Small Estates, Summary Administration and Title Requirements

Presented by

LEGAL EDUCATION DEPARTMENT

of

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The Fund®

Small Estates, Summary Administration and Title Requirements

Kara Scott
Legal Education Attorney

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What is a Small Estate?

Value of assets subject to administration do not exceed a certain amount

- Summary Administration
- Admit Foreign Will to Record
- Small Ancillary Administration

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The Fund

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Summary Administration

Less than $75,000 – Testate or Intestate estates

- Florida resident or nonresident estates
- Only assets **SUBJECT TO ADMINISTRATION**
- Also for decedents dead more than 2 years – no $ limitation

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The Fund

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Shorter form of Ancillary Administration

Admit Foreign Will to Record

- Decedent dead more than 2 years
- Testate estates ONLY
- Ancillary estates ONLY
- Sec. 734.104, F.S.

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The Fund

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Shorter form of Ancillary Administration

Asset Value Less than $50,000

- Testate estates ONLY
- Ancillary estates ONLY
- Foreign PR is Petitioner
- Sec. 734.1025, F.S.

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The Fund

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Summary Administration

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Why use Summary Administration?

- Faster and simpler
- Less costly
- No bond requirement because no Personal Representative appointed
- No formal accounting of assets, or inventory, required

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Why NOT use Summary Administration?

- Limited court involvement
- No Personal Representative
- No Letters of Administration
- Personal liability of the beneficiaries (up to 2 years after death)
- Other heirs or devisees who were not included

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When is Summary Administration available?

- Will must not require full administration
- Assets less than $75,000
  - Value of property subject to administration
  - Not including non-probate assets
  - Not including exempt property

OR

- Decedent dead for more than two years – no value limitation

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Estate Assets Less Than $75,000

Non-Probate Assets

Estate by the Entireties	Joint Tenancy with Right of Survivorship	Joint Bank Accounts
Wages, Traveling Expenses and Unemployment Compensation	Life Insurance Proceeds	Protected Homestead

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Protected Homestead

- Decedent survived by a spouse and/or heirs
- Protected homestead is **not** a probate asset
- Not all homestead is "protected homestead" (see Kelley's Paradigm)

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Protected Homestead

- Homestead property that passes to the surviving spouse and/or heirs by descent or devise
- Exempt from claims of creditors
- Exemption only inures to the owner's spouse or heirs

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Non-Protected Homestead

- Homestead can be devised by will
  - Devised to heir(s)
  - Devised to non-heir(s)
- If devised to non-heir
  - not protected against claims of creditors
  - property becomes a probate asset

The Florida Supreme Court has defined "heirs" for homestead purposes to include "any family member within the class of persons categorized in the intestacy statute" *Snyder v. Davis*, 699 So. 2d 999 (Fla. 1997)

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Poll 1 – Could this be Homestead?

Can unimproved land be homestead?

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Poll 1 – Could this be Homestead?

- Can unimproved land be homestead?
- If you own and actually occupy the land as your homestead
- Mobile home on owned land can be homestead for tax exemption. F.A.C. Rule 12D-7.0135
- What about mobile home on leased land? Sec. 222.05, F.S.

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Six Criteria - Homestead of Non-Traditional Abodes

1. Intent to make non-traditional abode a homestead.
2. Whether owner has another residence.
3. Whether owner has established continuous habitation.
4. Whether owner maintains at least a possessory right to the land.
5. Whether non-traditional abode allows for long term habitation verses mobility.
6. Whether physical configuration of the abode permits habitation.

In Re Yettaw, 316 B.R. 560 (Bankr. M.D. Fla. 2004)

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Poll 2 – Could this be Homestead?

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Poll 2 – Could this be Homestead?

Exemption may be extended to a houseboat because "a houseboat ... is specially designed to serve as a permanent dwelling."

Miami Country Day School v. Bakst, 641 So.2d 467 *(Fla. 3rd Dist. Ct. App.1994)*

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Protected Homestead

Need to file a Petition to Determine Homestead

The Petition can accompany the Petition for Summary Administration – Sec. 735.201, F.S.

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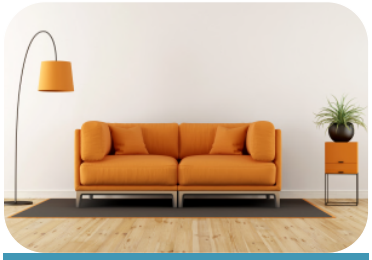
Exempt Property

Must be survived by a spouse or a child for property to be "exempt"



Household furniture, furnishings & appliances in decedent's home – up to $20,000

Up to 2 motor vehicles (personal use)

Personal property – up to $1,000

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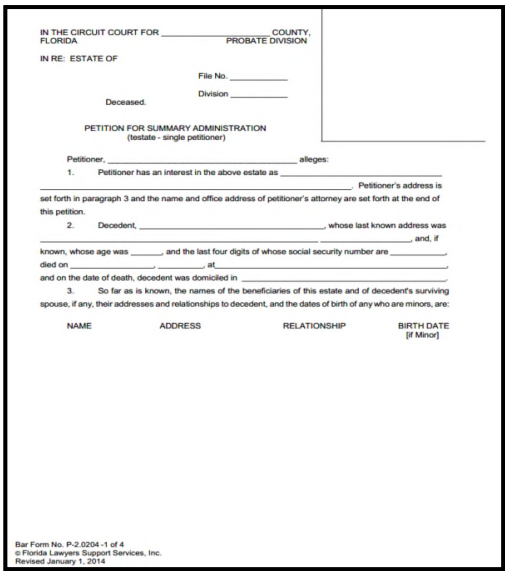
Petition for Summary Administration

Requirements:

1. Who must join in the Petition?
2. Petitioners
3. Beneficiaries
4. Assets



IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION FOR SUMMARY ADMINISTRATION
(testate - single petitioner)

Petitioner, _____ alleges:

1. Petitioner has an interest in the above estate as _____. Petitioner's address is set forth in paragraph 3 and the name and office address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, _____, whose last known address was _____, and, if known, whose age was _____, and the last four digits of whose social security number are _____, died on _____, _____, at _____, and on the date of death, decedent was domiciled in _____.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationships to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE [If Minor]

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Petition for Summary Administration

Requirements:

5. Homestead and exempt property
6. Proposed Plan of Distribution
7. Statement - unrevoked wills or codicils
8. Statement - less than $75,000 OR more than 2 years
9. Statement - creditor claims

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Petition for Summary Administration

Requirements:

10. Known creditors and plan of payment
11. Statement of Venue
12. Full administration required?
13. If Ancillary - Foreign PR and the Court

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Order of Summary Administration

- Hearing needed? Yes/No?
- Effect of Order
- Beneficiaries entitled to distribution

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THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT IN AND FOR _____ COUNTY STATE OF FLORIDA

IN RE ESTATE OF PROBATE DIVISION

_____ File No.:

Deceased.

ORDER OF SUMMARY ADMINISTRATION

On the Petition of _____ for Summary Administration of the Estate of _____, deceased, the Court finding that the decedent died on _____ in _____; that all interested persons have been served proper notice of the Petition and hearing or have waived notice thereof; that the material allegations of the Petition are true; that the will dated _____ _____ has been admitted to probate by order of this court as and for the last will of the decedent; that the decedent's estate qualifies for Summary Administration; and that an Order for Summary Administration should be entered; it is

ADJUDGED THAT there be immediate distribution of the estate assets as follows: a one-half interest in the following described condominium in _____ County,

[Legal Description]

Comprising the entire assets of the estate, shall be hereby transferred to _____ (1/2), _____ (1/4) and _____ (1/4).

ORDERED on _____, 20____.

_____
Circuit Judge

Order of Summary Administration

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Small Ancillary Estates

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Non-Resident Decedent with FL real property

Ancillary Administration

- Full Administration *
- Summary Administration
- Shorter forms of Ancillary Administration
  - Testate Estates Only

* Foreign PR has no powers in Florida (T.N. 2.05.04A) – file a full administration if you will need a Florida PR appointed

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Shorter Forms of Ancillary Administration

Sec. 734.104, F.S. – Admit Foreign Will to Record

- Decedent dead more than 2 years
- Authenticated copies
- Effective to pass title

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Shorter Forms of Ancillary Administration

Sec. 734.1025, F.S. – FL assets less than $50,000

- Authenticated transcript
- No PR appointed
- Publish notice to creditors (what if creditors file claim?)
- Why use this?

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Title Insurance Requirements

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Title Insurance Requirements

Summary Administration

Record in Official Records:

1. Proof of death
2. Estate tax clearance

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Estate Tax Clearance – Title Notes SC 2.10

* No Florida Estate Tax – after 1/1/2005
* Record Affidavit of No Florida Estate Tax Due - AFF-46 71
* Certain transactions divest the lien
  * Surviving Spouse – arm's length transaction to BFP

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Title Insurance Requirements

Summary Administration

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

ORDER OF SUMMARY ADMINISTRATION
(testate nonresident decedent)

On the petition of _____ for summary administration of the estate of _____, deceased, the court finding that the decedent died on _____, _____; that all interested persons have been served proper notice of the petition and hearing or have waived notice thereof; that the material allegations of the petition are true; that the will dated _____, _____, has been admitted to probate by order of this court as and for the last will of the decedent; and that the decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name Address Asset, Share or Amount

Record in Official Records:

3. Petition for S.A.
4. Affidavit re: Creditors 73
5. Order of S.A.
6. Order Admitting Will

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Title Insurance Requirements

Summary Administration

Record in Official Records:

7. Authenticated copy of Will
8. Order Determining Homestead

   or

   Affidavit of Non-Homestead

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Title Insurance Requirements

Admit Foreign Will to Record

- Record death certificate
- Record Order to Admit Foreign Will
- Record the Will
- Record estate tax clearance

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Why?

While summary administration may not be ideal for all situations, it can be a useful tool for certain estates due to its reduced costs and time.

A basic understanding of Florida's procedure for summary administration and small estates will be useful to the real estate practitioner to assist in meeting title commitment requirements.

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Thank you
for your time and attention

For more information please contact:

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Small Estates, Summary Administration and Title Requirements

Outline

I. Introduction:

What is a Small Estate? Generally, it is where the value of assets subject to administration do not exceed a certain dollar amount. Sounds simple, yes, but there are a number of considerations. Summary Administration is available where the value of the assets do not exceed $75,000 and an even shorter form of ancillary administration is available where the assets do not exceed $50,000.

The most important analysis is a determination of those assets that are subject to administration. A so-called small estate might appear quite large when looking at assets that are not subject to administration (for example: protected homestead), so step one should always be an analysis of the types of assets that may or may not be subject to administration.

And just to keep things interesting, the Summary Administration procedure is available where the decedent has been dead for more than 2 years, regardless of the value of the assets.

II. Summary Administration

a. When available: Under Sec. 735.201 F.S. Summary Administration is available, for either a resident or non-resident decedent's estate, where the decedent's will (if any) does not direct formal administration and the value of the estate subject to administration does not exceed $75,000 OR the decedent has been dead for more than 2 years.
    i. What property is subject to administration? Some property is considered Non-Estate Property and thus a non-probate asset and excluded from the determination of asset value.
    ii. If less than 2 years from date of death, there must be a diligent search and reasonable inquiry for known or reasonably ascertainable creditors and there must be provision for payment to those creditors to the extent that assets are available. (Sec. 735.206 F.S.)

b. Non-Estate Property – Not included in the estate valuation.

Examples (not exhaustive) are as follows: property held by the entireties; property held as joint tenants with rights of survivorship; joint bank accounts; bank accounts with pay on death provisions; accounts with beneficiary designations (retirement, investment, etc); life insurance proceeds; wages, traveling expenses & unemployment compensation; and protected homestead.

