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Taking Control of Your Future: A Legal Checkup

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CHAPTER 8

PROTECTING THE HOME

Homestead, Medicaid (MassHealth) Issues and Tax Exemptions

INTRODUCTION

For most Americans, their home is their largest single asset. As we age, we become increasingly concerned about how we can maintain our home as well as how its value can be passed on to future generations. Elder law attorneys strive to keep abreast of laws that not only allow elders to remain in their home, but also to protect their homes from creditors (by placing a homestead declaration on their home), reduce property taxes and borrow prudently on equity that has built up during their lifetimes.

A. Homestead Declaration

1. What is a Homestead Declaration?

A homestead declaration is a document recorded with the Registry of Deeds that protects one's principal residence from creditors' claims involving the debtor, debtor's spouse or debtor's minor children from certain creditors and their claims.

Massachusetts revised its homestead laws in 2011 to provide homeowners with added protection against creditors. The new law provides homeowners with an automatic $125,000 homestead without having to file. Homeowners may file for the $500,000 homestead, and this protection now extends to the real estate owner's spouse. Further, multi-family homes and homes in trust are eligible for the homestead protection.

Homesteads filed prior to March 2011 are grandfathered into the law, and therefore, homeowners do not have to re-file. Caveat: A homestead filed prior to March 2011 may not be grandfathered if a mortgage (or equity line of credit) was subsequently filed before March 2011. If that is the case, it would be wise to file a new homestead now. The homestead for seniors (persons 62 years of age or older), has increased protection of $500,000 for single owners and $1,000,000 for a married couple. Lastly, owners do not have to re-file homesteads when a home is refinanced (after March 2011), which had long been an issue with Massachusetts residents.

2. What Should I Know About a Homestead Declaration?

a. It is important to be aware that the homestead declaration cannot protect the homeowner from certain claims, such as:
   - A Medicaid (MassHealth) lien if the owner requires nursing home care;
   - Federal, state and local taxes, assessments, claims and liens;
   - First and second mortgages;
   - Liens on the home recorded prior to the filing of the declaration of homestead; or
   - Judgment that the spouse pay support for the other spouse or for minor children.

b. If an individual recorded a homestead declaration before attaining age 62, he or she must file a new declaration to gain added protections the law gives elderly homeowners.

c. Individuals who transfer the remainder interest in the property to one or more children and reserve a life estate after making a homestead declaration will lose the homestead over the entire property. At that point, it is unclear whether the protection offered by a homestead declaration would continue to protect the reserved life estate, but not the remainderman's interest. (The individual who will own the property after the life tenant dies or subsequently releases the life estate interest.) To be safe, file a new homestead with respect to the life estate only.

d. When deeding a home to or out of a trust, a new homestead declaration must be filed.

B. Deed With a Life Estate

A deed is a document showing proof of ownership of real property. A real estate owner can transfer a future interest in the property, a so-called "remainder interest," while reserving the right to continue to live at the property for the rest of the individual's life. In addition to the right to continue to live there, the holder of a life estate has the right to all income generated from the property and the duty to maintain the property for the remainderman, the owner of the future interest. Upon the death of the owner of the life estate, the life estate automatically ends, thereby avoiding probate, and the remainderman ends up owing 100 percent of the property. Real property with a life estate may only be sold (or sometimes mortgaged) with the assent of both the life tenant and the remainderman.

The remainderman will also benefit from a "step up in basis" for capital gains tax purposes upon the death of the life tenant. The remainderman, however, may not benefit from the Section 121 capital gains tax exclusion if the property is sold before the life tenant dies. Under current "MassHealth" (the term used for Medicaid in Massachusetts) estate recovery law, certain individuals who receive MassHealth will have a lien placed on any property in which they have an ownership interest, including a life estate. If a MassHealth recipient owns a life estate and the property is sold during the life estate holder's life, then MassHealth can only collect on the lien from the proceeds of the sale attributable to the life estate's actuarial worth, and not the remainderman's actuarial value. MassHealth cannot enforce a lien if the life tenant dies owning the life estate as, under the current law, that life estate is extinguished upon the death of the life tenant. (Governor Baker in the past has proposed a change in the MassHealth estate recovery law that would place a lien on the life estate, presumably to the extent of the actuarial value of the life estate immediately prior to the death of the life tenant. The governor may seek to introduce such a change in the law in the future.)

