



Homestead 2.0

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Homestead 2.0



Presented by : John B. "Jay" St. Lawrence
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Overview

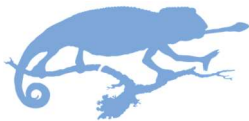
- Establishing & Transferring Homestead
- Spousal Waiver
- Splitting up the Homestead
- Marital Complications
- Trust Issues



Florida's "Legal Chameleon"



- Partial exemption from ad valorem taxes



- Exemption from forced sale



- Limitations on sale and devise

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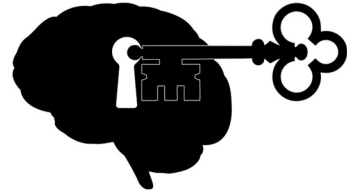


Establishing and Transferring Homestead



Basic Homestead Requirements Recap

- FL Supreme Court 3-Part Test
 - Actual principal residence
 - Intention to live on property
 - Intention to return when absent
 - *Hillsborough Inv. Co. v. Wilcox*, 152 Fla. 889, 13 So.2d 448 (1943)
- Abandonment eliminates homestead protection
 - Determined by specific facts
 - Temporary absence does not constitute abandonment
- Owned by natural persons only
 - *Dejesus v. A.M.J.R.K. Corp, et al.* 255 So. 3d 879 (Fla. 2d DCA 2018)
 - *In re Carvajal*, 657 B.R. 501 (Bankr. S.D. Fla. 2024)
- Owner need not reside on property so long as owner's family does
- Proceeds from sale protected if preserved for purchase of new homestead
 - *Orange Brevard Plumbing Heating v. La Croix* 137 So.2d 201 (Fla. 1962)



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Save Our Homes Portability

- The "Save Our Homes" (SOH) amendment to the Florida Constitution, codified at Sec. 193.155, F.S. includes a provision added in 2008 allowing homestead owners to transfer the accumulated difference between assessed value and the just or market value to a new homestead.
- If just value of the new homestead is more than the previous home's just value, entire benefit can be transferred, subject to a \$500,000 limit
- If just value of the new homestead is less than the previous home's just value, a percentage of the accumulated SOH benefit can be transferred (up to \$500,000 limit)



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Homestead Tax Exemption – Save Our Homes Portability

- As of Jan. 1, 2021, time limit to “port” the SOH benefit to a new property is 3 (previously 2) tax years from January 1st of the last qualified homestead exemption (not from the date of sale of prior homestead)



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Transferring Homestead Tax Benefit

“Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon ...” Art. VII, Sec. 6, Florida Constitution

Baldwin v. Henriquez, 279 So. 3d 328, **331** (Fla. 2d DCA 2019)

- **Jul. 2013** – Lowry and Jennifer Baldwin sell homestead; purchase new property in Hillsborough; demolish existing house, rent condo; begin construction on new home
- Dec. 2014 – Pitch tent on new property; spend one night together; Jennifer stays one more night
- Jan. 2015 – Change drivers’ licenses and voter registration to address of new property
- **June 11, 2015** – Baldwins move into new house
- Final CO issued Jan. 8, 2016



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Transferring Homestead Tax Benefit (cont'd)

- Baldwins apply for 2015 homestead exemption and “Save Our Homes” portability benefit
- Prop. appraiser denies because not physically occupied as permanent residence as of Jan. 2015
- Baldwins sue appraiser alleging intent to use property as permanent residence sufficient
- Trial court finds for prop. appraiser due to “insufficient indicia” of permanent residence
- On appeal, 2d DCA examines “maintain” and “permanent residence” language; holds
 - Cannot “maintain” a structure yet to be completed
 - Not “permanent” until physically living in the dwelling on the property
 - No 2015 exemption; homestead portability benefit lost
 - Likely different result today with 3-year portability



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Our House, Divided Splitting up Homestead



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Partition and Sale

Tullis v. Tullis 360 So. 2d 375 (Fla. 1978)

- Prior to dissolution, wife moved; husband remained in family home with his daughter
- Final judgment of dissolution made no disposition of home or the parties' respective interests
- Wife brought suit for partition of the property, now owned as tenants in common
- Trial court rejected the husband's claim that the homestead provision in the state constitution prevents the forced sale of this property
- 1st District Court affirmed, holding homestead never intended to preclude forced sale following a suit for partition by an owner in common



Held: "our constitutional provisions allow the partition and forced sale of homestead property upon suit by one of the owners of that property, if such partition and forced sale is necessary to protect the beneficial enjoyment of the owners in common to the extent of their interests in the property."