Protected Homestead – where the decedent is survived by a spouse and/or heirs. NOTE: Not all homestead property is "Protected Homestead". Where there is no surviving spouse or heirs, the decedent may devise his/her homestead to anyone, but it loses its protected status and is no longer exempt from claims of creditors.

i. Descent of Homestead – descends in the same manner as intestate property - see Sec. 732.401 F.S. The Florida Supreme Court has defined "heirs" for homestead purposes to include "any family member within the class of persons categorized in the intestacy statute." *Snyder v. Davis*, 699 So. 2d 999 (Fla. 1997) (see Chapter 732 Florida Statutes for intestacy rules).
ii. See Kelley's Homestead Paradigm (included in materials).
iii. Unusual or non-traditional types of homestead: a mobile home on owned land or even leased land (under Sec. 222.05 F.S.) can be homestead if it meets certain criteria, as set forth in a 2004 bankruptcy case, *In Re Yettaw, 316 B.R. 560* (Bankr. M.D. Fla. 2004). "… [R]ather than focusing on the mobility of a nontraditional abode, a better test to determine homestead exemption is one based on function and use of the dwelling structure, rather than its size, design, utility hookups, or ability to be moved." Additionally, the exemption may be extended to a houseboat because "a houseboat … is specially designed to serve as a permanent dwelling", *Miami Country Day School v. Bakst*, 641 So. 2d 467 (1994). In the Bakst case, the houseboat was docked at a marina and the boat owner paid for use of the dock, which the court held was enough to establish a possessory interest in the land the dock was attached to.
iv. File a Petition to Determine Homestead along with the Petition for Summary Administration. The Petition to Determine Homestead shall include the names and relation of the decedent's surviving spouse (if any) and/or heirs entitled to the Protected Homestead.

c. Exempt Property is excluded from the calculation of estate valuation, but to qualify, the decedent must be survived by a spouse or child. Exempt Property consists ONLY of:
   i. Household Furniture up to $20,000
   ii. 2 Motor Vehicles
   iii. Personal Property up to $1,000
   iv. Qualified tuition programs under IRC §529
   v. Benefits paid under Sec. 112.1915 F.S. – for teachers or school administrators who are killed by an act of violence at a school.

d. If the decedent has been dead for more than two years, there is no limit to the value of the estate and claims of creditors are barred under Sec. 735.201(2) F.S.

e. Procedure for Petition (sample in the materials):
    i. Persons required to join in the petition: the surviving spouse (if any) and the decedent's beneficiaries must sign the petition. The person designated as the PR in the decedent's will may also sign but is not required unless he/she is also a beneficiary.
    ii. Include each petitioner's name, address and interest in the estate.
    iii. Include each beneficiary's relationship to the decedent and date of birth if minor.
    iv. Include a description of estate assets and estimated value of each.
    v. Include a separate description of any protected homestead or exempt property.
    vi. Proposed Plan of Distribution of assets and the person to whom each asset is to be distributed.
    vii. Statement that each petitioner is unaware of any unrevoked wills or codicils (intestate estate) or all unrevoked wills and codicils are being presented for probate (testate estate) and they are unaware of any other unrevoked will or codicil.
    viii. Statement that estate qualified for Summary Administration due to assets less than $75,000 or decedent has been dead more than 2 years.
    ix. Statement that creditor claims are barred or a diligent search & reasonable inquiry has been made.
    x. Statement that the estate is not indebted - or if the estate is indebted, the name and address of each creditor, the nature and amount of the debt, when the debt is due, and provision for full payment of debt.
    xi. Statement of proper venue.
    xii. Statement that the decedent's will, if any, does not require full administration.
    xiii. If filing ancillary summary administration, the name and address of the foreign PR and the court that issued letters testamentary.

f. Effect of Order of Summary Administration: the beneficiaries are entitled to have the property transferred to them and they can file separate legal actions to enforce their rights if necessary. If there is protected homestead, the Order Determining Homestead will set forth the beneficiaries of the protected homestead and must be recorded in the Official Records.

III. Non-Resident Decedent with Real Property in Florida. A foreign court has no authority over the disposition of Florida real property and a foreign PR has no authority over Florida real property, regardless of whether the will does or does not confer upon the foreign PR a power of sale. See Title Note 2.05.04

a. Full Administration – use this if you need a PR appointed in Florida. A foreign PR has no powers in Florida (see Title Note 2.05.04A). The ancillary personal representative, in some cases, may be the same as the domiciliary personal representative, but the ancillary PR has no authority unless and until installed by the Florida probate court.
b. Summary Administration – same procedure as for a Florida resident estate.
c. Shorter Forms of Ancillary Administration – for Testate ancillary estates only.
    i. Sec. 734.104 F.S. – Admit Foreign Will to Record – Decedent Dead More Than Two Years or Domiciliary PR has been Discharged. The Petition must include authenticated copies of the will, the foreign petition for probate and the foreign order admitting the will to probate. The admitted foreign will is deemed to be valid and effectual to pass title to real property in Florida. A will that is valid under the laws of the state where it was drafted and executed qualifies for admission to probate in Florida (Sec. 732.502(2) F.S.).
    ii. Sec. 734.1025 F.S. – FL assets less than $50,000. Foreign PR shall file an authenticated transcript of the foreign proceedings that show the will and the beneficiaries of the estate. No Florida PR is appointed but the foreign PR must publish notice to creditors and serve known creditors, and if any creditors file claims, it is converted to a full administration and a Florida PR must be appointed.

IV. Title Requirements – Summary Administration
a. Record proof of death – Death Certificate – be sure to redact personal information such as social security number and cause of death (if shown).
b. Record Affidavit of Estate Tax Clearance
    i. No Florida Estate Tax for decedents dying on or after January 1, 2005.
    ii. No Federal Estate Tax Due – if no tax is due to the IRS, record an Affidavit of No Estate Tax Due if the taxable estate is valued below the threshold for the year of death ($12,060,000 in 2022). (Fund Aff-46)
    iii. Non-United States citizens - threshold is only $60,000!
    iv. Proof of Federal Estate Tax Paid
    v. Some transactions divest the lien. For example: an arm's length sale of real estate by the surviving spouse to a bona fide purchaser can divest the lien if the surviving spouse elected the marital deduction. In this situation, record an arm's length transaction affidavit (Fund Aff-2) and a continuous marriage affidavit (Fund Aff-28).
c. Record Petition for Summary Administration
d. Record affidavit that all known creditors were notified (Fund Aff-45) – unless said statement was included in the petition.
e. Record Order for Summary Administration
f. Record Order Admitting the Will to probate – unless said statement was included in the Order for Summary Administration

g. Record Authenticated Copy of Will
h. Record Order Determining Homestead (if any) – which sets forth the heirs who are vested in the Protected Homestead. If the real estate is devised homestead, record affidavit that decedent was not survived by a spouse or minor child (Fund Aff-49). If the real estate is not homestead, record an Affidavit of Non-Homestead (Fund Aff-48).

V. Title Requirements – Admit Foreign Will to Record
a. Record proof of death – Death Certificate.
b. Record Order to Admit Foreign Will
c. Record Authenticated Copy of Will
d. Record Affidavit of Estate Tax Clearance

As a real estate practitioner, you might receive a contract and request to be the closing agent only to discover that the owner of the property is deceased and a probate procedure becomes necessary to pass clear title to the buyer. A basic understanding of Florida's procedures for summary administration and small estates will be useful to assist you in meeting title commitment requirements, even if you never intend to file a probate case yourself. The most common situation you may face will be where the primary estate asset is the decedent's protected homestead, which can still be addressed in a summary proceeding regardless of its value. While Florida's summary administration may not be ideal for all situations, it can be a useful tool for certain estates due to its reduced costs and time.

The 2023 Florida Statutes

Title XLII
ESTATES AND TRUSTS
Chapter 735
PROBATE CODE: SMALL ESTATES
View Entire Chapter
CHAPTER 735
PROBATE CODE: SMALL ESTATES
PART I
SUMMARY ADMINISTRATION
(ss. 735.201-735.2063)
PART II
DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION
(ss. 735.301-735.304)

PART I
SUMMARY ADMINISTRATION

735.201 Summary administration; nature of proceedings.
735.202 May be administered in the same manner as other estates.
735.203 Petition for summary administration.
735.2055 Filing of petition.
735.206 Summary administration distribution.
735.2063 Notice to creditors.

735.201 Summary administration; nature of proceedings.—Summary administration may be had in the administration of either a resident or nonresident decedent's estate, when it appears:

(1) In a testate estate, that the decedent's will does not direct administration as required by chapter 733.

(2) That the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed $75,000 or that the decedent has been dead for more than 2 years.

History.—s. 1, ch. 74-106; s. 105, ch. 75-220; s. 2, ch. 80-203; s. 13, ch. 89-340; s. 179, ch. 2001-226.

735.202 May be administered in the same manner as other estates.—The estate may be administered in the same manner as the administration of any other estate, or it may be administered as provided in this part.

History.—s. 1, ch. 74-106.

Note.—Created from former s. 735.02.

735.203 Petition for summary administration.—

(1) A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will offered for probate. The petition must be signed and verified by the surviving spouse, if any, and any beneficiaries except that the joinder in a petition for summary administration is not required of a beneficiary who will receive

a full distributive share under the proposed distribution. However, formal notice of the petition must be served on a beneficiary not joining in the petition.
(2) If a person named in subsection (1) has died, is incapacitated, or is a minor, or has conveyed or transferred all interest in the property of the estate, then, as to that person, the petition must be signed and verified by:
(a) The personal representative, if any, of a deceased person or, if none, the surviving spouse, if any, and the beneficiaries;
(b) The guardian of an incapacitated person or a minor; or
(c) The grantee or transferee of any of them shall be authorized to sign and verify the petition instead of the beneficiary or surviving spouse.
(3) If each trustee of a trust that is a beneficiary of the estate of the deceased person is also a petitioner, formal notice of the petition for summary administration shall be served on each qualified beneficiary of the trust as defined in s. 736.0103 unless joinder in, or consent to, the petition is obtained from each qualified beneficiary of the trust.
History.—s. 1, ch. 74-106; s. 107, ch. 75-220; s. 1, ch. 77-174; s. 180, ch. 2001-226; s. 12, ch. 2009-115; s. 16, ch. 2010-132.
Note.—Created from former s. 735.05.
735.2055 Filing of petition.—The petition for summary administration may be filed at any stage of the administration of an estate if it appears that at the time of filing the estate would qualify.
History.—s. 47, ch. 77-87.
735.206 Summary administration distribution.—
(1) Upon the filing of the petition for summary administration, the will, if any, shall be proved in accordance with chapter 733 and be admitted to probate.
(2) Prior to entry of the order of summary administration, the petitioner shall make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, serve a copy of the petition on those creditors, and make provision for payment for those creditors to the extent that assets are available.
(3) The court may enter an order of summary administration allowing immediate distribution of the assets to the persons entitled to them.
(4) The order of summary administration and distribution so entered shall have the following effect:
(a) Those to whom specified parts of the decedent’s estate, including exempt property, are assigned by the order shall be entitled to receive and collect the parts and to have the parts transferred to them. They may maintain actions to enforce the right.
(b) Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of the decedent are registered are authorized and empowered to comply with the order by paying, delivering, or transferring to those specified in the order the parts of the decedent’s estate assigned to them by the order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.
(c) After the entry of the order, bona fide purchasers for value from those to whom property of the decedent may be assigned by the order shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries.

(d) Property of the decedent that is not exempt from claims of creditors and that remains in the hands of those to whom it may be assigned by the order shall continue to be liable for claims against the decedent until barred as provided in the code. Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded reasonable attorney's fees as an element of costs against those who joined in the petition.
(e) The recipients of the decedent's property under the order of summary administration shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.
(f) After 2 years from the death of the decedent, neither the decedent's estate nor those to whom it may be assigned shall be liable for any claim against the decedent, unless proceedings have been taken for the enforcement of the claim.
(g) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the order of summary administration and distribution may enforce all rights in appropriate proceedings against those who procured the order and, if successful, shall be awarded reasonable attorney's fees as an element of costs.
History.—s. 1, ch. 74-106; s. 108, ch. 75-220; s. 48, ch. 77-87; s. 1, ch. 77-174; s. 14, ch. 89-340; s. 1035, ch. 97-102; s. 181, ch. 2001-226.
Note.—Created from former s. 735.07.
735.2063 Notice to creditors.—
(1) Any person who has obtained an order of summary administration may publish a notice to creditors according to the relevant requirements of s. 733.2121, notifying all persons having claims or demands against the estate of the decedent that an order of summary administration has been entered by the court. The notice shall specify the total value of the estate and the names and addresses of those to whom it has been assigned by the order.
(2) If proof of publication of the notice is filed with the court, all claims and demands of creditors against the estate of the decedent who are not known or are not reasonably ascertainable shall be forever barred unless the claims and demands are filed with the court within 3 months after the first publication of the notice.
History.—s. 3, ch. 80-203; s. 182, ch. 2001-226; s. 13, ch. 2003-154.
PART II
DISPOSITION OF PERSONAL PROPERTY
WITHOUT ADMINISTRATION
735.301 Disposition without administration.
735.302 Income tax refunds in certain cases.
735.303 Payment to successor without court proceedings.
735.304 Disposition without administration of intestate property in small estates.
735.301 Disposition without administration.—
(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the State Constitution, and nonexempt

personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

(2) Upon informal application by affidavit, letter, or otherwise by any interested party, and if the court is satisfied that subsection (1) is applicable, the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, or disposition of the personal property, tangible or intangible, belonging to the decedent to those persons entitled.