A transfer of a remainder interest in property triggers the so-called "five year lookback period," meaning that if the transferor applies for MassHealth benefits within five years after making the transfer he or she would not be eligible for such benefits for a period of time determined under a formula that MassHealth utilizes.

C. How Exemptions and Deferrals Work

Each property tax exemption, deferral and credit has eligibility requirements that may include age, asset or income limitations. The applicant must be a resident of Massachusetts. Most exemptions require that the resident occupy his or her home for a minimum number of years (usually five or 10 years). An applicant may own either his or her home individually, or co-own the home with another person. Even a trust beneficiary can obtain the exemption if the beneficiary has a sufficient beneficial interest in the house held in trust, and the beneficiary is a trustee. Each exemption should be read carefully to determine its specific eligibility requirements.

Homeowners must file an application for an exemption or deferral at their local Board of Assessors Office on or before April 1 of the year to which the tax relates, or three months after the tax bill is mailed, whichever is later. Applicants must pay their property taxes while their application is pending. Approved applications will result in a reduced real estate tax bill to the taxpayer/applicant. Since an individual typically can qualify for only one exemption each year, it is important to review all exemptions annually in order to select the exemption that will result in the greatest tax reduction. If one is still having trouble paying his or her property taxes, he or she may receive additional relief through a hardship exemption, Elderly and Disabled Taxation Fund, the Senior Work-Off Program or Senior Circuit Breaker Tax Credit discussed in Sections E and F of this chapter.

EXAMPLE 1

Mary lives in a two-family home. Mary occupies the first floor and her son occupies the second floor. If she otherwise qualifies for a tax exemption of $1,000, her tax reduction would be $500 because Mary occupies 50 percent of the property.

D. Exemptions

Cities and towns may give property tax exemptions to some individuals as defined by state law. An exemption discharges a taxpayer from the legal obligation to pay all or part of the tax and examples can be found in the various clauses of Mass. G.L. ch. 59, § 5. Since an individual can only apply for one exemption and the exemptions vary from town to town, those seeking such exemptions should contact their local tax authorities for particulars.

1. Elderly Persons

The standard Elderly Persons exemption provides $500 (or $1,000 in some communities) for home owners who are at least 70 years of age. The applicant must occupy the property as his or her primary residence for at least five years and the applicant must have lived in Massachusetts for 10 years preceding the application. The Elderly Persons exemption is only granted to one person for the same parcel of property. If two elderly individuals own the property jointly, the exemption amount will only benefit one owner.

An elderly applicant must also meet income and asset limitations to be eligible for this exemption. The standard exemption is available to single applicants who earn less than $6,000 per year, and have assets less than $17,000. A married applicant cannot earn more than $7,000 per year, and cannot own assets that exceed $20,000. The income limitations do not include Social Security benefits, and the asset limitations do not include the value of the home. As with other exemptions, the value of the applicant's cemetery plots, registered vehicles, clothing and household furniture are also excluded when calculating the applicant's assets.

Cities and towns may adopt more liberal restrictions and, therefore, elders should contact their local assessor to see if they qualify under the town's Elderly Person exemption.

Applicants who do not qualify for this exemption because they exceed the income restriction should apply for the Older Citizens exemption (discussed in Section D, no. 4 of this chapter), as there is no income restriction for that particular exemption.

2. Veterans

The Veterans exemption is available to certain veterans, as well as their spouses, surviving spouses, and/or surviving parents. Although the residency requirement may vary from town to town, applicants seeking this exemption must have been either a Massachusetts resident for at least six months prior to entering the service or the veteran must have lived in Massachusetts for at least five years prior to filing for this exemption.

Disabled veterans, honored veterans and their spouses or parents are eligible for one of several real estate tax exemptions. Exemption amounts vary depending on the severity of the veteran's disability or his or her medal awarded. A list of available veteran exemptions relating to real estate includes:

- $400 to veterans who received at least a 10 percent disability rating from wartime service, veterans who have been awarded the Purple Heart and mothers and fathers of veterans who have been awarded the Gold Star;
- $750 to veterans who suffered the loss of one foot, one hand, or one eye; veterans who received the Congressional Medal of Honor, Navy Cross or Air Force Cross, and their spouses or surviving spouses;
- $1,000 to veterans who suffered total disability in the line of duty and are incapable of working, and their spouses or surviving spouses;
- $1,250 to veterans who suffered in the line of duty the loss of use of both feet, both hands, or both eyes, and their spouses or surviving spouses;
- $1,500 to veterans who suffered total disability in the line of duty and to veterans who received assistance in acquiring "specially adapted housing," as well as their spouses or surviving spouses;
- A full exemption, with a cap of $2,500 after five years is available to surviving spouses of soldiers, sailors and guardsmen who died from being in a combat zone; and
- A total exemption is available to paraplegic veterans and their surviving spouses.