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Trust Issues



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Trust Issues

Aronson v. Aronson I

Aronson v. Aronson, 930 So.2d 766 (Fla. 3d DCA 2006)



- July 2, 1996 – Hillard Aronson of MA conveys his Key Biscayne, FL condominium into a revocable trust in which he is life beneficiary and trustee
- Dec. 16, 1996 – Aronson conveys the same property to his wife Doreen by QCD in his individual capacity
- 2000 – Couple sells Mass. home, titled in Doreen's name only; moves to FL condo
- Nov. 10, 2001 – Mr. Aronson deceases

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Trust Issues

Aronson v. Aronson I (cont'd)

Aronson v. Aronson, 930 So.2d 766 (Fla. 3d DCA 2006)



- March, 2003 – Adult children of Mr. Aronson's 1st marriage, as successor trustees and individually, sue for declaratory judgment to invalidate the QCD to Doreen on the basis property was already conveyed to the trust
- Trial court applies MA law to construe trust
 - Rules Aronson retained the power to withdraw property from trust and showed intent to do so
 - QCD to Doreen thus valid
- On appeal, 3d DCA finds Aronson did not withdraw the property from trust
 - Therefore individual QCD was a nullity; property remains in trust

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Trust Issues

Aronson v. Aronson II

Aronson v. Aronson, 81 So.3d 515 (Fla. 3d DCA 2012)

- Aronson trust provided life estate in Doreen; remainder to adult children of first marriage, James and Jonathan
- Trust also provided Doreen to be paid greater of \$5k or 5% of trust principal each year upon request
- Doreen makes annual requests for payment, plus reimbursement of \$129k of proceeds from Massachusetts house she used to pay off mortgage on condo



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Trust Issues

Aronson v. Aronson II (cont'd)

Aronson v. Aronson, 81 So.3d 515 (Fla. 3d DCA 2012)

- Adult sons, as successor trustees, plan to sell condo, pay Doreen only the annual disbursement requests from proceeds, and distribute remainder to themselves
- Trial court found condo was Doreen's homestead; trustees must reimburse mortgage payoff and transfer interest in trust principal equal to annual requests
- On appeal, 3d DCA reverses and remands; finding condo Hillard's homestead at time of death
 - Thus trust disposition failed
 - Condo passed upon his demise to Doreen for life; remainder to sons



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Transferring Homestead

Homestead owners can convey but retain some control while avoiding Constitutional constraints

- Transfer to irrevocable trust

Sec. 732.4017, F.S. provides in part (emphasis provided)

(1) If owner of homestead property **transfers an interest** in that property, **including a transfer in trust**, with or without consideration, to one or more persons during the owner's lifetime, the transfer **is not a devise** for purposes of s. 731.201(10) or s. 732.4015, and the interest transferred **does not descend** as provided in s. 732.401 **if the transferor fails to retain a power, held in any capacity, acting alone or in conjunction with any other person, to revoke or revest that interest in the transferor.**

(3) The transfer of an interest in homestead property ... may not be treated as a devise of that interest **even if transferor retains a separate legal or equitable interest** in the homestead property, directly or indirectly through a trust or other arrangement such as a **term of years, life estate, reversion, possibility of reverter, or fractional fee interest;**

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Transferring Homestead

Conveyance to Irrevocable Trust

- Allows the owner of homestead property to
 - Alter use/enjoyment of the property within identified class of beneficiaries, subject to certain limitations;
 - Retain the property for life or a term of years,
 - Delay possession until a date certain; or
 - Subject the interest to divestment or lapse



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Transferring Homestead

- **Conveyance to Revocable Inter Vivos Trust**



TN 31.06.10 (condensed)

... the following circumstances are deemed not to violate the constitutional restraint on devise, and a deed from such trustee would be sufficient subject to the terms of the trust agreement

1. Decedent only settlor of the trust, and not survived by a spouse or a minor child
2. Decedent only settlor, but not survived by minor child, and upon death homestead is distributed to the surviving spouse in fee simple absolute
3. Decedent only settlor, not survived by a minor child, and surviving spouse executed a homestead waiver that has been judicially determined to be a valid homestead waiver (see caveat)

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Transferring Homestead

- **Conveyance to Revocable Inter Vivos Trust (cont'd)**



TN 31.06.10 (condensed)

4. Decedent settlor of joint trust, no minor child; surviving spouse also a settlor w/power to revoke or amend
5. Effective July, 1, 2018, if surviving spouse waived homestead, per Sec. 732.7025, F.S., and no surviving minor child

If acting trustee is a beneficiary, deed must also be signed individually, joined by spouse if homestead, or add a non-homestead recitation to the deed.