(3) Any person, firm, or corporation paying, delivering, or transferring property under the authorization shall be forever discharged from liability thereon.

History.—s. 1, ch. 74-106; s. 111, ch. 75-220; s. 50, ch. 77-87; s. 1, ch. 77-174; s. 275, ch. 79-400; s. 52, ch. 98-421; s. 184, ch. 2001-226.

735.302 Income tax refunds in certain cases.—

(1) In any case when the United States Treasury Department determines that an overpayment of federal income tax exists and the person in whose favor the overpayment is determined is dead at the time the overpayment of tax is to be refunded, and irrespective of whether the decedent had filed a joint and several or separate income tax return, the amount of the overpayment, if not in excess of $2,500, may be refunded as follows:

(a) Directly to the surviving spouse on his or her verified application; or

(b) If there is no surviving spouse, to one of the decedent's children who is designated in a verified application purporting to be executed by all of the decedent's children over the age of 14 years.

In either event, the application must show that the decedent was not indebted, that provision has been made for the payment of the decedent's debts, or that the entire estate is exempt from the claims of creditors under the constitution and statutes of the state, and that no administration of the estate, including summary administration, has been initiated and that none is planned, to the knowledge of the applicant.

(2) If a refund is made to the surviving spouse or designated child pursuant to the application, the refund shall operate as a complete discharge to the United States from liability from any action, claim, or demand by any beneficiary of the decedent or other person. This section shall be construed as establishing the ownership or rights of the payee in the refund.

History.—s. 1, ch. 74-106; s. 112, ch. 75-220; s. 51, ch. 77-87; s. 1, ch. 77-174; s. 185, ch. 2001-226.

Note.—Created from former s. 735.15.

735.303 Payment to successor without court proceedings.—

(1) As used in this section, the term:

(a) "Family member" means:

1. The surviving spouse of the decedent;
2. An adult child of the decedent if the decedent left no surviving spouse;
3. An adult descendant of the decedent if the decedent left no surviving spouse and no surviving adult child; or
4. A parent of the decedent if the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) "Qualified account" means a depository account or certificate of deposit held by a financial institution in the sole name of the decedent without a pay-on-death or any other survivor designation.

(2) A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of $1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent's death.

(3) In order to receive the funds described in subsection (2), the family member must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes all of the following:

(a) A statement attesting that the affiant is the surviving spouse, adult child, adult descendant, or parent of the decedent.

1. If the affiant is an adult child of the decedent, the affidavit must attest that the decedent left no surviving spouse.

2. If the affiant is an adult descendant of the decedent, the affidavit must attest that the decedent left no surviving spouse and no surviving adult child.

3. If the affiant is a parent of the decedent, the affidavit must attest that the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) The date of death and the address of the decedent's last residence.

(c) A statement attesting that the total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000.

(d) A statement acknowledging that a personal representative has not been appointed to administer the decedent's estate and attesting that no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) A statement acknowledging that the affiant has no knowledge of the existence of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution's obligation regarding the amount paid.

(g) A statement acknowledging that the affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) A statement acknowledging that the affiant understands that making a false statement in the affidavit may be punishable as a criminal offense.

(4) The family member may use an affidavit in substantially the following form to fulfill the requirements of subsection (3):

AFFIDAVIT UNDER
SECTION 735.303, FLORIDA STATUTES,
TO OBTAIN BANK PROPERTY OF DECEASED
ACCOUNT HOLDER: (Name of decedent)

State of

County of

Before the undersigned authority personally appeared (name of affiant) , of (residential address of affiant) , who has been sworn and says the following statements are true:

(a) The affiant is (initial one of the following responses):

The surviving spouse of the decedent.

A surviving adult child of the decedent, and the decedent left no surviving spouse.

A surviving adult descendant of the decedent, and the decedent left no surviving spouse and no surviving adult child.

A surviving parent of the decedent, and the decedent left no surviving spouse, no surviving adult child, and no surviving adult descendant.

(b) As shown in the certified death certificate, the date of death of the decedent was (date of death) , and the address of the decedent's last residence was (address of last residence) .

(c) The affiant is entitled to payment of the funds in the decedent's depository accounts and certificates of deposit held by the financial institution (name of financial institution) . The total amount in all qualified accounts held by the decedent in all financial institutions known to the affiant does not exceed an aggregate total of $1,000. The affiant requests full payment from the financial institution.

(d) A personal representative has not been appointed to administer the decedent's estate, and no probate proceeding or summary administration procedure has been commenced with respect to the estate.

(e) The affiant has no knowledge of any last will and testament or other document or agreement relating to the distribution of the decedent's estate.

(f) The payment of the funds constitutes a full release and discharge of the financial institution regarding the amount paid.

(g) The affiant understands that he or she is personally liable to the creditors of the decedent and other persons rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the affiant's share.

(h) The affiant understands that making a false statement in this affidavit may be punishable as a criminal offense.

By (signature of affiant)

Sworn to and subscribed before me this day of by (name of affiant) , who is personally known to me or produced as identification, and did take an oath.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: (date of expiration of commission)

(5) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of the funds by the financial institution to the affiant constitutes the financial institution's full release and discharge regarding the amount paid. A person does not have a right or cause of action against the financial institution for taking an action, or for failing to take an action, in connection with the affidavit or the payment of the funds.
(6) The family member who withdraws the funds under this section is personally liable to the creditors of the decedent and any other person rightfully entitled to the funds under the Florida Probate Code, to the extent the amount paid exceeds the amount properly attributable to the family member's share.
(7) The financial institution shall maintain a copy or an image of the affidavit in accordance with its customary retention policies. If a surviving spouse or descendant of the decedent requests a copy of the affidavit during such time, the financial institution may provide a copy of the affidavit to the requesting surviving spouse or descendant of the decedent.
(8) In addition to any other penalty provided by law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution to receive a decedent's funds under this section commits theft, punishable as provided in s. 812.014.
History.—s. 2, ch. 2020-110.
735.304 Disposition without administration of intestate property in small estates.—
(1) No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the State Constitution, and nonexempt personal property the value of which does not exceed the sum of $10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the decedent's estate is pending in this state.
(2) Any heir at law of the decedent entitled to a share of the intestate estate pursuant to s. 732.102 or s. 732.103 may by affidavit request distribution of assets of the decedent through informal application under this section. The affidavit must be signed and verified by the

surviving spouse, if any, and any heirs at law, except that joinder in the affidavit is not required of an heir who will receive a full intestate share under the proposed distribution of the personal property. Before the filing of the affidavit, the affiant must make a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors, and the proposed distribution must make provision for payment of those creditors to the extent that assets are available or the creditors must consent to the proposed distribution. The affidavit must be served in the manner of formal notice upon all heirs at law who have not joined in the affidavit; upon all known or reasonably ascertainable creditors of the decedent; and, if the decedent at the time of death was over the age of 55 years of age, upon the Agency for Health Care Administration.

(3) If the court is satisfied that subsection (1) is applicable and the affidavit filed by the heir at law meets the requirements of subsection (2), the court, by letter or other writing under the seal of the court, may authorize the payment, transfer, disposition, delivery, or assignment of the tangible or intangible personal property to those persons entitled.

(a) Any individual, corporation, or other person paying, transferring, delivering, or assigning personal property under the authorization shall be forever discharged from liability thereon.

(b) Bona fide purchasers for value from those to whom personal property of the decedent has been paid, transferred, delivered, or assigned shall take the property free of all claims of creditors of the decedent and all rights of the surviving spouse and all other beneficiaries or heirs at law of the decedent.

(c) Personal property of the decedent that is not exempt from claims of creditors and that remains in the possession of those to whom it has been paid, delivered, transferred, or assigned shall continue to be liable for claims against the decedent until barred as provided in the Florida Probate Code. Any known or reasonably ascertainable creditor who did not consent to the proposed distribution and for whom provision for payment was not made may enforce the claim and, if the creditor prevails, shall be awarded costs, including reasonable attorney fees, against those who joined in the affidavit.

(d) Recipients of the decedent’s personal property under this section shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value on the date of distribution of the personal property actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida.

(e) Except as otherwise provided in s. 733.710, after 2 years from the death of the decedent, neither the decedent’s estate nor those to whom it may be distributed shall be liable for any claim against the decedent, unless within that time proceedings have been taken for the enforcement of the claim.

(f) Any heir or devisee of the decedent who was lawfully entitled to share in the estate but who was not included in the distribution under this section may enforce all rights in appropriate proceedings against those who signed the affidavit or received distribution of personal property and, if successful, shall be awarded costs including reasonable attorney fees as in chancery actions.

History.—s. 3, ch. 2020-110.

The 2019 Florida Statutes

Title XLII
ESTATES AND TRUSTS
Chapter 734
PROBATE CODE: FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

734.104 Foreign wills; admission to record; effect on title.—
(1) An authenticated copy of the will of a nonresident that devises real property in this state, or any right, title, or interest in the property, may be admitted to record in any county of this state where the property is located at any time after 2 years from the death of the decedent or at any time after the domiciliary personal representative has been discharged if there has been no proceeding to administer the estate of the decedent in this state, provided:
(a) The will was executed as required by chapter 732; and
(b) The will has been admitted to probate in the proper court of any other state, territory, or country.
(2) A petition to admit a foreign will to record may be filed by any person and shall be accompanied by authenticated copies of the foreign will, the petition for probate, and the order admitting the will to probate. If no petition is required as a prerequisite to the probate of a will in the jurisdiction where the will of the nonresident was probated, upon proof by affidavit or certificate that no petition is required, an authenticated copy of the will may be admitted to record without an authenticated copy of a petition for probate, and the order admitting the will to record in this state shall recite that no petition was required in the jurisdiction of original probate.
(3) If the court finds that the requirements of this section have been met, it shall enter an order admitting the foreign will to record.
(4) When admitted to record, the foreign will shall be as valid and effectual to pass title to real property and any right, title, or interest therein as if the will had been admitted to probate in this state.
History.—s. 3, ch. 74-106; s. 98, ch. 75-220; s. 45, ch. 77-87; s. 229, ch. 77-104; s. 15, ch. 79-221; s. 274, ch. 79-400; s. 11, ch. 89-340; s. 173, ch. 2001-226.
Note.—Created from former s. 736.06.

The 2019 Florida Statutes

Title XLII
ESTATES AND TRUSTS
Chapter 734
PROBATE CODE: FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

734.1025 Nonresident decedent's testate estate with property not exceeding $50,000 in this state; determination of claims.—
(1) When a nonresident decedent dies testate and leaves property subject to administration in this state the gross value of which does not exceed $50,000 at the date of death, the foreign personal representative of the estate before the expiration of 2 years after the decedent's death may file in the circuit court of the county where any property is located an authenticated transcript of so much of the foreign proceedings as will show the will and beneficiaries of the estate, as provided in the Florida Probate Rules. The court shall admit the will and any codicils to probate if they comply with s. 732.502(1), (2), or (3).
(2) The foreign personal representative may cause a notice to creditors to be served and published according to the relevant requirements of chapter 733. Claims not filed in accordance with chapter 733 shall be barred as provided in s. 733.702. If any claim is filed, a personal representative shall be appointed as provided in the Florida Probate Rules.
History.—s. 1, ch. 80-203; s. 10, ch. 89-340; s. 1030, ch. 97-102; s. 79, ch. 99-3; s. 172, ch. 2001-226; s. 12, ch. 2003-154.

Kelley's Homestead Paradigm

Additional Information

If the homestead was owned as tenants by the entireties or JTWROS, this Paradigm does not apply. Title passes automatically to the surviving tenant or tenants free of decedent's creditors. 732.401(5). *Ostyn v. Olympic*, 455 So.2d 1137.

Protected Homestead* NOT subject to probate (F.S. 733.608, *McKean v. Warburton*, 919 So.2d 341), administrative expenses (*Engelke v. Estate of Engelke*, 921 So.2d 693) or creditors' claims (Art. X sec. 4(b)).

NOT Protected Homestead* is subject to probate, administrative expenses, and creditors' claims.

* Protected Homestead is defined in F.S. 731.201(33). Also see 733.608.

