Determination of Homestead

When to use this packet:

Florida law allows for the exemption of certain real property from the claims of creditors of the decedent's estate under specific circumstances. The following checklist and chart will help the user determine if they are eligible for such a process and if so, provide the forms needed. None of these forms can be used alone, for self-help purposes, they must be filed in combination with a Petition for Summary Administration.

Important Note:

All instructions and forms distributed by the Court are provided as a public service to persons seeking to represent themselves in court without the assistance of an attorney. These documents are meant to serve as a guide only, and to assist pro-se (self-represented) litigants with their cases. Any person using these instructions and/or forms does so at his or her own risk and the Court shall not be responsible for any losses incurred by any person in reliance on the information and forms provided.

Additional Resources:

For Death Certificates: www.FloridaHealth.gov or call: (727) 507-4330 ext. 1200

For vehicles: www.flhsmv.gov

For unclaimed property: www.fltreasurehunt.gov

No- and low-cost legal assistance: Legal Services of Greater Miami, Inc., (305) 576-008, https://www.legalservicesmiami.org

Florida Statutes: www.flsenate.gov/Laws/Statutes

Florida Probate Rules: https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf

Homestead

Florida Statutes 735.201-735.206, 732.401-402, and Florida Probate Rules 5.530, 5.405 and 5.406

Florida law allows for the protection of the decedent's primary residence from the claims of the decedent's creditors under certain situations.

In order to qualify for a determination of Homestead you must meet all of the following prerequisites:

- The decedent was a resident of Miami-Dade County at the time of their death (if the decedent resided in another county in Florida, the case should be filed there).
- The decedent must have been the owner of the real property at the time of their death.
- The real property must have been the decedent's residence at the time of death.
- The real property must be less than one-half acre and includes houses, apartments, and condominiums, but does not include Co-Op interests.
- The decedent must be survived by an heir at law who qualifies to receive the homestead.

If the decedent did not leave a will, descent of the decedent's real property is determined by statute as follows:

Decedent is survived by:	Who receives the homestead:
Spouse, no descendants	Spouse
Spouse and 1 or more descendants	Spouse receives a life-estate*, descendants receive remainder interest(s)
No Spouse, 1 or more descendants	Descendants in equal shares.
No spouse or descendants	Heirs at law in accordance with 732.103

If the decedent left a will, the homestead can only be devised as follows:

Decedent is survived by:	Will leaves property to:	Homestead goes to:
Spouse and no lineal descendants	Anyone else	Spouse
Spouse and lineal descendants (no minor children)	Spouse	Spouse
Spouse and lineal descendants (no minor children)	Anyone other than decedent's spouse	Spouse receives a life estate*, descendants receive remainder interest
Spouse and minor children	Anyone else	Spouse receives a life estate*, descendants receive remainder interest**
Minor children and no spouse	Anyone else	Lineal descendants of decedent**
Neither a spouse nor any minor children	Anyone else	As devised by will if the recipient is an heir at law under 732.103***

* A surviving spouse may elect to receive a 50% interest in the homestead instead of a life estate. The election must be made within 6 months of the decedent's death.

** Minor children receiving homestead property may require that a Guardian of the Property be appointed for each minor receiving property.

*** Devisees of homestead who are not related to the decedent can still receive the homestead, but it will not be exempt from the claims of creditors and may require formal administration.

ABOUT CREDITORS

If the decedent has been dead for less than 2 years, the petitioner will have to make a diligent search and reasonable inquiry for any “Creditors” or people or businesses to which the decedent owed money. Typical creditors include credit cards and utility companies, such as FPL.

You must include their payment out of the non-exempt assets in your petition and serve them with Formal Notice of the Petition for Summary Administration. You will need to file the completed proof of service.

If a creditor files a claim against the decedent’s estate, you will need to either: provide for payment to the creditor in the petition and order. Alternatively, you may pay the creditor outside of probate and file a satisfaction and release provided by the creditor.

