

A Homestead Protection is Not Always Forever!

Summary by: David R. Chenelle, Esq.



The story begins when Jean Milord bought his home at 119 Francis Street, Everett on June 14th, 2010, which was a single family home. (“Everett Property”) As all property owners should do, Mr. Milord filed a Declaration of Homestead on the property as well. Both the Deed and Homestead were recorded in the Registry of Deeds On June 15th, 2010. Since purchasing the Everett Property, Mr. Milord has lived there with his partner and his two biological children.

Unbeknownst to Mr. Milord, his problems began in April of 2016 when he purchased a second property, a condominium on Waite Street in Malden. (“Malden Property”) Several days after the purchase of this property, the deed and a Declaration of Homestead were filed. The problem came to light when he filed for protection under the bankruptcy code, specifically a Chapter 7 on March 9, 2017. Included within his bankruptcy documents was a schedule of exemptions whereby he claimed the Everett Property as his residence applying the full value of the property of \$418,235.00 as exempt under the Declaration of Homestead statute. As it turned out Mr. Milord, now the debtor (the “Debtor”), owned the Everett Property free and clear with no mortgages on the property. He claimed no exemption on the Malden Property.

Unfortunately for Mr. Milord, First Ipswich Bank (“Bank”) was a creditor to the Debtor and according to his bankruptcy schedules was owed in excess of \$1,300,000.00. The Bank thereafter filed an objection to the Debtor’s claimed exemptions by challenging the validity of the Declaration of Homestead on the Everett Property. In the Bank’s objection to the Debtor’s claimed exemptions, it stated that the Debtor’s subsequently filed a Declaration of Homestead against the Malden Property terminated his homestead on his residence by operation. If correct, it would leave the property “exposed” to the Chapter 7 trustee for the purposes of liquidating the property for the benefit of the unsecured creditors of the Debtor’s case, which included the Bank.

Not to be outdone, the Debtor filed a series of pleadings, including an affidavit claiming that he has maintained the Everett Property as his primary residence and that he has never lived in the Malden Property. He further stated that the closing attorney for the Malden Property prepared the Deed and Declaration of Homestead without properly advising him of the consequences. The matter culminated with the scheduling of an evidentiary hearing in the U.S. Bankruptcy Court. Prior to the hearing, the parties filed an “agreed upon statement of material facts” which in essence reduced the issue to a straight question of law.

Pursuant to M.G.L. ch. 188 §10(a)(1)-(a)(5) once a Declaration of Homestead has been claimed there are 5 delineated ways in which the homestead can be terminated. Under §10(a)(5) a homestead is terminated by:

(5) the subsequent recorded declaration of an estate of homestead under section 3 on other property, except that such declaration shall terminate only the rights of the owner making such subsequent declaration and the rights of that owner's spouse and minor children who reside or intend to reside in the other property as their principal residence.

The Bankruptcy Court ruled that notwithstanding the debtor's intent to live in the Everett or Malden properties, the simple act of recording a subsequent homestead on the Malden Property terminated his rights to the a homestead claimed against the Everett Property. Notwithstanding, the Court went on to find that even though the Debtor's claimed homestead had been terminated, his partner and children did benefit from the automatic homestead created under M.G.L. c. 188 §4 in the amount of \$125,000.00.

So the hard lesson to be learned is that not every property you purchase should have a Declaration of Homestead filed against it. And for every Declaration of Homestead you file, the prior one claimed is terminated. In this case, with a value of the debtor's residence being \$418,235.00 the application of the automatic homestead of \$125,000.00 left \$293,235.00 available for the Chapter 7 Trustee to liquidate and apply to the debtor's creditors!