

## **I'm protected by the Homestead Act ... I don't NEED liability insurance ...**

**By Irene Morrill, CPCU, CIC, ARM, CRM, LIA, CPIW  
Vice President of Technical Affairs**

## **That is one of the most FOOLISH statements that I have ever heard ... and it is SO UNTRUE ...**

Don't get me wrong. I think protecting one's residence by filing under the Homestead Act found in MGL 188 is a smart thing to do ... but it is not done in LIEU of liability insurance ... it's done in CONJUNCTION with proper liability insurance.

### **Brief overview of the Homestead Act ...**

How broad is the protection?

Currently homestead protection is a maximum of \$500,000 for one's PRINCIPAL residence only. Regardless of the numbers of owners of the property, the "estate of homestead" is only filed in ONE name for the benefit of the entire family.

Should the "filer" pass away, the homestead protection remains for the spouse until he/she remarries and for unmarried children until eighteen.

If the owners are 62 or older or disabled, then the law allows each owner to file for an estate of homestead up to \$500,000. To be considered disabled you must meet the legal definition in 42 USC 1382 (a) (3) (A) and (C).

The general purpose of the "estate of homestead" is to protect oneself from unsecured creditors.

Filing for an "estate of homestead" exempts your principal residence to the tune of \$500,000 from MOST attachments or debts. However, the Homestead Act does NOT exempt you from such things as:

1. sale of property to pay taxes (federal, state, local)
2. debts incurred PRIOR to creation of "estate of homestead" (sort of similar to NO prior acts coverage!)
3. mortgage debt ON the home
4. child support or alimony

### **Where do you file an "estate of homestead?"**

You file it in the county where your principal residence is located. The Registry of Deeds for the Commonwealth of Massachusetts Website will provide you with the contact information for your county. The MA Registry of Deeds Website address is: <http://www.sec.state.ma.us/rod/rodhom/homidx.htm>. The form will most probably be available online at the county's website address. The filing fee is a mere \$35.00. The form must be notarized, so there might be a modest fee for this procedure.

### **Why should I still purchase adequate liability limits on my auto and homeowners policy?**

#### **The MA auto policy and the defense issue ...**

If you only buy 20/40/5 (state minimum limits), but cause SERIOUS injury to someone, what will your MAP do? Suppose the plaintiff is suing you for \$1,000,000, and the request is not unreasonable based on his/her injuries. The accident is clearly your fault. Will your company choose to spend thousands of dollars on defense for you in an attempt to settle for a lesser amount than the million? In the long run, the carrier won't pay out more than the \$20,000 per person limit, so what will the carrier gain by offering a long involved and costly defense?

## **The duty to defend language in the MAP is “interesting” ...**

We also have a duty to defend any such lawsuit, even if *it is without merit, but our duty to defend ends when we tender, or pay to any claimant or to a court of competent jurisdiction, with the court's permission, the maximum limits of coverage under this policy. We may end our duty to defend at any time during the course of the lawsuit, by tendering, or paying the maximum limits of coverage under the policy, without the need for a judgment or settlement of the lawsuit or a release by the claimant.*

The MAP language allows the carrier to pay out and get out ... now ... you are going to have to come up with EXTRA money ... to pay for a lawyer to help get you out of the lawsuit that you got yourself into!!!

## **Massachusetts Uninsured and Underinsured Motorists Coverage ...**

Remember ... one CANNOT buy a higher limit of insurance for UM or UIM than is purchased for Optional Bodily Injury Part 5. There are a certain number of individuals out there who FAIL TO PAY their auto insurance premiums. If they are the ones that cause the accident where you are seriously injured ... what will YOU do? How will you pay YOUR bills? It is very likely that many of these people will NOT have any “assets” to attach or wages to garnish.

Purchasing high Uninsured Motorists coverage limits will allow YOU to receive compensation from your OWN carrier. Let your carrier worry about getting the money back!

Also, in Massachusetts, many people either make poor insurance buying decisions or just can't afford to purchase much insurance. They have met state law requirements ... but what good is \$20,000 when YOU are seriously injured. Buying high Underinsured Motorist limits can provide you with \$\$\$ to pay your mortgage and other monetary obligations.

In order to purchase high UM and UIM limits ...we must FIRST have the high BI limit!

## **MA Auto Property Damage Liability Coverage Part 4 ...**

Is inexpensive when purchasing limits HIGHER than state minimum. It's the first \$5,000 that costs the most. Then the premium jump to \$10,000 is somewhat hefty, but after that coverage is cheap. We ALL know that the average cost of a newer vehicle is well over \$5,000 to \$10,000! And, we all know that if an insurance company pays a collision loss to its customer, it WILL subrogate against the “guilty party.” Purchasing adequate Property Damage Liability limits is MUCH cheaper than having your wages attached. The additional premium will be portioned over your normal automobile payment plan.

## **Homeowners Liability Insurance ...**

Is so INEXPENSIVE ... it is ridiculous! Increasing one's Homeowners Liability limit from the base of \$100,000 to \$500,000 is usually less than \$50. What a deal!

## **Judgments rendered must be paid ... whether or not by insurance ...**

Filing an estate of homestead does NOT keep you from being sued. If you negligently cause injury to another person or their property, then a court of law can find against you. A huge judgment could be rendered against you. Granted, the Homestead Act could protect your principal residence ... but not any SECONDARY residence. Also, what about your savings account????? Or, the ATVs, Mercedes, sail or motor boats. You can kiss them goodbye!

Also, your wages could be GARNISHED (attached)! MGL 246 describes how property, cash and WAGES can be attached. MGL 246 s.28 only protects (exempts) \$125.00 of your wages from attachment. WOW!!! According to MGL 246 s.28A a whopping \$500 of your savings accounts are exempt ... that means any more than that IS “attachable.” Oh boy!!!

## **Could an outstanding judgment that attaches your pay ...**

Affect your ability to

- Acquire a second home
- Send your kids to the “best” colleges
- Purchase that fancy car
- Go on vacations
- Go out to eat
- Or otherwise affect your lifestyle or desired standard of living?

According to MGL 260 s. 20 a money judgment entered in the State of Massachusetts is generally enforceable for a period of 20 years. That’s a LONG, LONG time ... to try to put off your earning power to avoid your judgment obligations!

### **Fine ... then I’ll declare bankruptcy ...**

Well, from what I read of the bankruptcy laws, that unto itself is another can of worms. Chapter 7 bankruptcy is an “asset liquidation proceeding.” A Homestead Declaration will not exempt the home from liquidation, but will allow the individual to keep a “greater portion of the proceeds” from a liquidation sale.

In a chapter 13 bankruptcy a Homestead Declaration allows you to retain the home, but you will be required to repay “some or all of the unsecured debt over a 3 to 5 year period.”

If one is really contemplating bankruptcy, then Consumer Credit Counseling Service of Southern New England should be contacted at 1-800-208-2227.

Bankruptcy stays on your record for 10 years. We ALL know that a bankruptcy in your credit history will “adversely affect” your ability to buy insurance in the standard voluntary market!

I think purchasing insurance is WAY EASIER than filing bankruptcy ... and CHEAPER, too!

### **Massachusetts Registry of Deeds Website information ...**

Cautions us NOT to use the Homestead Act in lieu of insurance ... but in conjunction with it.

This is excellent advice ... buy adequate insurance and then utilize the Homestead Act as added protection.