Level Information:
At Level 2 — protected homestead may not be devised by will or rev trust 732.4015.**

At Level 3 — protected homestead may be devised only to spouse.** Art X § 4(c)

Below Level 3 — protected homestead may be freely devised.** Art X § 4(c)

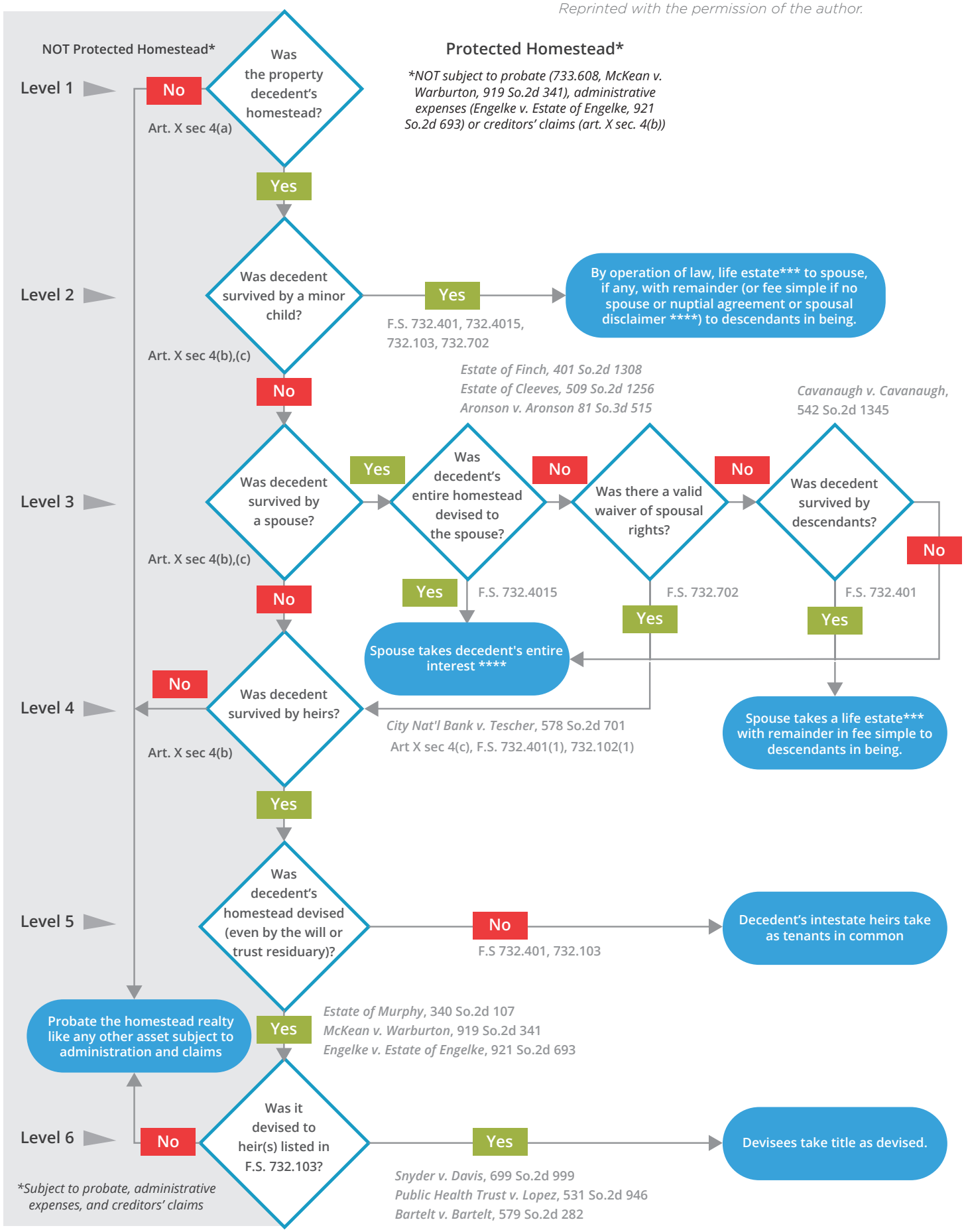
** Devise of protected homestead is limited in the same manner whether title is held by an individual or by a revocable trust. F.S. 732.4015(2)(a).

*** The spouse may elect to take a ½ interest as tenant in common rather than a life estate. F.S. 732.401(2)

**** A disclaimed intestate or validly devised spousal interest passes pursuant to 739.201. Disclaimer of a surviving spouse's life estate does not divest a descendant's vested remainder interest. 732.401(4).

Kelley's Homestead Paradigm

Includes statutory changes effective through 2014



SNYDER v. DAVIS, 699 So. 2d 999 (Fla. 1997)
Supreme Court of Florida.
Kelli SNYDER, Petitioner, v. Kent W. DAVIS, etc., Respondent.

No. 89410.
Decided: September 18, 1997
Gerald L. Pickett of Gerald L. Pickett, P.A., Inverness, for petitioner. Kent W. Davis of Foster & Davis, St. Petersburg, for respondent.

We have for review the decision of the Second District Court of Appeal in Davis v. Snyder, 681 So.2d 1191 (Fla. 2d DCA 1996). The district court held that the testator could not both devise her homestead property to her granddaughter and preserve its exemption from creditors. The court found that while the homestead could be devised, the constitutional exemption from creditors would follow the homestead only if it were devised to the person or persons who would have actually taken the homestead had the testator died intestate. In this case the granddaughter would not have taken the homestead under the intestacy statutes because the testator's natural son was still alive at the death of the testator. See § 732.103, Fla. Stat. (1995). The court then certified the following question to be of great public importance:

WHETHER ARTICLE X, SECTION 4, OF THE FLORIDA CONSTITUTION EXEMPTS FROM FORCED SALE A DEVISE OF A HOMESTEAD BY A DECEDENT NOT SURVIVED BY A SPOUSE OR MINOR CHILD TO A LINEAL DESCENDANT WHO IS NOT AN HEIR UNDER THE DEFINITION IN SECTION 731.201(18), FLORIDA STATUTES (1993).

Id. at 1193. We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

For the reasons expressed, we answer the certified question in the affirmative and quash the district court's decision. We find that in these circumstances the word “heirs,” when determining entitlement to the homestead protections against creditors, is not limited to only the person or persons who would actually take the homestead by law in intestacy on the death of the decedent. Instead, we hold that the constitution must be construed to mean that a testator, when drafting a will prior to death, may devise the homestead (if there is no surviving spouse or minor children) to any of that class of persons categorized in section 732.103 (the intestacy statute). To hold otherwise would mean that a testator, when making an effort to avoid intestacy by drafting a will, would have to guess who his or her actual heirs 1 would be on the date of death in order to maintain the homestead's constitutional protections against creditors.

FACTS

Betty Snyder died testate on February 15, 1995. In her will, she made the following dispositions:

First, the expenses of my funeral, burial, or other disposition of my remains I may have directed, my just debts, and the costs of administering my estate shall be paid out of the residue of my estate.

Second, I give, devise and make special provisions as follows:

a. The sum of $3,000 to my son, MILO SNYDER, provided he survives me.

b. The sum of $2,000 to my friends, JOE BEDRIN and BARBARA BEDRIN, or to the survivor of them.

Third, I give and devise all the rest, residue, and remainder of my property of every kind and wherever situated, as follows: All to my granddaughter, KELLI SNYDER.

Betty Snyder was not survived by a spouse. She was, however, survived by her only son, Milo Snyder and his only daughter, Kelli Snyder. Both Milo and Kelli are adults.

Kent W. Davis, the personal representative of Betty Snyder's estate, sought to sell the homestead property to satisfy creditors' claims, to fund specific bequests, and to pay the costs of administration. Kelli Snyder, the residuary beneficiary, asserted that the testator's homestead passed to her free of claims because she was protected by article X, section 4, of the Florida Constitution (the homestead provision). The homestead provision reads, in relevant part, as follows:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead.

.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

Art. X, § 4, Fla. Const. (emphasis added).

There is no dispute in this case that Betty Snyder's home was homestead property for the purpose of distribution or that said property was properly devised in the residuary clause of her will. The sole issue is whether Kelli Snyder, as the granddaughter, may be properly considered an heir under the homestead provision, qualifying her for protection from the forced sale of the

homestead property when her father, the next-in-line heir under statutory intestate succession, is still living.

The personal representative argues that, had Betty Snyder died intestate, Kelli Snyder would not have qualified as an heir under the intestacy statute. He asserts that Milo Snyder, as the testator's son, would have been the sole taker of the homestead under the intestacy statute and, consequently, the homestead was not devised to an heir by Betty Snyder's will. Accordingly, he argues that the homestead property is not protected by the homestead provision and is subject to creditors' claims.

The trial judge disagreed with these assertions and found that the homestead provision protected the homestead from creditors in this case. The district court reversed, finding that because Milo Snyder would have been the sole heir had there been intestacy, Kelli Snyder is precluded from benefitting from the homestead provision's protections against creditors. In so finding, the district court explained its position as follows:

Section 731.201(18) defines “heirs” as “those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.” While Kelli Snyder is a lineal descendant of her grandmother, the decedent's adult son, Milo Snyder, is the only member of the next generation of “lineal descendant.” A reference to “heirs” is generally considered as referring to those who inherit under the laws of intestate succession. See, e.g., Arnold v. Wells, 100 Fla. 1470, 131 So. 400 (1930). If Betty Snyder had died intestate, Milo Snyder would have inherited everything as her “heir,” i.e., next lineal descendant in line, and Kelli Snyder, under any construction of section 732.103, would have inherited nothing. This would be so because inheritance in Florida is “per stirpes.” § 732.104, Fla. Stat. (1993). Because Milo Snyder survived, Kelli Snyder is not an intestate “heir” of her grandmother. Therefore, for purposes of the homestead exemption inuring to “the heir of the decedent,” as defined by intestate succession, the exemption cannot inure to Kelli Snyder.

681 So.2d at 1193. We granted review in order to answer the certified question. We note, though, that we have an additional basis for jurisdiction because this district court opinion expressly and directly conflicts with Walker v. Mickler, 687 So.2d 1328 (Fla. 1st DCA 1997), review granted, No. 89,922, 696 So.2d 343 (Fla. June 12, 1997).

The circumstances under which a homestead may be devised while still retaining its protections against creditors present a significant issue for both the legal profession and the public in general. All Floridians need to fully understand how their homestead property might be properly devised while still maintaining its protections against creditors (when there are no surviving spouses or minor children).2

THE HOMESTEAD PROVISION

The homestead provision has been characterized as "our legal chameleon." 3 Our constitution protects Florida homesteads in three distinct ways. First, a clause, separate and apart from the homestead provision applicable in this case, provides homesteads with an exemption from taxes.4 Second, the homestead provision protects the homestead from forced sale by creditors.5 Third, the homestead provision delineates the restrictions a homestead owner faces when attempting to alienate or devise the homestead property.6 This case involves the second and third protections described above.

Homestead law in the United States has evolved over time and it is strictly an American innovation. In Florida, moreover, our case law surrounding the homestead provision has its own contours and legal principles. As a result, it is not susceptible to comparisons with similar provisions in other jurisdictions. Importantly, our courts have emphasized that, in Florida, the homestead provision is in place to protect and preserve the interest of the family in the family home. We recently reaffirmed that general policy by stating:

As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.

Public Health Trust v. Lopez, 531 So.2d 946, 948 (Fla.1988). Further, it is clear that the homestead provision is to be liberally construed in favor of maintaining the homestead property. See Butterworth v. Caggiano, 605 So.2d 56 (Fla.1992); Hubert v. Hubert, 622 So.2d 1049 (Fla. 4th DCA 1993); Moore v. Rote, 552 So.2d 1150 (Fla. 3d DCA 1989); In re Estate of Skuro, 467 So.2d 1098 (Fla. 4th DCA 1985), approved, 487 So.2d 1065 (Fla.1986). As a matter of policy as well as construction, our homestead protections have been interpreted broadly.7

In addition, in 1984, the people further expanded homestead provision to substantially broaden the class of people eligible to take advantage of our homestead protections. While those protections had been previously limited to the "head of a family," they are now available to any "natural person." Compare art. X, § 4(a), Fla. Const.(1972)("There shall be exempt from forced sale under process of any court . the following property owned by the head of a family") with art. X, § 4(a), Fla. Const. ("There shall be exempt from forced sale under process of any court . the following property owned by a natural person").

