

# ***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 devisees 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**