In all other circumstances, title to homestead held by the trustee of a revocable living trust presumptively amounts to a violation of the constitutional restraint on devise and the property passes under the laws of intestacy.

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Extra Marital Complications



Homestead and Post-Marital Obligations

Randazzo v. Randazzo 980 So. 2d 1210 (Fla. 3d DCA 2008)

- In the course of divorce proceeding, Marc and Elena Randazzo enter into marital settlement agreement which in part calls for him to QC his interest in the marital residence to her, and for her to pay him \$190,000 within 90 days
- Marc executes QCD transferring his interest in the house to Elena in anticipation she will sell the house and pay him the \$190,000
- When the deadline passes without the payment, a magistrate orders an equitable lien on the property, which Elena says is under contract for sale within 1 month, to be recorded if she does not pay
- Elena moves to vacate the magistrate's order
- Elena files bankruptcy, sells the house, and purchases a new homestead with the proceeds

Homestead and Post-Marital Obligations

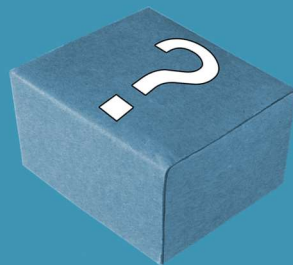
Randazzo v. Randazzo 980 So. 2d 1210 (Fla. 3d DCA 2008)

- Elena claims the magistrate's equitable lien cannot be placed on her new homestead
- Bankruptcy court relinquishes jurisdiction to the state court on the issue of the equitable lien and Elena's motion to vacate
- The state trial court denies Elena's claims and imposes an equitable lien on her new homestead
- On appeal, Elena cites *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018 (Fla. 2001) for the proposition that Article X, Sec. 4 of the Florida Constitution exempts homestead even where acquired with non-exempt funds with the specific intent of hindering, delaying, or defrauding creditors



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Hold that thought ...



Sidebar: *Havoco*

Havoco of America, Ltd. v. Hill, 790 So.2d 1018 (Fla. 2001)

- 1981 – Havoco of America sues Elmer Hill, alleging fraud, conspiracy, tortious interference with contract and breach of fiduciary duty in conspiring to eliminate Havoco in its 10-yr contract to supply coal to the Tennessee Valley Authority
- Dec 1990 – Hill, a longtime TN resident, purchases a home in Destin, Florida for \$650,000 cash
- Jan. 1991 – Jury finds for Havoco and awards it \$15 million in damages against Hill
- July 1992 – Elmer Hill files voluntary Ch. 7 bankruptcy in which he claims homestead exemption for Destin FL property, which the bankruptcy court upholds



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Sidebar: *Havoco*

Havoco of America, Ltd. v. Hill, 790 So.2d 1018 (Fla. 2001)

- On remand after District Court appeal, bankruptcy court finds even an intentional fraudulent transfer, normally subject to avoidance under FL law, did not affect constitutional homestead protections, so thus cannot be recovered against the house
- On further appeal, the 11th Circuit affirmed, but certified the following question to the FL Supreme Court:
 - Does Article X, Section 4 of the Florida Constitution exempt a Florida homestead, where the debtor acquired the homestead using non-exempt funds with the specific intent of hindering, delaying, or defrauding creditors in violation of Sec. 726.105 or Sec. 222.29 and 222.30, F.S.?
- The Florida Supreme Court answered in the affirmative, citing historically liberal interpretation of the constitutional protection and traditional disfavor of forfeitures

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Sidebar: *Havoco*

Havoco of America, Ltd. v. Hill, 790 So.2d 1018 (Fla. 2001)

- In its ruling, the Florida S.C. distinguished the following cases
 - *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127 (Fla. 1925)
 - Bread company president embezzled corporate funds to improve his homestead.
 - Court imposed an equitable lien on the property based on egregious conduct
 - *Palm Beach Savings & Loan v. Fishbein*, 619 So.2d 267 (Fla. 1993)
 - In the midst of a divorce, Mr. Fishbein forged his wife's signature on a \$930,000 loan on the family home, satisfying three existing mortgages in the process
 - Upon discovery of the fraud, Mrs. Fishbein was awarded the house, but the FL S.C. allowed an equitable lien to the extent the fraudulently obtained mortgage paid off loans that would have been enforceable against the house, including her interest, on the basis of equitable subrogation

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Havoco vs. Fishbein Distinction

In distinguishing its previous imposition of equitable liens on homestead from its finding that even an intentionally fraudulent transfer enabling the purchase of homestead property was protected, the Florida Supreme Court stated the following:

"We have invoked equitable principles to reach beyond the literal language of the exceptions only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead."