Objections to creditor claims are outside the scope of these forms. If you wish to contest or object to a creditor’s claim, the assistance of an attorney may be needed.

If a creditor’s claim is filed after the summary order is entered, the recipients of the decedent’s property will be personally liable for all lawful claims against the estate of the decedent <u>but only up to the value or amount of money they received from the estate</u>.

These self-help forms are intended for use in uncontested estates only. If an objection to the petition is filed by any interested parties or if there is a dispute amongst the beneficiaries, you should seek the assistance of an attorney.

Helpful Hints:

- If you are transferring real property, you must include the street address, legal description, and folio number on the petition and proposed order.
- Tax and utility bills submitted in support of your petition must list the decedent as the account holder/payor and must be for the subject homestead property.
- All required forms must be completely filled out. Any line that provides a choice must be completed. If there is no applicable answer, please write “N/A” in the provided space.
- What will happen next? How long does it take?
    - The court will review the documents you have filed. You can expect a response within 4-6 weeks.
    - If you did not provide all the necessary documents, the court will send you an email (or a letter sent via U.S. Mail) describing what missing documents or corrections your file needs to be processed. Once the deficiencies have been cured, you may resubmit your proposed order for another review.
    - Once all necessary documents meeting the court’s requirements have been filed, the order will be signed and a copy will be sent via email, or, if you provided the self-addressed envelope and additional fee, a certified copy will be mailed to you.

- What does the Order do?
    - The order will direct the asset holder to transfer the asset to the person entitled to it.
    - Agencies such as the Department of Motor Vehicles and banks may require a certified copy of the order to release or transfer any assets. Each asset holder may require their own certified copy, so make sure to get enough copies. Additionally, you may wish to keep one certified copy for your own records. Certified copies can be obtained from the Clerk of Courts' office.

Glossary of terms (from FS 731.201):

Assets – anything owned that has monetary value.

Beneficiary - means an heir at law in an intestate estate.

Case Number (or reference number) – this is a number assigned to the case when it is filed. Once filed, please put this number on all other paperwork submitted to the case.

Claim (or claim of creditor) – A demand for money or property filed by a creditor; a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense.

Creditor – person or business to whom the decedent owed money.

Decedent – the person who has passed away. In this instance, the person whose estate you are trying to Probate.

Descendant -- means a person in any generational level down the applicable individual's descending line and includes children, grandchildren, and more remote descendants. The term "descendant" is synonymous with the terms "lineal descendant" and "issue".

Domicile -- means a person's usual place of dwelling and shall be synonymous with residence.

Estate – the property of a decedent that is the subject of administration.

Exempt property -- means the property of a decedent's estate which is exempt from the claims of creditors as described in s. 732.402 and includes: (a) household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of $20,000; (b) two motor vehicles held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal motor vehicles; (c) all qualified tuition programs including but not limited to, the Florida Prepaid College Trust Fund; (d) all benefits paid pursuant to s. 112.1915- Teachers and school administrators; death benefits; (e) other homestead personal property (including cash) up to a value of $1,000.

Heirs or "heirs at law" -- means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession (FS Chapter 732) to the property of a decedent. Includes decedent's blood relatives such as children and grandchildren, parents, siblings, nieces/nephews, grandparents, aunts/uncles, and cousins. Also includes heirs related by way of legal adoption.

Homestead -- means the real property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. Legal descriptions can be found at https://www.miamidade.gov/pa/.

Intestate – the decedent died without a will. See also Testate.

Petitioner – the person asking the court for an order. This will be you; the person filling out and signing the petition form.

Testate – the decedent had a will before passing. See also Intestate.

Venue – is the appropriate location for a case to be heard by the court. For Probate, the appropriate venue is the county in this state where the decedent was domiciled before they died, or if the decedent had no domicile in this state, then in any county where the decedent's property is located.