Finally, it is important to note that creditors are aware of the homestead provision and its inherent protections. As we discussed in Public Health Trust, we will not narrowly interpret the homestead provision simply because "financially independent heirs" may receive a windfall. 531 So.2d at 950. There we wrote:

The homestead protection has never been based on principles of equity, see Bigelow [v. Dunphe, 143 Fla. 603, 197 So. 328 (1940)], but always has been extended to the homesteader and, after

his or her death, to the heirs whether the homestead was a twenty-two room mansion or a two-room hut and whether the heirs were rich or poor.

Id. Creditors have been on notice for many years that the plain language of the constitution protects homestead property from most creditors.

It is with these policy considerations in mind that we address the two major issues in this case.

DEVISEES OF A HOMESTEAD MAY BE ENTITLED TO THE HOMESTEAD PROVISION'S PROTECTIONS AGAINST CREDITORS

The first question we must resolve is whether the protection against creditors found in the homestead provision can be transferred, with a will, to a devisee. This Court has never addressed whether the term "heirs" in the homestead provision includes devisees.

Under the common law, an heir was a person designated to inherit in the event of intestacy at the death of the decedent. Now, however, "the term is frequently used in a popular sense to designate a successor to property either by will or by law." Black's Law Dictionary 724 (6th ed. 1990) ("Word 'heirs' is no longer limited to designated character of estate as at common law.") If we define the term "heirs" in the homestead provision by its strict common-law definition, the very act of devising the homestead would abolish the homestead protections against creditors. We refuse to construe the homestead provision in such a narrow way. In reaching this conclusion, we are persuaded by the reasoning of the Third District Court of Appeal, sitting en banc, in Bartelt v. Bartelt, 579 So.2d 282 (Fla. 3d DCA 1991). That court addressed the situation in which the decedent, who died without a surviving spouse but with two surviving adult children, a son and a daughter, devised his homestead only to his son. There, the district court held that the homestead exemption passed to the devisee through the will even though the omitted child would have been entitled to an equal share of the homestead had the decedent died intestate. In so holding, the Bartelt court stated:

When the decedent's homestead is devised to his son-a member of the class of persons who are the decedent's "heirs"-the constitutional exemption from forced sale by the decedent's creditors found in Article X, Section 4(b) of the Florida Constitution, inures to that son. The test is not how title was devolved, but rather to whom it passed.

The personal representative argues that, although "heirs" may avail themselves of the constitutional protection from creditors, "devisees" may not. Section 731.201(18), Florida Statutes (1989), defines heirs or heirs at law as "those persons . who are entitled under the statutes of intestate succession to the property of a decedent." Devisees are defined in section 731.201(9) as persons "designated in a will to receive a devise." According to the personal representative, a devisee cannot be an heir because a devisee takes by will and an heir takes only where there is no will. We disagree. Heirs, as defined in section 731.201(18), are simply those persons entitled to receive property under the laws of intestacy; the decedent's son, as his

lineal descendant, is a member of that class. § 732.103(1), Fla. Stat. (1989). The class designated as "heirs" does not exclude those who, but for the decedent's foresight in executing a will, would have taken by the laws of intestate succession. Article X, section 4 of the Florida Constitution defines the class of persons to whom the decedent's exemption from forced sale of homestead property inures; it does not mandate the technique by which the qualified person must receive title.

Id. at 283-84. An academic commentator on this subject writes approvingly of the result reached by that district court:

This author supports the Bartelt decision. The constitutional exemption from forced sale by creditors, as found in article X, § 4(b) of the Florida Constitution, inures to the surviving spouse or heirs of the owner. Bartelt includes within the term "heirs" devisees who but for the will would have been heirs. It properly takes a broad gauged approach to the constitutional terminology. It places substance over form. The persons involved as takers are the same whether there is a will or there is not a will. The court points out that without such a determination, with respect to homestead, Florida residents would be discouraged from making wills and would be encouraged to let the property in issue pass by intestate succession. Such a result would be an anathema.

1 David T. Smith, Florida Probate Code Manual § 4.05, at 29-30 (1995).

We agree that, in cases in which there is no surviving spouse or minor children, the protections against creditors found in the homestead provision may inure to the benefit of the person to whom the homestead property is devised by will. As explained below, though, the class of persons to which such protections may be devised is limited.

THE CLASS OF DEVISEES TO WHICH THE PROTECTIONS AGAINST CREDITORS FOUND IN THE HOMESTEAD PROVISION MAY BE DEVISED

Having found that the protections against creditors found in the homestead provision may be devised by will, we now must define the scope of the class of persons to which those protections may be so devised. The Davis court and the Walker court present us with two alternatives. First, the Davis court defined the word "heirs" narrowly and found that, in order to preserve the protection against creditors, a devisee had to be entitled to inherit the homestead property under the intestacy statute. The Walker court applied a broader definition of the term "heirs." It held that the protections against creditors could be devised to any of the class of potential heirs under the intestacy statute. It found no occasion to require that a testator leave the homestead property to the actual person or persons who would have actually inherited under the intestacy statute. These two views of the term "heirs" can be characterized as the "entitlement definition" and the "class definition," respectively.

We are persuaded by the Walker court's view. In a situation almost identical to that in this Davis case, the First District Court held that a decedent's grandson was entitled to the homestead protection even though the grandson was not the closest consanguine heir. In doing so, the court found that any person categorized in the intestacy statute was an heir for the purpose of the homestead provision. In particular, it wrote:

Article X, section 4(b) of the Florida Constitution provides that the exemptions and protections established for homestead property under article X, section 4(a) "shall inure to the surviving spouse or heirs of the owner." As this court explained in State Department of Health and Rehabilitative Services v. Trammell, 508 So.2d 422 (Fla. 1st DCA 1987), the term "heir" under article X, section 4(b) means "those who may under the laws of the state inherit from the owner of the homestead." Id. at 423, quoting Shone v. Bellmore, 75 Fla. 515, 78 So. 605, 607 (Fla.1918). Because Bavle, as the decedent's grandson, was a lineal descendent of the decedent, he is a member of the class of persons entitled to receive property under the laws of intestacy, see sections 732.103(1) and 732.401(1), Florida Statutes (1993), and accordingly, is an "heir" for the purposes of article X, section 4(b). See, Bartelt v. Bartelt, 579 So.2d 282, 283-4 [84] (Fla. 3d DCA 1991). A remainderman is entitled to claim a homestead exemption. Hubert v. Hubert, 622 So.2d 1049 (Fla. 4th DCA 1993), rev. denied, 634 So.2d 624 (Fla.1994).

687 So.2d at 1329.

The Walker court expressly rejected the holding of the Davis court. It wrote:

We find the Davis opinion contrary to the purpose of the homestead exemption from forced sale. We start with the well-established principle that the laws regarding homestead exemption are to be liberally construed. Jetton Lumber Co. v. Hall, 67 Fla. 61, 64 So. 440 (1914); and In re Estate of Skuro, 467 So.2d 1098 (Fla. 4th DCA 1985), aff'd, 487 So.2d 1065 (Fla.1986). Although the constitution is silent as to the intent of the drafters with respect to the rights of creditors of estates, we conclude that, as amended in 1984, article V, section 4(b), however, does reflect the intent that the exemption is to inure to whomever the homestead property passes.

Id. at 1330. The Walker court grounded its conclusion on the following policy consideration:

It seems clear to us that the intent of the homestead exemption is to protect the decedent's homestead from the decedent's creditors for the benefit of the decedent's heirs. To deny the exemption for a homestead property simply because the person chosen by the decedent to receive the property under the will, even though that person is within the class of persons entitled to take under the laws of intestate succession, is not the closest consanguine heir, is contrary to that constitutional intent.

Id. at 1331.

The Walker court, it seems to us, announces the correct view of our homestead provision. Indeed, the approach used by the Davis court would force a testator to guess as to his or her survivors in order to successfully devise, by will, the homestead property with the protections against creditors intact. That reading of our constitution is, in our view, unreasonable. If a severe limitation is to be placed on the ability of Floridians to keep the homestead within the family, it should not be done by a narrow judicial construction of the homestead provision.

We are reinforced in our view when the ramifications of the alternative position are considered. Under the Davis court's reasoning, an attorney would be faced with giving the following illogical advice to a potential testator with no surviving spouse or minor children:

You have two bad choices. You can devise your homestead to any person you choose. If you do, though, the homestead provision's protections against creditors will be inapplicable and your homestead may be subject to forced sale. On the other hand, you can guess as to which family members will survive you. After we have established the list of your guesses, I can tell you which of those family members would inherit under our intestacy statute. If you leave your homestead to those family members and they really do survive you, the homestead provision's protections against creditors will remain intact. If you guess incorrectly, though, the protections against creditors will be inapplicable. The point is this: If you want to ensure protection of the homestead property against creditors under our constitution, you have no choice as to which family member might best maintain your homestead property. The law requires that in order to utilize the homestead provision's protections against creditors, the homestead property must pass to the person or persons dictated by the intestacy statute.

Creating a system, by engaging a narrow judicial construction of the homestead provision, in which this type of advice must be given is unreasonable. Will-making, in these circumstances, becomes an act of prophecy. Clearly, as a policy matter, we should not be encouraging intestacy as a means of distributing one's property. In many instances where there is no surviving spouse or minor children, the homestead property is the most significant part of a testator's estate. If a testator loses control over the disposition of his or her homestead property, the need for a will is effectively eliminated. Such an approach takes away from the testator any ability to make a choice as to which family member will best preserve and maintain the family homestead. Instead, it promotes absolute adherence to the strict priorities found in the intestacy statute without paying any respect to the needs of individual testators and their families.

The whole purpose of the homestead provision is to protect and maintain the family homestead. The testator is likely in the best position to know which family member is most likely to need or to properly maintain the homestead. A plain reading of the homestead provision establishes that it only prohibits devising the homestead property when the testator is survived by a spouse or minor children. There is no prohibition against devising the homestead property to any of that class of persons who could potentially receive the homestead property under the intestacy statute. We must emphasize, however, that today's ruling does not authorize a testator to devise homestead property to any person not categorized by our intestacy statute with any expectation

that the protections against creditors will survive such a devise. See State Dep't of Health & Rehabilitative Servs. v. Trammell, 508 So.2d 422 (Fla. 1st DCA 1987)(holding that a devise of homestead to a good friend does not qualify for the homestead exemption).

CONCLUSION

We have consistently made it clear that the homestead provision must be given a broad and liberal construction. In the context of this case, we reject the narrow entitlement definition of the term "heirs" that includes only those people who would inherit under the intestacy statute at the death of the decedent. Instead, we hold that the homestead provision allows a testator with no surviving spouse or minor children to choose to devise, in a will, the homestead property, with its accompanying protection from creditors, to any family member within the class of persons categorized in our intestacy statute.

Accordingly, we answer the certified question in the affirmative, quash the decision of the district court in Davis, and approve the district court's opinion in Walker.

It is so ordered.

The word "heirs" as used in article X, section 4(b) of the Florida Constitution means exactly what Florida lawyers and judges have commonly understood it to mean for many decades. That is, a person's heirs are those persons who inherit from the decedent under the law when the decedent dies intestate.

The pertinent constitutional language has been essentially the same since the adoption of the 1885 constitution. In Scull v. Beatty, 27 Fla. 426, 436, 9 So. 4, 7 (1891), this Court said:

The language of the Constitution is: "The exemptions provided for . shall accrue to the heirs of the party having enjoyed or taken the benefit of such exemption." The statute of descents fixes who are the heirs-in this case, the children of James Beatty, deceased.

Interpreting this decision in Shone v. Bellmore, 75 Fla. 515, 522, 78 So. 605, 607 (1918), we stated:

In this connection the word "heirs" means those who may under the laws of the State inherit from the owner of the homestead.

Accord State Dep't of Health & Rehabilitative Servs. v. Trammell, 508 So.2d 422 (Fla. 1st DCA 1987). It is well established that heirs are determined after death, depending on who survives the testator. Williams v. Williams, 149 Fla. 454, 6 So.2d 275 (1942); Pitts v. Pitts, 120 Fla. 363, 162 So. 708 (1935); Stone v. Citizens' State Bank, 64 Fla. 456, 59 So. 945 (1912).

The majority has now defined heirs to mean a class of heirs. Yet, section 731.201(18), Florida Statutes (1993), states that the word "heirs" means "those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent." (Emphasis added.) Under the rationale of the majority, the homestead exemption could accrue to the kindred of the last deceased spouse of the decedent, section 732.103(5), Florida Statutes (1993), even though they would not be entitled to the decedent's property through intestate succession because lineal descendants closer in consanguinity to decedent survived.