There are no income or asset restrictions for the qualified Veterans exemption, but the applicant must occupy the property as his or her primary residence. Applicants who co-own the property must have an ownership interest in the property valued at $2,000 to $10,000, depending on the exemption. If the property is greater than a single-family home, the exemption amount is calculated and is prorated based on the value of the property that is occupied by the applicant.

A motor vehicle of a disabled veteran operated for personal use is exempt from automobile excise taxes. In addition, a motor vehicle of a veteran, or his or her surviving spouse, is exempt from automobile excise taxes if the veteran was a prisoner of war and the city or town allows this exemption provision.

3. Blind

The property tax exemption for the blind is either $437.50 or $500, depending on the city or town's discretion. An individual applying for this exemption will need to provide proof that he or she is legally blind. Most assessors will accept a certificate showing that the applicant is registered as legally blind with the Massachusetts Commission for the Blind or a letter from the applicant's physician stating that the applicant is legally blind.

While there are no income or asset restrictions, the blind applicant must own and occupy the property as his or her primary residence. Applicants who co-own the property must have an ownership interest worth at least $5,000 in order to satisfy the requirement of this exemption. There is no apportionment of this exemption if the blind person co-owns the property (owns as a joint tenant or tenant in common, for example). A co-owning blind person will receive the entire exemption.

EXAMPLE 2

Mary and her sister are both legally blind, registered with the Massachusetts Commission for the Blind, and are joint owners of the property. Even though both women qualify for the exemption, the first person to apply for the exemption will receive the abatement because only one exemption is granted on the same parcel of land.

4. Older Citizens, Surviving Spouses and Minors

This exemption provides relief to three categories of persons: 1) widows and widowers; 2) minor children with one parent deceased; and 3) persons 70 years of age and older. The state statute compels cities and towns to provide a $175 property tax exemption to applicants meeting the eligibility requirements. Some cities and towns, however, have voluntarily adopted a higher exemption amount.

There are no income limitations for these exemptions. As a result, this exemption is a good alternative for elders who do not qualify under the Elderly Persons exemption discussed in Section D, no. 1 of this chapter. A surviving spouse or a minor with a deceased parent does not have to own and occupy the property for any period of time to receive this exemption. An elderly person, on the other hand, applying for this exemption must have owned and occupied the property as his or her primary residence for at least five or 10 years, depending on the town's discretion.

The dollar amounts in the original eligibility requirements under this exemption established by the commonwealth have become somewhat outdated with increasing property values. The commonwealth, therefore, now gives cities and towns the option of electing from several alternatives that vary in asset limitations and residency requirements. For example, under the original standard exemption, an individual cannot exceed $20,000 in total assets, excluding any unpaid mortgage on the property.

Conversely, under the most flexible alternative, an individual cannot own more than $20,000 under clause 17, or $40,000 under the other clauses, excluding the total value of the subject property.

EXAMPLE 3

Mary is 70 years old and has lived in her home for the past seven years. Mary has $30,000 in the bank and a home valued at $200,000 with an outstanding mortgage of $170,000. Mary would not qualify for this exemption if she lives in a town that adopted the standard exemption because she exceeds the asset limitation ($30,000 cash + $30,000 in equity) and she does not meet the residency requirement of 10 years. Mary does, however, qualify for the exemption if she lives in a town that adopted the least restrictive alternative, because she does not exceed the asset limitation and she does meet the residency requirement of five years.

Practice note: Check with the local assessor to determine which clause the city or town has adopted. Also check if the exemption amount is $175 or if the city or town adopted a higher exemption amount.

An applicant's personal belongings, household furniture, car and prepaid funeral expenses are not counted in determining the applicant's maximum total asset value amount.