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Randazzo Holding

Randazzo v. Randazzo 980 So. 2d 1210 (Fla. 3d DCA 2008)

- 3d DCA referenced both *Havoco* and *Fishbein*, focusing on *Fishbein* language that
 - “... where equity demands it this Court has not hesitated to permit equitable liens to be imposed on homesteads beyond the literal language of article X, section 4,” and
 - “We have invoked equitable principles to reach beyond the literal language of the exceptions only where funds obtained through fraud or egregious conduct were used to invest in, purchase, or improve the homestead.”
- Held: Elena’s conduct “sufficient to warrant the imposition of an equitable lien,” citing both *Fishbein* and its own ruling in *Sell v. Sell*, 949 So.2d 1108, (also based on *Fishbein*) in which it found “homestead property may be subjected to equitable liens where fraud, reprehensible or egregious conduct is demonstrated.”



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Spousal Waiver: A Deeper Dive



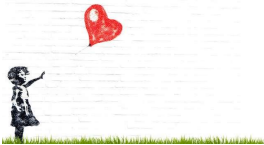
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Spousal Waiver

Sec. 732.702 F.S. (emphasis provided)

Waiver of spousal rights

- (1) The **rights of a surviving spouse** to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, **may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses.**
- (2) Each spouse shall make a **fair disclosure** to the other of that spouse's estate if the agreement, contract, or waiver is **executed after marriage**. **No disclosure** shall be required for an agreement, contract, or waiver executed **before marriage**.



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Pre and Post-Nuptial Complications

Fund Title Note 16.04.14 – Pre- and Post-nuptial agreements

Waiver of spousal rights

May a waiver of homestead by valid nuptial agreement be relied on to insure homestead property devised by the deceased owner?

1. Antenuptial Agreements
 - No disclosure or consideration required
 - Validity of agreement must be judicially determined
2. Postnuptial Agreements
 - Disclosure required
 - Validity of agreement must be judicially determined



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Spousal Waiver By Deed

Stone v. Stone, 157 So. 3d 295 (Fla. 4th DCA 2015)

- **March 27, 2000** – Jerome and Alma Stone convey their homestead property, held as tenancy by the entireties, to themselves as tenants in common
- Each executes an individual deed conveying their respective undivided ½ interests into matching Qualified Personal Residential Trusts (QPRTs) naming themselves as co-trustees. Jerome’s adult daughter Nancy is the sole beneficiary. His adult son Ross is omitted.
- Mr. Stone’s QPRT has a term of 5 years or his own death, providing that if he did not survive the term, the trust assets would revert to his estate, which contains a living trust for wife Alma, remainder to Nancy.
- **Feb 2005** – Mr. Stone deceases before the term of his QPRT expires.
- **June 2009** – Alma Stone deceases. The property passes to Nancy under Jerome’s will.

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Spousal Waiver By Deed

Stone v. Stone, 157 So. 3d 295, **331** (Fla. 4th DCA 2015)

- Ross sues, alleging the QPRT failed, and the property was improperly devised under Jerome’s will, meaning the property should pass to both he and Nancy under intestacy law
- Trial court finds the QPRT validly held the property at the time of Jerome’s death and the conveyance into the trust was thus not an improper devise, or in the alternative, Alma waived her homestead rights by executing the deeds used to create the QPRTs.
- On appeal, the 4th DCA finds the conveyance to the QPRTs valid inter vivos transfers per Sec. 732.4017, F.S., but finds the subsequent conveyance of the property from the trusts to his estate was a failed devise because Jerome did not survive the trust term and thus never gave his whole interest to the trust.
- However, the court held Alma did waive her homestead rights per Sec 732.702 in giving the warranty deed splitting the property into two tenancies in common, which conveyed among other things “all the tenements, hereditaments, and appurtenances.” (Nancy wins)

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Spousal Waiver By Deed – New Statute

Sec, 732.7025, F.S.