I would adopt the cogent analysis of the court below which explained:

Where there is no surviving spouse or minor child, the decedent's homestead may be devised without limitation. Art. X, § 4(c), Fla. Const. Homestead property can be devised through the residuary clause in a decedent's will. Estate of Murphy, 340 So.2d 107 (Fla.1976). In a devise of a homestead to a spouse or heir of the testator/testatrix the exemption from forced sale inures to the benefit of the devisee. Bartelt v. Bartelt, 579 So.2d 282 (Fla. 3d DCA 1991). The question therefore is simply whether Kelli Snyder, the devisee of the homestead, is an heir as contemplated by article X, section 4, of the Florida Constitution and as defined in sections 731.201(18) and 732.103. If she is, she is thereby entitled to the protection of article X, section 4(b) of the Florida Constitution.

Section 731.201(18) defines "heirs" as "those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent." While Kelli Snyder is a lineal descendant of her grandmother, the decedent's adult son, Milo Snyder, is the only member of the next generation of "lineal descendant." A reference to "heirs" is generally considered as referring to those who inherit under the laws of intestate succession. See, e.e., Arnold v. Wells, 100 Fla. 1470, 131 So. 400 (1930). If Betty Snyder had died intestate, Milo Snyder would have inherited everything as her "heir," i.e., next lineal descendant in line, and Kelli Snyder, under any construction of section 732.103, would have inherited nothing. This would be so because inheritance in Florida is "per stirpes." § 732.104, Fla. Stat. (1993). Because Milo Snyder survived, Kelli Snyder is not an intestate "heir" of her grandmother. Therefore, for purposes of the homestead exemption inuring to "the heir of the decedent," as defined by intestate succession, the exemption cannot inure to Kelli Snyder.

Davis v. Snyder, 681 So.2d 1191, 1193 (Fla. 2d DCA 1996).

I respectfully dissent.

I dissent. The majority opinion does violence to the rules of constitutional and statutory construction, the principles of stare decisis, and the doctrine of separation of powers.

The majority ignores section 731.201(18), Florida Statutes (1995), which clearly defines heirs: " 'Heirs' or 'heirs at law' means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent." The majority opinion

also overlooks those cases in which we have approved the statutory definition in relation to homestead. The majority does refer to Black's Law Dictionary, which uses a 1970 California Court of Appeal opinion 8 for the proposition that "heirs" is no longer limited to its technical definition. Majority op. at 1002-03. But Black's goes on to cite another California Court of Appeal opinion decided two years later which contradicts that position: "Word heirs is a technical term and is used to designate persons who would, by statute, succeed to an estate in case of intestacy." Black's Law Dictionary 724 (6th ed.1990) (citing Wells Fargo Bank v. Title Insurance & Trust Company, 22 Cal.App.3d 295, 99 Cal.Rptr. 464, 466 (1972)). Although neither Black's nor the California appellate courts are binding authority in this state, this second definition reflects Florida's law as defined by section 731.201(18) and numerous opinions of this Court. The majority does not address the section, nor does it distinguish any of the cases in which this Court has used the statute to define "heirs."

The majority extols the virtue of "broadening and liberalizing" our definition in favor of maintaining the homestead property. Majority op. at 1002. While there may be compelling policy reasons to include the decedent's granddaughter as an "heir" in order to preserve the homestead status of the property, the statute is clear and unambiguous. In this case she is not an heir. To ignore the statute or interpret it more broadly than the terms of its plain language amounts to creating law, which is more properly the office of the legislature. To do so by a court opinion violates the doctrine of separation of powers, the role of the court in statutory construction cases.

As Justice Grimes points out in his dissent, this Court has generally approved the definition of "heirs" as those defined who take under the statute of descents or the laws of the state and specially the definition contained in section 731.201(18). Grimes, J., dissenting op. at 1006; See also, e.g., Public Health Trust of Dade County v. Lopez, 531 So.2d 946, n. 2 (Fla.1988) ("The term 'heirs' is defined by section 731.201(18), Florida Statutes (1985), as those persons entitled to the decedent's property under the statues of intestate succession."). I believe the following words concerning stare decisis from my dissent in State v. Schopp, 653 So.2d 1016, 1023 (Fla.1995) (Harding, J., dissenting), in which Justice Overton concurred, are equally applicable here:

The doctrine of stare decisis provides stability to the law and to the society governed by that law. While no one would advocate blind adherence to prior law, certainly a change from that law should be principled. Where a rule of law has been adopted after reasoned consideration and then strictly followed over the course of years, the rule should not be abandoned without a change in the circumstances that justified its adoption.

As Justice Overton stated in his concurrence in Perez v. State, 620 So.2d 1256, 1259 (Fla.1993) (Overton, J., concurring), "adhering to precedent is an essential part of our judicial system and philosophy."

State v. Schopp, 653 So.2d 1016, 1023 (Fla.1995) (Harding, J., dissenting). I would adhere to the statutory definition of "heirs" heretofore followed by this Court.

I also find the majority's reliance upon Bartelt to be misplaced. The language quoted by the majority opinion does not support the proposition that a grandchild can become an "heir" to extend the homestead status of property when there is a surviving child as well. In fact, Bartelt reaffirms that heirs as defined in section 731.201(18) are "simply those persons entitled to receive property under the laws of intestacy." Bartelt, 579 So.2d at 284. In Bartelt, the decedent had a son and a daughter but devised the homestead property only to the son.9 The district court held that the homestead privileges inured to the son even though he obtained the homestead property by devise rather than through intestacy. The court held that the property maintained its homestead status because it was devised to one who would have received the property as an heir through intestacy, stating, "The test is not how title was devolved, but rather to whom it passed." Bartelt, 579 So.2d at 283. In Bartelt, the property passed to one who would have received it under the laws of intestate succession. In the instant case, it did not.

The district court in the instant case correctly interpreted the statute. After setting out section 731.201(18), the court held:

If Betty Snyder had died intestate, Milo Snyder would have inherited everything as her "heir," i.e., next lineal descendant in line, and Kelli Snyder, under any construction of section 732.103, would have inherited nothing. Because Milo Snyder survived, Kelli Snyder is not an intestate "heir" of her grandmother. Therefore, for purposes of the homestead exemption inuring to "the heir of the decedent," as defined by intestate succession, the exemption cannot inure to Kelli Snyder.

Snyder, 681 So.2d at 1193. This comports with the statute enacted by the legislature and our history of case law. I believe this is the proper result.

The majority approves the conflicting decision in Walker v. Mickler, 687 So.2d 1328 (Fla. 1st DCA 1997), where the district court held that a grandchild could become an "heir" and thus extended the homestead status of property to protect it from forced sale by creditors. The Walker court quoted our decision in Public Health Trust as describing the "broad purpose of the exemption in protecting the homestead." Walker, 687 So.2d at 1330. But in Public Health Trust, this Court merely held that the homestead exemption was not limited to the head of a family but could be enjoyed by any natural person and that heirs did not have to be dependent on the homestead owner. Public Health Trust, 531 So.2d at 951. As previously noted, the majority opinion included a footnote attached to the word "heirs," stating: "The term 'heirs' is defined by section 731.201(18), Florida Statutes (1985), as those persons entitled to the decedent's property under the statutes of intestate succession." Public Health Trust, 531 So.2d at 951, n. 6. The majority here does not distinguish, recede from, or explain our statement in Public Health Trust regarding the definition of "heirs." Even in that case, where we recognized

the broad purpose behind the homestead exemption, we followed the plain language of the statutory definition of "heirs."

Because I can find nothing in the majority opinion to support the newly expanded interpretation of "heirs" except reliance on the flawed analysis from Walker, and because I think such an expansion invades the province of the legislature and ignores the prior holdings of this Court, I am compelled to dissent.

FOOTNOTES

1. Actual heirs are only determined upon death.

2. The issue was addressed in a recent publication from the Real Property, Probate, and Trust Law Section of the Florida Bar. Carlos A. Rodriguez, Inurement of the Real Property Homestead Exemption to Devisees of the Owner, XX Actionline 4 (April-May 1997).

3. Harold B. Crosby & George John Miller, Our Legal Chameleon, the Florida Homestead Exemption: I-III, 2 U. Fla. L.Rev. 12 (1949); Harold B. Crosby & George John Miller, Our Legal Chameleon, the Florida Homestead Exemption: IV, 2 U. Fla. L.Rev. 219 (1949); Harold B. Crosby & George John Miller, Our Legal Chameleon, the Florida Homestead Exemption: V, 2 U. Fla. L.Rev. 346 (1949); J. Allen Maines & Donna Litman Maines, Our Legal Chameleon Revisited: Florida's Homestead Exemption 30 U. Fla. L.Rev. 227 (1978); Donna Litman Seiden, An Update on the Legal Chameleon: Florida's Homestead Exemption and Restrictions, 40 U. Fla. L.Rev. 919 (1988).

4. See art. VII, § 6, Fla. Const.

5. See id. art. X, § 4(a)-(b).

6. See id. art. X, § 4(c).

7. See Tramel v. Stewart, 697 So.2d 821 (Fla.1997)(liberally construing homestead provision in the face of a attempted forfeiture action against homestead property).

8. Jay v. Dollarhide, 3 Cal.App.3d 1001, 84 Cal.Rptr. 538, 547 (1970): "The word 'heirs' is no longer limited to designating the character of the estate, as at common law."

9. The daughter did not contest the devise of the entire homestead to the son.

OVERTON, Justice.

KOGAN, C.J., and SHAW, WELLS and ANSTEAD, JJ., concur. GRIMES, J., dissents with an opinion in which HARDING, J., concurs. HARDING, J., dissents with an opinion.

RSA 12D-7.0135
Current through Reg. 49, No. 177; September 12, 2023

Section 12D-7.0135 - Homestead Exemptions - Mobile Homes

(1) For purposes of qualifying for the homestead exemption, the mobile home must be determined to be permanently affixed to realty, as provided in rule Chapter 12D-6, F.A.C. Otherwise, the applicant must be found to be making his permanent residence on realty.
(2) Where a mobile home owner utilizes a mobile home as a permanent residence and owns the land on which the mobile home is located, the owner may, upon proper application, qualify for a homestead exemption.
(3) Joint tenants holding an undivided interest in residential property are each entitled to a full homestead exemption to the extent of each joint tenant's interest, provided all requisite conditions are met. Joint tenants owning a mobile home qualify for a homestead exemption even though the property on which the mobile home is located is owned in joint tenancy by more persons than just those who own the mobile home. Each separate residential or family unit is entitled to a homestead exemption. The value of the applicant's proportionate interest in the land shall be added to the value of the applicant's proportionate interest in the mobile home and this value may be exempted up to the statutory limit.
(4) If a mobile home is owned as an estate by the entireties, the homestead exemptions of Section 196.031, F.S. and the additional homestead exemptions are applicable if either spouse qualifies.
(5) No homestead exemption shall be allowed by the property appraiser if there is no current license sticker on January 1, unless the property appraiser determines prior to the July 1 deadline for denial of the exemption that the mobile home was in fact permanently affixed on January 1 to real property and the owner of the mobile home is the same as the owner of the land.
RSA 12D-7.0135

Rulemaking Authority RSA 195.027(1), RSA 213.06(1) FS. Law Implemented RSA 193.075, RSA 196.012, RSA 196.031, 196.041, 196.081, 196.091, 196.101, 196.202 FS.
New 5-13-92.

The 2023 Florida Statutes

Title XV
HOMESTEAD AND EXEMPTIONS
Chapter 222
METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

222.05 Setting apart leasehold.—Any person owning and occupying any dwelling house, including a mobile home used as a residence, or modular home, on land not his or her own which he or she may lawfully possess, by lease or otherwise, and claiming such house, mobile home, or modular home as his or her homestead, shall be entitled to the exemption of such house, mobile home, or modular home from levy and sale as aforesaid.

History.—s. 5, ch. 1715, 1869; RS 2002; GS 2524; RGS 3879; CGL 5786; s. 1, ch. 77-299; s. 1198, ch. 95-147.

