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More residents filing for 'Homestead' protection

By Steven Fletcher
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To many, the Homestead Act conjures up images of the Minnesota prairie, the Great Plains and the Maine woods, not tightly settled Massachusetts cities and towns.

But the Massachusetts Homestead Act shares only a name with its 19th-Century federal cousin.

It focuses on home equity, rather than "Manifest Destiny," and Essex County alone has seen a 17 percent increase in homestead protections filed to date this year compared to the same time frame in 2009.

The act, Chapter 188 in Massachusetts general law, provides \$500,000 in home equity protection against unsecured creditors, deemed an "estate of homestead."

Homeowners looking for homestead protection file a declaration of estate of homestead form with the local Registry of Deeds, along with a \$35 filing fee.

The Southern Essex Registry of Deeds reported 13,925 residents filed declaration of estate of homestead forms in 2009, and sees a marked increase in filing since John L. O'Brien began a "Homestead Outreach Program," in September 2008 after the homestead protection rose to \$500,000 in 2004.

The registry deposited fliers in local town halls and elsewhere, including at last year's Topsfield Fair.

O'Brien said he believes that, in the current financial situation, the registry should remind Essex County residents of available financial protection.

Only a homeowner's primary residence can receive homestead protection, and residents cannot take out multiple homesteads. Homestead protection works for both standard and manufactured residences.

However, only one estate or claim of homestead, according to Chapter 188 section 2, can be placed on a residence at any time. The act defines a homeowner as either the sole owner, joint tenant, tenant by entirety or tenant in common, and only one owner can file for an estate for family benefit.

The \$500,000 mentioned in Chapter 188 protects the homeowner's primary residence from "the laws of conveyance, descent, devise, attachment, or levy." That is, their home cannot be taken during a court judgment requiring them to sell property to pay off debts brought by an unsecured creditor. The act keeps residents in their home in spite of these lawsuits.

"It's insurance you hope you never have to use," said Kevin Harvey, assistant register at the South Essex Registry of Deeds

That insurance doesn't protect against federal, state and local taxes, assessments and liens, unpaid mortgages used to purchase the residence or other secured creditors. And the act levies no protection against court judgments concerning fraud, duress, mistake, or unpaid spousal and child support, according to Chapter 188. The act also can't be used retroactively; it doesn't protect against any creditor, secured or not, before the homeowner filed for homestead coverage.

Persons who work in jobs that receive frequent lawsuits — such as police and medical personnel, according to the South Essex Registry — should consider homestead protection.

Harvey noted that disabled people and those over 62 also may want to file for a homestead. Chapter 188 section 1A defines a disabled individual as any individual who has medically proven physical or mental impairment under provisions of 42 USC 1382c(a)(3)(A) and (C).

The residences of married seniors are eligible for up to \$1 million in protection, as both tenants or owners can file for homestead. Their homes typically hold greater equity than homes of younger people.

There are some other catches.

If residents sell the home under homestead protection or if their descendants sell the building, that home no longer carries the financial protection provided under the Homestead Act. Homeowners also may terminate the homestead with a dually signed contract.

The homeowner's estate of homestead, however, does pass to their spouse or surviving minor children following their death.

"In times like these we all need as much help as possible," O'Brien said. "It's very important that I remind the people of Essex County of all their financial protection options."

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