Waiver of homestead rights through deed.—(1) A spouse waives his or her rights as a surviving spouse with respect to the devise restrictions under s. 4(c), Art. X of the State Constitution if the following or substantially similar language is included in a deed:

“By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.”

(2) The waiver language in subsection (1) may not be considered a waiver of the protection against the owner’s creditor claims during the owner’s lifetime and after death. Such language may not be considered a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner’s spouse.

- Effective July 1, 2018
- Does not affect requirement for joinder
- Does not affect protection from creditors

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Spousal Waiver By Deed – Impact of New Statute

TN 31.06.10

- Spousal waiver of homestead rights under a nuptial agreement should not be relied on for purposes of authorizing a conveyance out of the trustee after the settlor's death if there has been no judicial determination of the validity of the waiver. The waiver by the surviving spouse does not automatically eliminate the homestead protection from creditors as to the deceased spouse's interest. See *Engelke v. Estate of Engelke*, 921 So.2d 693 (Fla. 4th DCA 2006). See also **TN 16.04.14**.
- However, effective July 1, 2018, if surviving spouse has waived homestead rights related to the restraint on devise in compliance with Sec. 732.7025, F.S., and there is no minor child surviving the decedent, a conveyance from the trustee can be relied upon.

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Spousal Waiver - Complications

Fund Title Note 16.04.14 – Does not eliminate need for spousal joinder

Waiver of spousal rights

May a waiver of homestead rights by a valid nuptial agreement be relied on to dispense with spousal joinder in a mortgage or alienation of homestead property by the owner?

No.

Even though Sec. 732.702, F.S., and Sec. 61.079, F.S., authorize waiver of homestead rights by nuptial agreement, **the statutes do not prevail over the constitutional requirement of spousal joinder in the alienation or encumbrance of homestead property**, Art. X, Sec. 4, Fla. Const. 1968 (as amended), and the spouse will have to join in the alienation or encumbrance of homestead property before a title policy could be issued in such a transaction. See *In re Estate of Johnson*, 397 So.2d 970 (Fla. 4th DCA 1981); but see *In re Guardianship of Tanner*, 564 So.2d 180 (Fla. 3d DCA 1990); *James v. James*, 843 So.2d 304 (Fla. 5th DCA 2003).

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Spousal Waiver – Complications (cont'd)

Feldman v. Schocket, 366 So. 3d 1104 (Fla. 3rd DCA 2022)

- Jeffrey Schocket executed three separate waivers of spousal homestead rights *vis a vis* his spouse Patricia Silver and their shared home in Islamorada, Florida.
- 2 waivers were in regard to mortgages Ms. Silver placed on the property in 2015 and read identically:
 - “Mortgagor, [Schocket], is joining in the execution of this mortgage for the sole purpose of waiving his or her homestead rights under Article X, Section 4 of the Florida Constitution, and shall not be bound by the terms, conditions or warranties contained in this instrument.”
- Oct. 2016: Ms. Silver passed away. Her will, executed 2 days prior provided that the Islamorada home:
 - “shall be sold by [Silver's] executor, the proceeds of which ... shall become part of [Silver's] residuary estate. Until such time as the property is sold, my husband Jeffrey Schocket may reside in the property.”

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Spousal Waiver – Complications (cont'd)

Feldman v. Schocket, 366 So. 3d 1104 (Fla. 3rd DCA 2022)

- Nov. 2016: PR for Ms. Silver's estate Robert Feldman got Schocket to sign a third waiver providing:
 - I, JEFFREY SCHOCKET, hereby [sic] waive, any and all right, title, and interest I have in the property Specifically ... any rights, title and/or interest that I may have to claim that the aforementioned property is exempt and/or excluded from my wife, Patricia M. Silver's estate pursuant to Florida Statute § 732.401 or Florida Statute § 732.4015.
- Sept. 2017: Feldman notified Schocket he was selling the property. Schocket sued asserting homestead
- Trial court granted Summary Judgment for Schocket, finding all waivers ineffective on various grounds
- On appeal, the 3rd DCA affirmed, holding:
 - 2 mortgage waivers were qualified, limited only to alienation of the property
 - There was also no disclosure as to Ms. Silver's estate, although the waivers were after marriage
 - The final waiver failed because the property vested in Schocket on Silver's death.

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Homestead 2.0 – Going Home Again



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The End

Thank you for coming!



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