent,
67 and dower and sale for the payment of debts and other *civil*
68 *obligations*.

69 *Section 5.* No estate of homestead shall affect a mortgage,
70 lien or other encumbrance previously existing.

71 *Section 6.* Property which is subject to a mortgage executed
72 before said property became part of a homestead estate, or
73 executed afterward and containing a release thereof, shall be
74 subject to an estate of homestead, except as against the mort-
75 gagee and those claiming under him, in the same manner as
76 if there were no mortgage. If the owner of the equity in such
77 property redeems the mortgage, he shall not be allowed to
78 claim under it against the owner of the estate of homestead,
79 said owner's surviving spouse, heirs or assigns; but if said
80 owner of the estate of homestead, or the surviving spouse,
81 heirs or assigns offers to redeem the residue above the home-
82 stead estate and the mortgage from a sale or set-off an execu-
83 tion and the judgment creditor has redeemed the mortgage,
84 with interest and expenses, shall be included in the amount to
85 be paid for the redemption of said residue.

86 *Section 7.* No conveyance of property in which an estate of
87 homestead exists, and no release or waiver of such estate, shall
88 convey the part so held and exempted, or defeat the right of
89 the owner or of the owner's spouse and minor children to a
90 homestead therein, unless such conveyance is by a deed signed
91 by the owner's spouse, he or she being competent to so act, or
92 unless the right is released as provided in Chapter two hundred
93 and nine (209); but a deed duly executed without such signa-
94 ture or release shall be valid to pass, according to its terms,
95 any title or interest in the property beyond the estate of home-
96 stead. Should the estate of homestead be sold by the owner
97 as herein provided, the proceeds from such sale to the extent
98 of the value allowed for a homestead exemption as provided
99 in this Chapter shall be exempt to the owner of the homestead
100 for a period of six months next following such sale.

101 *Section 8.* The surviving spouse and the guardian of the
102 minor children, if he has obtained a license therefor from the
103 probate court as in the sale of land of minors, may join in a
104 sale of an estate of homestead; or if there is no surviving

105 spouse entitled to rights therein, the guardian may, upon ob-
106 taining such license make sale of such estate; and the sur-
107 viving spouse may make such sale if there are no minor chil-
108 dren. The purchaser shall enjoy and possess the premises for
109 the full time that the surviving spouse and children or either
110 of them might have continued to hold and enjoy them if no
111 sale had been made. The probate court may apportion the
112 proceeds of the sale among the parties entitled thereto.

1 SECTION 2. Section 9 of chapter 188 of the General Laws, as
2 most recently amended by section 2 of chapter 407 of the acts
3 of 1975, is hereby further amended by striking the last sen-
4 tence thereof, and inserting in its place the following: —

5 *Section 9.* If it appears to the court that the property sub-
6 ject to the homestead estate cannot be divided and set off as
7 provided in section eighteen of Chapter two hundred and
8 thirty-six, the assignee shall sell the property and the proceeds
9 thereof shall be applied in the following order of priority: —

10 First, to the discharge of all liens and encumbrances, if any
11 on the property;

12 Second, to the homestead owner to the amount of the home-
13 stead exemption, which payment shall for six months be en-
14 titled to the same protection against legal process and vol-
15 untary disposition by the head of a family which this Chapter
16 gives to the homestead;

17 Third, to the satisfaction of the execution; and

18 Fourth, the balance, if any, to the owner of the homestead
19 estate.

20 The appraisers be entitled to the same fees, to be paid out
21 of the estate in insolvency, as are allowed to an appraiser of
22 land seized upon execution.

23 *Section 10.* All existing estates of homestead which have
24 been acquired under any law heretofore in force shall con-
25 tinue to be held and enjoyed notwithstanding the repeal of
26 such law.

1 SECTION 3. Chapter 188 of the General Laws is hereby fur-
2 ther amended by adding after section 10 thereof the following
3 section: —

4 *Section 11.* The phrase "head of family" as used in this chap-
5 ter, includes within its meaning: —

- 6 1. the husband or wife, when the homestead owner is a
7 married person;
- 8 2. Every person who has residency on the premises with
9 him or her, and under his or her care and maintenance,
10 either: —
 - 11 a. his or her minor child, minor grandchild, or the minor
12 child of his or deceased spouse
 - 13 b. a minor brother or sister, or the minor child of a de-
14 ceased brother or sister;
 - 15 c. a father, mother, grandfather, or grandmother of a
16 deceased spouse;
 - 17 d. any of the relatives mentioned in this section, who
18 have attained the age of majority, and are unable to
19 take care of or support themselves.

1 SECTION 4. Section 18 of Chapter 236 of the General Laws,
2 as most recently amended by Section 4 of Chapter 407 of the
3 Acts of 1975, is hereby amended by adding to the end of that
4 section the following: —

5 If it appears to the Court that the property subject to the
6 homestead estate cannot be divided and set off as herein pro-
7 vide, the property shall be sold as provided in this Chapter
8 and the proceeds thereof shall be applied in the following or-
9 der of priority: —

- 10 First, to the discharge of all liens and encumbrances, if
11 any, on the property; Second, to the homestead owner to
12 the amount of the homestead exemption as provided in
13 section one of chapter one hundred and eighty eight (188),
14 which payment shall for six (6) months be entitled to the
15 same protection against legal process and voluntary dis-
16 position by the head of a family, as defined in section
17 eleven of that chapter, which that chapter gives to the
18 homestead; Third, to the satisfaction of the execution;
19 and Fourth, the balance, if any, to the owner of the home-
20 stead estate.

THE STATE OF TEXAS, COUNTY OF [illegible]

I, the undersigned, [illegible]

do hereby certify that [illegible]

is the true and correct copy of [illegible]

as the same appears from the records of [illegible]

and is a true and correct copy of [illegible]

as the same appears from the records of [illegible]

and is a true and correct copy of [illegible]

as the same appears from the records of [illegible]

