



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## Homestead Exemption: Court Adopts Predominance Test for Home Office Use

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**Joshua Lee Smith** – The Massachusetts homestead statute (M.G.L. c. 188) permits an owner to declare a homestead on his or her principal residence to protect it against claims of certain unsecured creditors of up to \$500,000, or if an owner is disabled or 62 years of age or older, up to \$1,000,000. Without declaring a homestead, homeowners are entitled to an “automatic homestead exemption” of \$125,000. The U.S. Bankruptcy Court for the District of Massachusetts recently held in [In re: Walter D. Catton, Jr.](#) that a property that is predominantly used for commercial rather than residential purposes will disqualify such property for exemption under the homestead statute.

The debtor in the case owned a two-story structure in which he lived on the second floor and used the first floor as an office for his insurance agency. The opposing party, a bankruptcy trustee, argued that, due to its commercial use, the debtor’s property should not qualify as a single family dwelling entitled to homestead protection. The trustee pointed to the city’s assessor website which described the property as an “office” having a style of “Stores/Apt Com” and noted that the city taxed part of the property at the residential rate and part at the commercial rate. The trustee also pointed out that the debtor’s appraisal described the property as a “two unit mixed use property.” The Court was unpersuaded by these arguments, stating that the test for homestead eligibility is not whether the single family dwelling includes *any* commercial use but whether the commercial use *predominates*.

In holding that the debtor’s use of the property for his insurance agency was not the predominant use, the Court indicated that the zoning district in which the property was located permitted a home occupation with commercial use only if the commercial use was “clearly incidental and secondary to the use of the premises for residential purposes.” The Court also found persuasive the fact that over 60% of the floor area represented residential living area.

The good news for homeowners (and bad news for creditors) is that this case further demonstrates how the courts in Massachusetts continue to follow what the Court here described as the “golden rule” that exemptions are to be liberally construed in favor of debtors. Homeowners should consider taking the simple step of filing a declaration of homestead as a means to maximize the protection of one’s principal residence. Creditors should be mindful of the

homestead protections afforded to debtors in the collection of judgments and the few but important exceptions where debtor-friendly homestead laws do not apply.