



The Law Office of
Thomas C. Marino

Jan 2011
LawTimes

“LEGALESE” MADE EASY

POWER OF ATTORNEY:

This is probably one of the most important documents you can have. This allows you to name someone to act on your behalf while you are alive and unable to do so. This allows someone you trust to make decisions on your behalf, and more importantly speak with important representatives such as bankers, lawyers, etc. about what your needs are.

HEALTH CARE PROXY:

This is the person who will make your health care decisions when you cannot. The only time this person has authority to act on your behalf regarding medical care is when you are unable to.

LIVING WILL: This is an important document that provides evidence of what your wishes are regarding life sustaining measures should you become diagnosed as being in a persistent vegetative state. Do wish to be kept alive by artificial means, and if so, for how long? While this may be difficult to decide now, it provides a great source of comfort for your loved ones who need to know for sure what your wishes are.



CHANGES TO HOMESTEAD ACT ON THE HORIZON.

After Five years of wrangling it appears the Governor is on the verge of signing into law new legislation regarding the Massachusetts Homestead Act. The key component will be an **automatic** homestead exemption of \$125,000 for homeowner in the Commonwealth without any filing requirements. Under Massachusetts law, homeowners who file a Homestead Declaration can protect up to \$500,000 of equity in their home from unsecured creditors. Under the new law the first \$125,000 exemption is automatic without any filing requirement. To receive protection for the full amount of \$500,000, homeowners will still be required to record a Homestead Declaration with the Registry of Deeds. Many homeowners are highly leveraged on their home and have little if any equity to protect. For some that meant putting off the Homestead Declaration until they had more equity in the home to protect. Now, under the new law, your initial \$125,000 in equity will be protected automatically.

REFINANCE PROTECTION – Another important addition to the new legislation is clarification that refinancing your home does not affect the prior Homestead Declaration. Under the existing law, the Massachusetts Courts could not decide on whether your initial homestead declaration was valid when you refinanced your home. This left people confused about what to do when refinancing their home. The result in many cases was an additional filing just to make sure you were protected. Under the new law, no refiling will be required. In addition the new legislation will stop lenders from requiring a waiver or release of homestead when you enter into a new mortgage transaction.

REQUIRED NOTICE – Also included in the new legislation, closing attorneys and/or settlement agents will be required to provide written proof that they have informed the Borrowers of their right to declare a homestead and explain the difference between the automatic coverage and expanded coverage.



WHY HOMEOWNERS SHOULD PURCHASE TITLE INSURANCE

Many new homebuyers decline to purchase owner's title insurance; opting instead to save the one-time fee for what many feel is an unnecessary expense in an already expensive process. However, where homebuyers are frequently purchasing homes that have gone through the foreclosure process, their purchase and/or title could be held invalid.

Continued on page 2..



PERSONAL INJURY

Not every accident is a lottery ticket to millions of dollars. Many people rely on stories they read in the paper or hear from friends where someone allegedly was hurt and received thousands – sometimes just for “nuisance payments” because insurers wanted to settle fast. Insurers aren’t that willing to part with their money.

Real victims of someone else’s negligence are entitled to recover for their injuries, including cost for medical treatment, lost wages, pain and suffering and in some cases emotional damages. However, you can’t recover because something might have happened but didn’t. Because someone drove their car negligently and could have hit a tree and killed you does not entitle you to sue them. Be thankful your alive and don’t drive with them again.

If, however, you’ve suffered real injuries then you should first and foremost see your doctor and get treatment. If you think someone else is responsible for your injury then you should talk to a lawyer and find out what, if anything, you should do to protect your rights,



FAMILY MATTERS

Sadly the breakup of a family because of divorce can often become a costly event....not just financially, but because of the high emotional costs that can come from fighting over custody, property, alimony and visitation schedules. In many cases the only winner in this process can be the divorce attorneys. For many divorcing couples there are few real options to battle over. Child support payments are governed by the state’s guidelines with very little wiggle room. Physical custody is usually given to the parent who has been the primary caretaker of the children and the courts are very reluctant to deny visitation rights absent a showing of real risk to the children.

MEDIATION – Divorce mediation offers a real alternative to the conventional contested divorce. The parents can save thousands of dollars and work out a settlement that provides for the care and custody of your children and an equitable division of your assets. It is not for everyone however. The two parties must be willing to go to mediation and work to resolve their differences in a fair and open manner. If someone is simply looking for a referee to tell them who is right, then mediation isn’t the way to go

Continued from front.....TITLE INSURANCE

In 2009 the Massachusetts Supreme Judicial Court made an important ruling that put many homeowners’ titles into question. Essentially the Court decided that the process that had been used for providing notice and recording a foreclosure was faulty and thereby invalid. If you purchased a home during that period which had a foreclosure in its history, then you were potentially stuck with a bad title. That meant getting your home refinanced or sold could become problematic. While it’s true that an attorney may have done a title search to confirm your title, not all matters can be uncovered by such a search. Besides, spending thousands of dollars in a lawsuit and/or potentially losing your home are not what you want to do. Your best protection is to make sure you speak with your attorney about (1) purchasing an owner’s title policy whenever you have a foreclosure in your title history; and (2) review with your attorney whether there are any special exceptions in the insurance policy that should send red flags about the quality of the title you have.

THE LAW OFFICE OF THOMAS C. MARINO

Representing clients in residential and commercial real estate; Will and Estate Planning, Family Law, and Personal Injury.

See us at: www.attorneymarino.com



Central Mass Office

454 Main Street, P.O. Box 768
Fiskdale/Sturbridge, MA 01518
Phone (774) 241-0152