316 B.R. 560 (2004)
In the Matter of Leroy George YETTAW, Debtor.
No. 8:03-bk-09968-TEB.
United States Bankruptcy Court, M.D. Florida, Tampa Division.
October 14, 2004.
561*561 LeRoy George Yettaw, New Port Richey, FL, Pro se.
Beth Ann Scharrer, Seminole, FL, trustee.
ORDER ON CREDITOR, WALLACE CALNEY'S, OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION
THOMAS E. BAYNES, JR., Bankruptcy Judge.
THIS CAUSE came before the Court at a Final Evidentiary Hearing on February 10, 2004, upon the Objection to Claim of Exemption filed by Wallace Calney, a creditor in Debtor's case. The Court, having heard arguments of counsel, reviewed the evidence and the record, and being otherwise advised, finds as follows:
BACKGROUND
The evidence at the Final Evidentiary Hearing established Debtor filed his Chapter 7 bankruptcy case in 2003. In the schedules, Debtor claims his 1988 Winnebago Chieftain motor home, valued at $18,000.00, to be exempt under the Florida Constitution as homestead. *See* Fla. Const. art. X, § 4; Fla. Stat. Ch. 222.01, et seq. Debtor acquired the motor home for $15,000.00 some few months before filing bankruptcy. Financially, he was unable to obtain employment due to extensive health problems. Debtor sold his homestead, took the proceeds and bought the motor home and parked it at a motor home park.
Debtor pays $300.00 a month rent which includes sewage, water and electricity. Debtor was denied Social Security disability, but appears to receive necessary medication on a charitable basis. He has a minimal part-time job and minimal expenses. The motor home itself is not capable of running, does not have a valid registration, and is used solely for the purposes of a residence—having not been moved since entering the RV park. According to Debtor's testimony and other 562*562 evidence, it is possible to rejuvenate mechanics of the motor home, (if Debtor were financially able), therefore, it must be concluded that the motor home is inoperable. Debtor asserts the vehicle is his residence, and it is his intent to reside there as it is very economical for him considering his dire financial position.
DISCUSSION
The bankruptcy courts in the State of Florida, as well as the state courts, deal with the question of whether untraditional mobile abodes could be transferred into homestead, thereby benefiting from the homestead exemption created in the Florida Constitution, on a fairly regular basis. As may be gathered, the two most unique "residences" are motor homes and boats. In fact, the Florida Legislature enacted Fla. Stat. Ch. 222.05 which expanded the definition of "dwelling house" to exempt mobile and modular homes held by a debtor where the debtor merely leases the land. Clearly, Fla. Stat. Ch. 222.05 comes into play when determining whether non-traditional abodes other than mobile homes, such as motor homes and boats, may be a dwelling house entitled to the homestead exemption. *See* *Miami Country Day School v. Bakst*, 641 So.2d 467, 469-70 (Fla. 3rd Dist.Ct.App.1994).

While the characterization of homestead is grounded in the Florida Constitution and statutory law, it is also a product of state public policy. It is quite clear the Florida state courts, as well as the federal bankruptcy courts, have determined the issue of homestead should be liberally construed in favor of the individual claiming the exemption. *See* *In re Bubnak*, 176 B.R. 601, 602-03 (Bankr.M.D.Fla. 1994) (holding a motor home met the requirements for a homestead exemption); *In re Mangano*, 158 B.R. 532, 534-35 (Bankr.S.D.Fla.1993) (holding a motor home met the requirements for a homestead exemption); *In re Meola*, 158 B.R. 881, 882-83 (Bankr.S.D.Fla.1993) (holding a travel trailer met the requirements for a homestead exemption); *In re Imprasert*, 86 B.R. 721, 722 (Bankr.M.D.Fla.1988) (holding temporary absence from home did not constitute abandonment of homestead); *Butterworth v. Caggiano*, 605 So.2d 56, 59-61 (Fla.1992) (holding property entitled to homestead exemption is not subject to civil or criminal forfeiture). As the Florida Supreme Court states in *Public Health Trust v. Lopez*, 531 So.2d 946, 948 (Fla. 1988),

As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.

The burden of proof lies with the objecting party, the creditor here, to prove by a preponderance of the evidence that the Debtor is not entitled to the exemption claimed. *See* *In re McClain*, 281 B.R. 769, 773 (Bankr.M.D.Fla.2002); *In re Ehnle*, 124 B.R. 361, 363 (Bankr.M.D.Fla.1991). Ultimately, however, the policy must be construed with criteria for homestead where there are "unconventional" or "nontraditional abodes." The Court, upon reviewing all the cases dealing with motor homes and analogous abodes such as motor boats, concludes the courts, both federal and state, look to the following criteria to determine whether or not the public policy of homestead exemption shall apply. The criteria include, but are not limited to:

1) The Debtor's intent to make the non-traditional abode his homestead. *See, e.g.*, *In re Mead*, 255 B.R. 80, 84 (Bankr. 563*563 S.D.Fla.2000) (holding a boat met the requirements for homestead exemption).

2) Whether the debtor has no other residence. *See, e.g.*, *Miami Country Day School v. Bakst*, 641 So.2d at 469.

3) Whether the evidence establishes a continuous habitation. *See, e.g.*, *In re Brissont*, 250 B.R. 413, 414-15 (Bankr. M.D.Fla.2000) (holding a mobile boat did not meet the requirements for homestead exemption).

4) Whether the debtor maintains at least a possessory right associated with the land establishing a physical presence. *See, e.g.*, *In re Dean*, 177 B.R. 727, 729 (Bankr.S.D.Fla.1995).[1]

5) Whether the nontraditional abode has been physically maintained to allow longterm habitation versus mobility. *See, e.g.*, *In re McClain*, 281 B.R. at 773.

6) Whether the physical configuration of the abode permits habitation, otherwise the physical characteristics are immaterial. *See, e.g.*, *In re Mangano*, 158 B.R. at 534 (holding use, rather than design or size, is the key factor in determining the homestead status of a nontraditional abode).

Reviewing the record in light of the relevant criteria, the Court finds the fact that Debtor sold his homestead and used all the proceeds to buy the motor home is sufficient to establish an intent to make the motor home the Debtor's homestead. The record establishes Debtor has no other

residence. The evidence establishes habitation to be continual and consistent with homestead as the vehicle no longer has a license, is not in operating condition and Debtor does not have the ability to bring the mobile home back in service. The Debtor's lease upon the land, which includes the services necessary to make the motor home habitable, establishes a possessory right sufficient to maintain a homestead.

Finally, the record reflects the motor home is maintained for long-term habitation, as evidenced by Debtor acquiring all the necessary requirements for habitation including, but not limited to, water, sewer, and electrical service. The motor home is physically configured to serve as Debtor's living quarters and the record clearly reflects this use of the motor home. The Court understands full well there is evidence that the lease is month-to-month and there is the ever present ability to unhook the particular services to the mobile home, but this does not outweigh the evidence establishing the criteria for homestead.

CONCLUSION

As Chief Bankruptcy Judge Mark of the Southern District in *In re Mangano*, 158 B.R. at 535, states,

Certain members of the public (and the media) believe that Florida's homestead exemption allows wealthy debtors to shelter a disproportionate amount of their wealth from creditors .... In this case, the Court is confronted with the opposite end of the spectrum—debtors with virtually no property other than the vehicle in which they live. Here, there is room for judicial discretion within the confines of the Bankruptcy Code, Florida Statutes and Florida Constitution.

Judge Mark's findings are consistent with this case. Federal and state law leads this Court to the conclusion that under the facts in this case, the 1988 Winnebago Chieftain motor home as maintained by the Debtor should be considered a dwelling house and allowed a homestead exemption 564*564 under the Florida Constitution and Florida Statutes. *See* Fla. Const. art. X, § 4; Fla. Stat. Ch. 222.05. Therefore, the Objection to Claim of Exemption filed by the Creditor, Wallace Calney, should be overruled.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Objection to Claim of Exemption filed by Creditor, Wallace Calney, is hereby overruled.

[1] The law does not require the debtor own the land, *see* Fla. Stat. Ch. 222.05, *In re Mead*, 255 B.R. at 83-84.

641 So.2d 467 (1994)
MIAMI COUNTRY DAY SCHOOL, Appellant,
v.
Irving BAKST and Jackie Bakst, Appellees.
No. 94-208.
District Court of Appeal of Florida, Third District.
August 17, 1994.
468*468 Perse & Ginsberg and Joseph T. Robinson and Todd R. Schwartz, Miami, for appellant.
Ackerman, Bakst & Cloyd and Michael Bakst, West Palm Beach, for appellees.
Before BARKDULL, HUBBART and BASKIN, JJ.
BASKIN, Judge.
Miami Country Day School [School] appeals a non-final order ruling that the houseboat owned by Jackie Bakst qualifies as homestead pursuant to Article X, section 4 of the Florida Constitution, and section 222.05, Florida Statutes (1993). We affirm.
The School obtained a money judgment against Irving and Jackie Bakst for failure to pay tuition. To satisfy the judgment, the School sought to levy on a houseboat owned by Jackie Bakst. The 3,000 square foot houseboat, her sole residence since 1986, is fully equipped for occupancy and includes four bedrooms, three bathrooms, and a garden. The houseboat was towed to its present location; it was never equipped with a motor and is connected to the dock via walkways and gangplanks. Bakst does not own the land or body of water beneath the houseboat, which is docked at a marina pursuant to a rental agreement. The marina provides hookups for necessary connections including water and electric supplies. Bakst sought to avoid a forced sale by asserting that the houseboat was exempt property. The trial court ruled that the houseboat qualified as homestead. The School appeals.
In determining whether Bakst's houseboat is entitled to an exemption, we follow well-settled law and liberally construe the homestead exemption in favor of the party claiming the exemption and in furtherance of the exemption's purpose. *Butterworth v. Caggiano*, 605 So.2d 56 (Fla. 1992), and cited cases. "As a matter of public policy, the purpose of the homestead exemption 469*469 is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law." *Public Health Trust of Dade County v. Lopez*, 531 So.2d 946, 948 (Fla. 1988). Applying those principles, we hold that the trial court properly ruled that Bakst is entitled to a homestead exemption for her houseboat.
Article X, section 4 provides, in pertinent part: "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, ... the following property owned by a natural person: (1) a homestead... ." Section 222.05, Florida Statutes (1993), sets forth when certain homesteads located on leased properties are entitled to the exemption, and provides that "any person owning and occupying any dwelling house, including a mobile home used as a residence, ... on land not his own which he may lawfully possess, by lease or otherwise, and claiming such house ... as his homestead, shall be entitled to the exemption of such house ... from levy and sale aforesaid." Although section 222.05 does not expressly state that a houseboat is entitled to homestead exemption, the language of the section is

noninclusive thereby permitting designation of a houseboat as homestead if it is a dwelling house. Pursuant to section 222.05, the term dwelling house *includes* a mobile home and a modular home: that language suggests that the legislature intended to enlarge the definition of the term "dwelling house" rather than to limit the term to modular and mobile homes or to list every possible type of dwelling house. *In re Mangano*, 158 B.R. 532 (Bankr.S.D.Fla. 1993); *In re Meola*, 158 B.R. 881 (Bankr.S.D.Fla. 1993); *see Yon v. Fleming*, 595 So.2d 573, 577 (Fla. 4th DCA), *review denied*, 599 So.2d 1281 (Fla. 1992). Therefore, Bakst, whose sole permanent residence is the houseboat, is entitled to homestead exemption if the houseboat she owns is a dwelling house.

Under the circumstances of this case, we hold that the houseboat is a dwelling house;[1] thus, the trial court properly determined that Bakst is entitled to the exemption. The houseboat is similar to a mobile home which the legislature has determined is a dwelling house; although both may be moved, they are self-contained living environments, designed for use as residences rather than transportation. *See In re Scudder*, 97 B.R. 617, 619 (Bankr.S.D.Ala. 1989) (houseboat subject to homestead exemption). Here, Bakst uses the houseboat as her sole, permanent residence.[2] It is fully equipped for occupancy and supplied with utilities via dock connections. In addition, the houseboat cannot be used as a vehicle: it has never been equipped with a motor and was towed to its present location. Therefore, this case is unlike *In re Major*, 166 B.R. 457 (Bankr. M.D.Fla. 1994), in which the court held that a boat, which had an inoperable motor because the owners lacked funds to repair the motor, was not subject to homestead exemption. The *Major* court recognized that the exemption may be extended to a houseboat because "a houseboat ... is specially designed to serve as a permanent dwelling." *Major*, 166 B.R. at 458. Our holding is supported by Florida bankruptcy courts, applying Florida homestead law, which have drawn an analogy to mobile homes and have held that a travel trailer, *Meola*, 158 B.R. at 881, and a motor home, *Mangano*, 158 B.R. at 532, are dwelling houses. Based on that analogy, the *Meola* and *Mangano* courts concluded that such property is entitled to homestead exemption under Article X, section 4 and section 222.05.

