

## **Massachusetts asset protection statutes Compiled but kept up to date only as time allows.**

From the Office of: **Borchers Trust Law Group, P.C.**  
77 Main Street, Medway, MA 02053. Tel. (508) 803-1900. [www.borcherslaw.com](http://www.borcherslaw.com)

### **Summary:**

Qualified Plans (401(k), 403(b), 457's, Keogh's, SEP's, IRAs that are Qualified plan rollovers – protected without limitation MGL Ch. 235. Our statute is clear on rollovers as plans distributed from or purchased with assets distributed from qualified plans (annuity, pension, profit sharing or other retirement plan subject to the federal ERISA, or self-employed plans, or 401(a) plan, except as against a court order concerning divorce, maintenance or child support or penalty or restitution for commission of a crime.

IRAs that aren't rollovers – protected with some 7% limitation MGL Ch. 235. The 7% deal is that IRA protection “shall not apply to sums deposited, determined without regard to deposits pursuant to “a rollover or transfer [from a qualified plan] during the five year period preceding the individual’s declaration of bankruptcy or entry of judgment in excess of 7 per cent of the total income of such individual for such period.”

Homestead – 500k new homestead law March 16, 2011 covers home equity and is still \$500k for “declared” homestead by any owner occupant, and covers trustees declaring for beneficiaries (new) and stacking the declared homestead for those over 62 y/o/a or legally disabled. The new \$125k “automatic” (undeclared) homestead can cover owners with little home equity. It now behooves owners of property held in trust to declare homestead. For those over 62 it behooves all owner occupants to declare in order to stack the exemption.

Life insurance – cash value and proceeds not positive about cash value, but the statute talks about proceeds, which arguably includes cash value as long as it needed to fund the death benefit AND is accessible in favor of someone other than the person owning the policy, except for deposits to the policy amounting to fraudulent transfers. There is only one judicial interpretation of the statute I am aware of. Ch 175 Sec 125. Statute says “If a policy of life or endowment insurance is effected by [purchased and/or put in place by, or owned by is my interpretation] any person on his own life or on another life, in favor of a person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall be entitled to its proceeds against the creditors and representatives of the person effecting the same, whether or not the right to change the named beneficiary is reserved by or permitted to such person; provided that [the provisions of the fraudulent transfer statute shall apply to premiums paid deposits].” There’s a weird additional benefit for married

women to have policies protected for her own separate use and benefit and that of her children. Sec. 126.

Tenancy by the entirety: Effective vs creditors of one spouse? **yes** Can be used for just real estate? **yes** Bank accounts/other assets as well? **no**

## **CHAPTER 235. JUDGMENT AND EXECUTION**

### **LEVY OF EXECUTION AND PERSONAL PROPERTY EXEMPT THEREFROM**

#### **Chapter 235: Section 34A. Annuities, pensions, profit sharing or retirement plans; insolvency; attachment**

Section 34A. The right or interest of any person in an annuity, pension, profit sharing or other retirement plan subject to the federal Employee Retirement Income Security Act of 1974, in any plan maintained by one or more self-employed individuals as a Keogh Plan, so-called, in any plan maintained by a corporation or other business organization pursuant to section 401(a) of the Internal Revenue Code but not subject to the federal Employee Retirement Income Security Act of 1974, or in any Simplified Employee Plan, annuity plan to which the provisions of section 403(b) of the Internal Revenue Code apply or Individual Retirement Account or Annuity maintained by an individual, or in any annuity or similar contract distributed from or purchased with assets distributed from any of the foregoing, shall be exempt from the operation of any law relating to insolvency and shall not be attached or taken on execution or other process to satisfy any debt or liability of such person, except as may be necessary to satisfy (i) an order of a court of competent jurisdiction concerning divorce, separate maintenance or child support or (ii), in the event of the conviction of such person of a crime, an order of a court requiring such person to satisfy a monetary penalty or make restitution to the victim of such crime. The exemption in this section for plans maintained by an individual, whether or not self-employed, shall not apply to sums deposited, determined without regard to deposits pursuant to a rollover or transfer except to the extent protection under this section would be limited in the absence of a rollover or transfer, in said plans during the five year period preceding the individual's declaration of bankruptcy or entry of judgment in excess of 7 per cent of the total income of such individual for such period.

Commentary: Exemption protects only the amount of contributions to IRAs up to 7 percent of the total income of the individual for the 5 year period preceding filing bankruptcy or entry of judgment (except for deposits made by "rollover or transfer" [from qualified plans presumably] to which the exemption will apply). Rollovers should be kept in separate accounts from other IRAs. T. Borchers.

