

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1238

H.P. 924

House of Representatives, February 28, 2001

### **An Act to Allow the Filing of a Declaration of Homestead.**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative ANDREWS of York. (By Request)

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 14 MRSA §4422, sub-§1, ¶D** is enacted to read:

6 D. This subsection does not limit the exemption afforded to  
8 homestead estates that are registered under Title 33,  
10 chapter 14.

12 **Sec. 2. 14 MRSA §4562** is enacted to read:

14 **§4562. Homesteads**

16 Exemptions for registered homestead estates are governed by  
18 Title 33, chapter 14.

20 **Sec. 3. 33 MRSA c. 14** is enacted to read:

22 **CHAPTER 14**

24 **HOMESTEAD ESTATES**

26 **§821. Right to acquire**

28 A homestead estate may be acquired by a person who owns a  
30 home, including real property and buildings, as long as the  
32 person occupies or intends to occupy the home as a principal  
34 residence. The owner of the home may be a sole owner, a joint  
36 tenant, a tenant by the entirety or a tenant in common.

38 **§822. Homestead exemption**

40 1. General. Up to \$100,000 of a homestead estate's value  
42 is exempt from the laws of conveyance, descent, devise,  
44 attachment, levy on execution and sale for the payment of debts  
46 and legacies.

48 2. Elderly or disabled persons. If the holder of a  
50 homestead estate is disabled or at least 62 years of age, up to  
\$200,000 of the homestead estate's value is exempt from the laws  
of conveyance, descent, devise, attachment, levy on execution and  
sale for the payment of debts and legacies.

A. For the purposes of this chapter, "disabled person"  
means a person who has a permanent physical or mental  
impairment that meets the disability requirements for  
supplemental security income under 42 United States Code,  
Section 1382c(a)(3). An original or certified copy of a  
disability award letter issued to the person by the United  
States Social Security Administration or a letter signed by  
a licensed physician, certifying that the person meets the

2 disability requirements in 42 United States Code, Section  
3 1382c(a)(3), must be recorded or filed with a disabled  
4 person's declaration of homestead estate.

5 B. Notwithstanding the limitation in section 825, each  
6 individual who qualifies for an elderly or disabled person's  
7 homestead estate may obtain a homestead estate and an  
8 exemption of up to \$200,000.

9 C. An elderly or disabled person's homestead estate  
10 terminates:

11 (1) On the sale or transfer of the real property or  
12 buildings during the estate holder's lifetime;

13 (2) On the sale or transfer of the estate holder's  
14 interest in the real property or buildings during the  
15 estate holder's lifetime; and

16 (3) On the death of the estate holder.

17 **§823. Exception**

18 A homestead estate does not provide exemption from:

19 **1. Unpaid taxes.** Unpaid taxes;

20 **2. Debts contracted before acquisition.** Debts contracted  
21 before the homestead estate was acquired;

22 **3. Debts contracted for purchase of homestead.** Debts  
23 contracted for the purchase of the real property or buildings;

24 **4. Support of spouse or minor children.** A court order to  
25 pay for the support of a spouse or a minor child; or

26 **5. Certain rent.** Rent for real property on which buildings  
27 in the homestead estate stand.

28 **§824. Acquiring homestead estate**

29 **1. Real property.** A homestead estate in real property may  
30 be acquired:

31 A. Through a designation contained in the deed by which the  
32 property is acquired; or

33 B. Through a written declaration that is signed by the  
34 estate holder and recorded in the registry of deeds for the  
35 county in which the property is located.

2           2. Buildings. A homestead estate in buildings, including a  
4           manufactured home, may be acquired through a written declaration  
6           that is signed by the estate holder and filed at the city or town  
          clerk's office in the city or town in which the building is  
          located.

8           3. Elderly or disabled persons. In order to acquire a  
10           homestead estate under subsection 1 or 2, an elderly or disabled  
12           person acquiring a homestead estate must also file or record the  
          documentation required in section 822, subsection 2.

14           4. Previous estates. The acquisition of a new homestead  
16           estate by a person discharges all previous homestead estates of  
          that person.

#### 18           §825. Limitations

20           Only one person may acquire a homestead estate in a  
22           particular home for the benefit of that person's family. A  
24           homestead estate may be acquired on only one principal residence  
          for the benefit of a family. A family includes a sole owner, a  
          parent with one or more children, a husband and wife and a  
          husband and wife with one or more children.

#### 26           §826. Use by spouse or minor child

28           If a court has determined that a spouse of a holder of a  
30           homestead estate is living apart from the holder of a homestead  
32           estate for a justifiable cause or if a court has awarded the  
34           custody of a minor child of a holder of a homestead estate to a  
36           person other than the holder of a homestead estate, the court may  
38           grant to the spouse or minor child or both the right to use the  
          homestead estate until further order of the court. If the court  
          order is recorded in the registry of deeds for the county in  
          which the property is located, or filed at the city or town  
          clerk's office in the city or town in which the building is  
          located, the holder of the homestead estate may not dispose of  
          the homestead estate until the court revokes its judgment.

#### 40           §827. Continuance after death

42           If the holder of a homestead estate dies, the homestead  
44           estate continues to exist for the benefit of the holder's  
46           surviving spouse and minor children, as long as one of them or a  
48           purchaser under section 828 occupies the premises. The homestead  
          estate exists until the youngest surviving unmarried child  
          attains 18 years of age and the surviving spouse remarries or  
          dies.

#### 50           §828. Sale of right

2       1. Right to sell. When the holder of a homestead estate  
dies, the homestead estate may be sold according to this  
4 subsection.

6       A. The surviving spouse and the guardian of the minor  
children, if the guardian has obtained permission from a  
8 court, may join in the sale of the homestead estate.

10       B. If there is no surviving spouse entitled to rights in  
the homestead estate, the guardian may sell the homestead  
12 estate after obtaining permission from a court.

14       C. The surviving spouse may sell the homestead estate if  
there are no minor children.

16       2. Purchaser's rights. The purchaser is entitled to  
18 possess the premises for as long as the surviving spouse or one  
of the children could have pursuant to section 827 if there had  
20 been no sale.

22       3. Proceeds. A court may apportion the proceeds of the  
sale among the parties.

24       **§829. Termination**

26       A homestead estate may be terminated during the life of the  
28 holder:

30       1. Deed. Through a deed that conveys the property, is  
signed by the holder of the estate and does not specifically  
32 reserve the homestead estate;

34       2. Written release recorded in registry. Through a written  
release of the homestead estate that is signed by the holder of  
36 the estate and recorded in the registry of deeds for the county  
in which the property is located; or

38       3. Written release filed. Through a written release of the  
homestead estate that is signed by the holder of the estate and  
40 filed at the city or town clerk's office in the city or town in  
which the building is located.

42       **§830. Continuing rights**

44       A homestead estate continues to exist, even if the law under  
46 which it was acquired is repealed.

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## SUMMARY

4           This bill creates the homestead estate, which protects a  
6           home, including real property and buildings, from attachments and  
8           seizures of up to \$100,000, or up to \$200,000 if the estate  
10          holder is an elderly or disabled person. The protection does not  
            apply for the following debts: nonpayment of taxes, debts  
            incurred before the homestead estate was acquired, mortgages,  
            rent and court orders for spousal or child support.