EXAMPLE 4
Mary is 70 years old and has lived in her home for the past 10 years. In addition to $13,000 in the bank, Mary owns a car worth $15,000 and has household furniture valued at $20,000. Mary also prepaid her funeral expenses. Mary would qualify for all clause 17 exemptions and would receive a reduction of taxes on her home of $175.

5. Hardship

Individuals who do not qualify for any of the above exemptions may apply for a hardship exemption. A hardship exemption can be obtained by individuals who also received one of the above exemptions. This exemption grants relief to a homeowner in his or her tax bill due to medical hardship, financial hardship, or extenuating circumstances and expenses.

There are no expressed restrictions, and eligibility is determined on a case-by-case basis. This exemption is typically available to individuals who are unable to fulfill their tax obligation because of age, infirmity, poverty or financial hardship resulting from a change to active military status.

E. Deferring Taxes

The Elderly Tax Deferral, available under Mass. G.L. ch. 59, § 5, clause 41A, allows an elder homeowner to defer payment on his or her property taxes. In contrast to tax exemptions, deferred taxes must eventually be paid. Under the deferral, all or part of the property taxes due on the property are deferred until the deferred tax amount reaches 50 percent of the then-assessed property value. A single elder homeowner must be at least 65 years old to be eligible for the deferral. An elder may own the property jointly or as a tenant in common. For elders owning property jointly with a spouse, at least one spouse must be 65 years or older.

A qualified applicant must enter into a written tax deferral and recovery agreement with the city or town. This agreement is recorded at the Registry of Deeds. During the deferral period, the deferred tax amount incurs a maximum 8 percent interest annually, although the statute permits cities and towns to elect a lower interest rate. Some towns have elected an interest rate of zero. Deferred taxes must be repaid within six months after the death of the elder homeowner or sale of the property. If the property is sold or the elder homeowner is deceased and the taxes are not repaid, the tax deferral becomes a lien on the property.

The elder applicant must have owned and occupied any real property in Massachusetts (including the current property) for five years, and must have been a resident of Massachusetts for the previous 10 years. While there are no asset limitations, the elder's income may not exceed $20,000 per year. Cities and towns may adopt higher income limitations, but no city or town may adopt an annual income limitation higher than $40,000. The deferral can be used in conjunction with one of the available real estate tax exemptions, as long as the applicants meet eligibility requirements for both.

EXAMPLE 5
Mary has a yearly real estate tax bill of $1,200 on her home. She is 73 years old and receives a $500 reduction in her real estate tax under the Elderly Persons exemption. Mary's remaining tax amount due of $700 can be deferred.

F. Other Tax Exemptions and Credits for Seniors

1. Elderly and Disabled Tax Fund (Mass. G.L. ch. 60, §3D)

Pursuant to Mass. G.L. ch. 60, § 3D, the commonwealth authorized cities and towns to create an Elderly and Disabled Taxation Fund " ... for the purpose of defraying the real estate taxes of elderly and disabled persons of low income who, in the judgment of the fund administrators, are unable to contribute fully toward their public charges."

Each city or town may adopt the program. If adopted, the community will establish a five-person Taxation Aid Committee, which identifies the recipients of the aid and determines how much of their tax bills will be defrayed. The community's taxpayers may donate any amount to the fund through their tax bills. Donated funds are deposited into a special account until administered by the committee.

An individual meeting the eligibility criteria must submit an application to the taxation aid committee. The applicant must be elderly or disabled in accordance with his or her community's eligibility guidelines. Since the statute does not provide specific standards to define elderly or disabled, the committee has some flexibility in administering the funds.

Whether elderly or disabled, the applicant must have some degree of financial hardship, and must disclose his or her financial information on the application. Certain communities consider other factors, such as marital status, employment status, work qualifications, public assistance received by the applicant, or the value of the applicant's home. Each community may establish its own unique standards to better meet its local needs.

Communities will frequently award aid to all qualified applicants because few residents apply for aid. This high acceptance rate is ordinarily due to a lack of knowledge of the program. Because an individual's entire property tax burden can be covered by the tax fund, it is essential for potential applicants who meet the minimum qualifications to be made aware of the program and submit an application.

2. Senior Work-off Abatement (Mass. G.L. ch. 59, § 5K)

The Senior Work-Off Abatement program enables tax-paying seniors to volunteer their services to the community in exchange for a reduction in their property tax bill.