## CHAPTER 246. TRUSTEE PROCESS

### PROPERTY LIABLE TO ATTACHMENT BY TRUSTEE PROCESS

#### Chapter 246: Section 28. Wages and pensions; exemptions; exceptions

Section 28. If wages for personal labor or personal services of a defendant are attached for a debt or claim, an amount not exceeding \$125 out of the wages then due to the defendant for labor performed or services rendered during each week for which such wages were earned but not paid shall be reserved in the hands of the trustee and shall be exempt from such attachment. Except as otherwise permitted by law, amounts held by a trustee for a defendant in a pension shall be reserved in the hands of the trustee and shall be exempt from attachment. For the purpose of this section, the word "pension" shall mean any annuity, pension, profit sharing or other retirement plan subject to the federal Employee Retirement Income Security Act of 1974, any plan maintained by one or more self-employed individuals as a Keogh Plan, so-called, any plan maintained by a corporation or other business organization pursuant to section 401(a) of the Internal Revenue Code but not subject to the federal Employee Retirement Income Security Act of 1974, any Simplified Employee Plan, annuity plan to which the provisions of section 403(b) of the Internal Revenue Code apply or an Individual Retirement Account or Annuity maintained by an individual, or any annuity or similar contract distributed from or purchased with assets distributed from any of the foregoing; provided, however, that this definition shall not apply to sums deposited, determined without regard to deposits pursuant to a rollover or transfer except to the extent protection under this section would have been limited in the absence of a rollover or transfer, in any plan maintained by an individual, whether or not self-employed, during the five year period preceding the individual's declaration of bankruptcy or entry of judgment in excess of 7 per cent of the total income of such individual for such period. The amount reserved under this section shall be paid by the trustee to the defendant in the same manner and at the same time as such amount would have been paid if no such attachment had been made. Every writ of attachment shall contain a statement of the amount exempted from attachment under this section and also a direction to the trustee to pay over the exempted amount as provided in this section.

The provisions of this section shall not apply in any proceeding to attach wages or a pension to satisfy a divorce, separate maintenance or child support order of a court of competent jurisdiction, and in such actions, including an action for trustee process to enforce a support order under section 36A of chapter 208, the provisions of federal law limiting the amounts which may be trustee, assigned or attached in order to satisfy an alimony, maintenance or child support order shall apply in lieu of said provisions of this section.

## CHAPTER 175. INSURANCE

### LIFE INSURANCE

#### Chapter 175: Section 125. Creditors or beneficiaries; rights

Section 125. If a policy of life or endowment insurance is effected by any person on his own life or on another life, in favor of a person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, shall be entitled to its proceeds against the creditors and representatives of the person effecting the same, whether or not the right to change the named beneficiary is reserved by or permitted to such person; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or on behalf of a creditor, of a claim to recover for certain premiums paid in fraud of creditors, with specification of the amount claimed. No court, and no trustee or assignee for the benefit of creditors, shall elect for the person effecting such insurance to exercise such right to change the named beneficiary.

Any person to whom a policy of life or endowment insurance, issued subsequent to April eleventh, eighteen hundred and ninety-four, is made payable may maintain an action thereon in his own name.

## **Chapter 175: Section 126. Married woman; beneficiary under insurance contract**

Section 126. Every policy of life or endowment insurance made payable to or for the benefit of a married woman, or after its issue assigned, transferred or in any way made payable to a married woman, or to any person in trust for her or for her benefit, whether procured by herself, her husband or by any other person, and whether the assignment or transfer is made by her husband or by any other person, and whether or not the right to change the named beneficiary is reserved by or permitted to the person effecting such insurance, shall inure to her separate use and benefit, and to that of her children, subject to the provisions of section one hundred and twenty-five relative to premiums paid in fraud of creditors and to sections one hundred and forty-four to one hundred and forty-six, inclusive. No court, and no trustee or assignee for the benefit of creditors, shall elect for the person effecting such insurance to exercise such right to change the named beneficiary.

## **CHAPTER 188. HOMESTEADS**

**Homestead – 500k** new homestead law March 16, 2011 covers home equity and is still \$500k for “declared” homestead by any owner occupant, and covers trustees declaring for beneficiaries (new) and stacking the declared homestead for those over 62 y/o/a or legally disabled. The new \$125k “automatic” (undeclared) homestead can cover owners with little home equity. It now behooves owners of property held in trust to declare homestead. For those over 62 it behooves all owner occupants to declare in order to stack the exemption.