

FUNDAMENTALS OF HOMESTEAD

I. WHAT IS HOMESTEAD?

- A. Realty Owned by a Natural Person (Size limitations)
- B. Protected Homestead
- C. Homestead for Ad Valorem Tax Purposes
- D. Abandonment of Homestead – EX, parent moves in with child
- E. Owner's family resides in property, but owner moved out (limited to residence within municipality)

II. ARTICLE X, SECTION 4 HOMESTEAD LIMITATIONS AND BENEFITS

- A. Lifetime Exemption From Creditors
 - 1. Types of property that qualify for creditor protection (include various types of property – houseboat, etc.)
 - 2. Single-family residence, part of which is rented?
 - 3. Proceeds from sale of homestead – When are they exempt?
 - 4. Insurance proceeds for damage to homestead – When are they exempt?
 - 5. What does not qualify for creditor protection?
 - 6. Interactive examples of above
- B. Lifetime Restriction on Alienation
 - 1. Joinder of spouse required
 - 2. One exception – Conveyance from owner to owner and spouse as TBE
- C. Death Time Exemption From Creditors
 - 1. Creditor protection inures to surviving spouse or heirs of deceased owner
 - 2. What is an heir?
 - 3. Loss of death time exemption from creditors
 - a. Direction to sell

- b. Devise to non-protected beneficiary
 - c. Funds invested in homestead were obtained by fraud
- D. Restrictions on Devise – Survived by spouse or minor child
 - 1. Exception for Minor child (There is a statutory trust for a minor child, but it is not a basic planning tool.)
 - 2. Exception for devise to spouse if no minor child
 - 3. Requirements for devise to spouse (if such devise is permitted)
 - 4. Specific or Residuary Devise
 - 5. Waiver
 - a. Pre-nuptial – requirements
 - b. Post-nuptial – requirements
 - c. By deed – requirements and unanswered questions
 - d. Cases
 - 6. Revocable trust holding homestead real property will not avoid the restrictions on devise.
 - 7. Examples

III. DESCENT OF HOMESTEAD (Intestacy or when an attempted devise fails)

- A. Florida Statute 732.401
- B. Property Excluded from Application of Statute
- C. Election Available to Surviving Spouse
 - 1. Timing (date delivered for recording); discuss limited extensions that are available
 - 2. Procedure – RECORDING in OR Books of County; cover restrictions of who can file on behalf of spouse; filing in probate proceeding or delivering to probate clerk is not sufficient
 - 3. Suggested Form
 - 4. Do not need a probate proceeding

IV. ADMINISTRATION ISSUES

A. Protected Homestead

1. Not an asset of the probate estate
 - a. Cannot be used to pay expenses of administration or creditor claims
 - b. Will not abate in favor of pecuniary devises even if devised through residuary
 - c. Court order authorizing PR to sell is not valid!
2. PR may take possession in limited circumstances; cover process; contrast trustee's possession

B. Passage of Title

1. When?
2. How? Order is not a monument of title; PR's release also does not convey title

C. Testamentary Devise Through a Revocable Trust

1. Trustee has legal title
2. Trust directs distribution upon settlor's death
3. Trust directs homestead to be held in further trust; Compare and contrast *Zimmerman* and *Est of Morrow*

D. Disclaimers – Can divest yourself, but can't take away another's vested right with post-death disclaimer; must be done with pre-death waiver

E. Ad valorem tax issues

1. 3%/5%
2. Requirement to notify property appraiser
3. Save Our Homes; need correct provisions in trust; difference between 10% and 3%

E. Attorney's fees for establishing homestead

V. OTHER HOMESTEAD TIDBITS

- A. Multiple homesteads of Spouses; homes in multiple states (be sure homestead not claimed in other state);
- B. Fraudulent Transfer/Conveyance

VI. KELLEY PARADIGM