

SENATE No. 754

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. 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 S. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 754

By Ms. Creem, a petition (accompanied by bill, Senate, No. 754) of Cynthia S. Creem for legislation to clarify homestead estates and real estate titles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 706 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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 striking
2 the definition of “Owner” and inserting in place thereof the following:--

3 “Owner”, a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant
4 in common, life estate holder, remainderman, or holder of a beneficial interest in a trust,
5 including any of the foregoing who is a lessee-shareholder of a residential cooperative housing
6 unit.

7 SECTION 2. Subsection (b) of section 3 of said chapter 188 is hereby amended by
8 striking clause (6) and inserting in place thereof the following:--

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

11 SECTION 3. Subsection (d) of section 5 of said chapter 188 is hereby amended by
12 striking the second paragraph, and inserting in place thereof the following paragraph:

13 The estate of homestead of an individual who records a declaration of homestead under
14 section 3 and who subsequently marries shall automatically be deemed to benefit that
15 individual's spouse. Any subsequent recording of a declaration of homestead, without an
16 intervening release, benefitting: (i) the original declarant or a family member identified on a
17 prior declaration on the same home; or (ii) the spouse of that person; shall in either case relate
18 back to the filing date of the earliest recorded declaration, but the provisions of this chapter
19 pursuant to which the later recorded declaration was made shall control the rights of a person
20 identified in a later declaration.

21 SECTION 4. Section 11 of said chapter 188 is hereby amended by striking subsection (a)
22 and inserting in place thereof the following:

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

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

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

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

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

35 SECTION 5. The provisions of this Act shall apply to estates of homestead arising or
36 created before, on or after said effective date, except with respect to the subject matter of any
37 final judgment to the contrary by a court of competent jurisdiction prior to said effective date.