An eligible senior may save up to $1,500 on his or her taxes, depending on the community's election. The senior will work at an hourly rate that may not exceed the state minimum wage; in exchange for such work, the city or town will issue a voucher to the senior that will be applied against his or her property tax bill. By applying these vouchers, the seniors are not earning income and, therefore, the voucher is tax free.

The state statute provides that the taxpayer must be more than 60 years of age and own property within the community. The applicant may be a trustee if the property is owned by a trust. More than one qualifying owner may earn the abatement on the same property, unless local provisions express otherwise. Seniors may earn the work-off abatement on top of any other exemptions and credits that may be available under any other statutes. Seniors may work in schools, libraries, senior centers, or other public departments and offices in the community.

Not every applicant is guaranteed work through the program. Generally, seniors must demonstrate a financial hardship in order to receive jobs with the community and the hours a senior may work are limited since he or she can only earn up to $1,500 per year. In most towns, there is no automatic re-enrollment and, as a result, interested senior workers need to apply each year.

The program has been well-received in the communities that have adopted the senior work-off, because it: (a) decreases property taxes for the working senior; (b) increases senior involvement in local government; and (c) gives communities a skilled pool of potential senior employees.

3. Senior Circuit Breaker Tax Credit (Mass. G.L. ch. 62, § 6(k))

The Senior Circuit Breaker Tax Credit differs from the other exemptions and deferrals discussed earlier because this program credits the senior's state income tax as opposed to his or her property tax. The circuit breaker credit allows property owners or renters 65 years of age or older to claim a credit of up to $1,080 (for 2017) for rent or real estate taxes paid on their principal residence to the extent the taxes exceed 10 percent of their total income. The state pays the credit as opposed to the local cities and towns.

Senior homeowners who paid more than 10 percent of their income for real estate taxes and water and sewer charges are eligible for the credit. Senior renters can count 25 percent of their rent as real estate taxes. In order to receive the credit, a senior must file a state income tax return, even if he or she is not otherwise required to do so. The taxpayer will receive a refund if the credit due exceeds the amount of the income tax paid that year.

To be eligible for the credit for 2017, single seniors cannot earn more than $57,000. For heads of household, and married couples filing a joint return, the annual 2017 income limitations are

$72,000 and $86,000, respectively. In all cases, the value of the home after abatements cannot exceed $747,000 for 2017. In order for a renter to receive the credit, he or she cannot be receiving a rent subsidy, and he or she cannot pay rent to a landlord who is not required to pay real estate taxes. A taxpayer may add 50 percent of his or her water and sewer bill to his or her property tax assessment when calculating the credit, so long as the water and sewer bill is not already included in the municipal property tax bill. For example, delinquent water and sewer bills are generally added to the property tax whereas the provisions of the circuit breaker credit only apply to current water and sewer bills.

Any property tax reductions or exemptions, such as the ones described in this guide, earned or received by the taxpayer must be taken into account before determining the total real estate tax paid.

EXAMPLE 6

Mary is 81 years old and lives alone. Mary's home is valued at $350,000 and she earned $20,000 in 2017. She had an unadjusted real estate tax bill of $5,000 and a $500 water and sewer bill. She can therefore add $250 (50% of $500) to her tax bill in calculating the circuit breaker credit, bringing it up to $5,250. Mary also received the elderly person's exemption of $175 and earned $500 through the Senior Work-Off Abatement. Mary's adjusted property tax is $4,575 ($5,250 – $175 – $500). Ten percent of Mary's income is $2,000. Because Mary's adjusted real estate tax exceeds 10 percent of her total income by at least $1,080, Mary is eligible for the full $1,080 income tax credit for 2017.

ADDITIONAL RESOURCES AND CONCLUSION

Additional information and applications for exemptions can be obtained at the Assessor's Office in each city or town. Several assessor's offices have websites which provide local exemption information, downloadable applications, and links to other websites. The following are additional resources that may be useful:

- **Commonwealth of Massachusetts Citizen Information Service**
  www.sec.state.ma.us/cis
  (617) 727-7030
- **Department of Revenue, Division of Local Services, Property Tax Bureau**
  51 Sleeper St., Boston, MA 02210
  (617) 626-2300

This chapter should provide you with information needed to determine whether you may be eligible for a real estate tax exemption or deferral. Because several cities and towns have adopted alternatives for many exemptions, you should contact your local Assessor's Office for specific eligibility requirements and exemption amounts.