We hold that the trial court correctly ruled that Bakst is entitled to a homestead exemption 470*470 for her houseboat. The decision we reach today is in keeping with the spirit of Florida homestead law which endeavors "to shelter the family and provide it a refuge from the stresses and strains of misfortune." *Collins v. Collins*, 150 Fla. 374, 377, 7 So.2d 443, 444 (1942). Accordingly, the order is affirmed.

Affirmed.

[1] Because the statute does not define the term "dwelling house," the term "must be given its ordinary and commonly accepted meaning as it is used in the particular statutory context." *Hancock Advertising, Inc. v. Department of Transp.*, 549 So.2d 1086, 1088 (Fla. 3d DCA 1989) (citation omitted), *review denied*, 558 So.2d 17 (Fla. 1990); *see Butterworth v. Caggiano*, 605 So.2d 56, 58-59 (Fla. 1992). Dwelling house is defined as "a house or sometimes part of a house that is occupied as a residence... ." *Webster's Third New Int'l Dictionary* 706 (1986).

[2] There is no dispute that Bakst fulfilled the homestead permanency requirement. *Cooke v. Uransky*, 412 So.2d 340 (Fla. 1982).

[redacted]

IN THE CIRCUIT COURT FOR SARASOTA COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

[redacted]

Division

Deceased.

PETITION TO DETERMINE HOMESTEAD STATUS OF REAL PROPERTY
(testate)

Petitioners, [redacted], as Co-Personal Representatives of this estate, alleges:

1. The decedent, [redacted], died testate on [redacted], domiciled in Sarasota County, Florida, and was not survived by a spouse or a minor child of the decedent.

2. At the time of decedent's death, the decedent owned and resided on the following described contiguous parcel of real property located at [redacted] (the "Property"):

[redacted]

3. The Property is contiguous and located in a municipality and is less than one-half acre. Decedent's interest in the Property was full fee simple ownership.

4. Decedent's Will, which has been admitted to probate and record by Order of this Court, contains a provision in Article IV. that specifically devises the residuary estate to his adult children, [redacted]

Filed [redacted] **- Karen E. Rushing, Clerk of the Circuit Court, Sarasota County, FL**

5. The Property constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida.

6. Petitioners believe that upon decedent's death, decedent's entire interest in the Property was devised by Article IV. of decedent's Will and the Property passed to persons who are heirs of the decedent as set out in paragraph 4 above and title to the Property descended to and the constitutional exemption from claims of decedent's creditors inured to [redacted] who are heirs of the decedent. Decedent's homestead is fully exempt from the claims of decedent's creditors.

7. The name of the decedent's surviving spouse, if any, and the names of the decedent's surviving descendants and devisees having an interest in the decedent's estate, if any, and their respective relationships to decedent and dates of birth of descendants are:

NAME	RELATIONSHIP	DATE OF BIRTH
[redacted]		

8. The Notice to Creditors published on [redacted], and the expiration date to file claims is [redacted] Creditors who have filed timely claims in this estate are: [redacted]

9. The only persons, other than Petitioners, having an interest in this proceeding, including unpaid creditors, and their respective addresses and interests are listed in paragraph 8 above.

10. All interested persons have either joined in this Petition, consented to the relief requested, been served proper notice of this proceeding, or waived notice thereof.

Petitioners request that an order be entered determining that the Property constituted the exempt homestead of the decedent, title to which, upon decedent's death, descended and the constitutional exemption from claims inured as set forth in paragraph 7, above; directing the Petitioner to surrender possession of the Property to the persons identified in paragraph 8 above; and directing that the Petitioners shall have no further responsibility with respect to the Property.

Petitioners further agree that the proceeds from the sale of the homestead property shall be distributed to and held in [redacted], to be held in escrow until the expiration of the creditor's claim period and pending further order of this Court.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on September 1, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Determine Homestead Status of Real Property of the Estate of [redacted] deceased, was served upon the following interested party on September 6, 2023:

via U.S. mail:

[redacted]

[redacted]

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION FOR SUMMARY ADMINISTRATION
(testate - single petitioner)

Petitioner, _____ alleges:

1. Petitioner has an interest in the above estate as _____ _____. Petitioner's address is set forth in paragraph 3 and the name and office address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, _____, whose last known address was _____ _____, and, if known, whose age was _____, and the last four digits of whose social security number are _____, died on _____, _____, at _____, and on the date of death, decedent was domiciled in _____.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationships to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE [if Minor]

4. Venue of this proceeding is in this county because _____
_____.

5. The original of the decedent's last will, dated _____, _____, and codicil(s), if any, dated _____,_____, is/are in the possession of the above court or accompany/accompanies this petition.

6. Petitioner is unaware of any unrevoked will of decedent other than as set forth in paragraph 5.

7. Petitioner is entitled to summary administration because:

[Strike each statement that is not applicable.]

a. Decedent's will does not direct administration as required by Florida Statutes Chapter 733.

b. To the best knowledge of the petitioner, the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed $75,000.

c. The decedent has been dead for more than two years.

8. Domiciliary probate proceedings (are)(are not) known to be pending in another state or country. Letters have been issued by _____
the address of which is _____
to _____, whose address is _____.

[delete if inapplicable]

9. The following is a complete list of the assets in this estate and their estimated values, together with those assets claimed to be exempt [separately designate protected homestead and exempt property]:

Assets Estimated Value

10. With respect to claims of creditors: [Strike each statement that is not applicable.]

a. All claims of creditors are barred.

b. Petitioner has made diligent search and reasonable inquiry for any known or reasonably ascertainable creditors.

c. The estate is not indebted.

d. The estate is indebted and provision for the payment of debts and the information required by Florida Statutes Section 735.206 and Florida Probate Rule 5.530 is as set forth on the attached schedule.

e. All creditors ascertained to have claims will be served with a copy of this petition prior to the entry of the Order of Summary Administration.

Petitioner acknowledges that any known or reasonably ascertainable creditor who did not receive timely notice of this petition and for whom provision for payment was not made may enforce a timely claim and, if the creditor prevails, shall be awarded reasonable attorney's fees as an element of costs against those who joined in the petition.

11. It is proposed that all assets of the decedent, including exempt property, be distributed to the following:

Name	Asset, Share or Amount

Petitioner waives notice of hearing on this petition and requests that the decedent's last will and codicil(s), if applicable, be admitted to probate and an order of summary administration be entered directing distribution of the assets in the estate in accordance with the schedule set forth in paragraph 11 of this petition.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on _____, _____.

_____

Petitioner

_____

Attorney for Petitioner

Email Addresses:

_____

_____

Florida Bar No. _____

_____

_____

(address)

Telephone: _____

[Print or Type Names Under All Signature Lines]

THE CIRCUIT COURT OF THE _____ JUDICIAL
CIRCUIT IN AND FOR _____ COUNTY
STATE OF FLORIDA

IN RE ESTATE OF PROBATE DIVISION

_____ File No.:

Deceased.

ORDER OF SUMMARY ADMINISTRATION

On the Petition of _____ for Summary Administration of the Estate of _____, deceased, the Court finding that the decedent died on _____ in _____; that all interested persons have been served proper notice of the Petition and hearing or have waived notice thereof; that the material allegations of the Petition are true; that the will dated _____ _____ has been admitted to probate by order of this court as and for the last will of the decedent; that the decedent's estate qualifies for Summary Administration; and that an Order for Summary Administration should be entered; it is

ADJUDGED THAT there be immediate distribution of the estate assets as follows: a one-half interest in the following described condominium in _____ County,

[Legal Description]

Comprising the entire assets of the estate, shall be hereby transferred to _____ (1/2), _____ (1/4) and _____ (1/4).

ORDERED on _____, 20_____.

_____
Circuit Judge

Quick Solutions for insuring without an exception for estate tax liens

This tool is not comprehensive, dates of death prior to 2005 require further inquiry.
Detailed explanations are available in The Fund Title Notes SC 2.10

FLORIDA FIRST

Pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001, as amended, resident and nonresident decedents dying on and after Jan. 1, 2005, will not be subject to the Florida estate tax. **FLORIDA ESTATE TAXES ARE CLEARED WITH AN AFFIDAVIT OF NO ESTATE TAX DUE (See form DR-312 and DR-313)**

FEDERAL FAST

Affidavit of no estate tax due (TN 2.10.08)

Recording of a **DR-312** is sufficient to clear state and federal estate taxes if the taxable estate was valued below the threshold in the year of the decedent's death.

2005: $1,500,000
2006 through 2008: $2,000,000
2009: $3,500,000
2010: $5,000,000 (or may elect a full exemption)
2011: $5,000,000
2012 – 2017: $5,000,000 indexed for inflation
2018 – present: $10,000,000 indexed for inflation

Affidavit that transaction divests the lien

In certain circumstances, a sale to an arm's length bona fide purchaser for value divests the lien of estate taxes of a decedent who was a US Citizen:

- A sale by the decedent's surviving spouse as successor by right of survivorship (whether tenant by the entireties or otherwise) (TN 2.10.02, A.)
- A sale by a surviving joint tenant (without regard to marital status) (TN 2.10.02, B.)
- A sale by remainderman after death of life tenant (TN 2.10.06)
- A sale by a successor trustee or the beneficiaries of a trust (TN 2.10.10)
- A sale by the PR of the decedent's estate
    - Necessary to cover expenses of administration (TN 2.10.04)
    - After the death of the surviving spouse to clear the estate taxes of the FIRST spouse to die (TN 2.10.02)

Marital deduction: No requirement for estate tax clearance in sale by surviving spouse who elected the marital deduction; CMA must be recorded.

FOREIGN FAILS

Different rules apply in the case of the estate of a decedent who is not a citizen of the United States

1. There is a much lower threshold for the size of the estate necessitating the filing of a federal tax return: $60,000.00 of US assets in the gross estate (TN. 2.10.08)
2. Arm's length transfer to BFP for value doesn't divest the lien (See TN 2.10.02, TN 2.10.06, and TN 2.10.10)

FINAL FINISH

If none of the foregoing methods of clearing the question of estate taxes is available, consult the Title Notes for a more complete understanding and specific instructions, including but not limited to

TN 2.10.01 Assurance by Personal Representative of Ample Estate Funds to Pay Not Sufficient
TN 2.10.03 Estate Tax Liens Clearance, including procedures for obtaining a transaction specific release. See also Concept articles including those published June 2010 and Feb 2002
TN 2.10.08 Property Subject to — May Differ from Property Included in Administration — Estate Taxes.

Affidavit

[No Florida Estate Tax Due]

I, the undersigned _____ [*print name of personal representative*] do hereby state:

1. I am the personal representative as defined in section 198.01 or section 731.201, Florida Statutes, as the case may be, of the estate of _____ [*print name of decedent*].
2. The decedent referenced above died on ____/____/____ [*date of death*], and was domiciled (as defined in s. 198.015, F.S.) at the time of death in the state of _____. On date of death the decedent was (*check one*): ____ a U.S. citizen ____ **not** a U.S. citizen.
3. A federal estate tax return (federal Form 706 or 706-NA) is not required to be filed for the estate.
4. The estate does not owe Florida estate tax pursuant to Chapter 198, F.S.
5. I acknowledge personal liability for distribution in whole or in part of any of the estate by having obtained release of such property from the lien of the Florida estate tax.

Under penalties of perjury, I declare that I have read this Affidavit and the facts stated in it are true. This declaration is based on all information of which the personal representative has any knowledge [ss. 92.525(1)(b); 213.37; 837.06, F.S.].

Executed this _____ day of _____, 20_____.

_____

(Signature)

_____

(Print Name)

Telephone Number: _____

Mailing Address: _____ City/State/ZIP: _____

STATE OF _____
COUNTY OF _____
The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Arms' Length Transaction — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [i*nsert legal description of real property*] ("Subject Property")

2. Affiant is the surviving spouse of _____ ("Decedent"), and the owner of Subject Property by virtue of that certain deed recorded _____ in O.R. _____, Page_____, and/or under Instrument No. _____, of the Public Records of _____County, Florida.

3. Affiant was continuously married to Decedent from a time prior to taking title to Subject Property through the date of death of Decedent.

4. Decedent was a U.S. citizen or permanent resident at the time of his death.

5. Affiant is conveying Subject Property to a bonafide purchaser for full and adequate consideration in an arms' length transaction.

6. This affidavit is made to induce **Old Republic National Title Insurance Company** ("Title Insurer") to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

_____
(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Continuous Marriage — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [*insert legal description of real property*]

2. Affiant is the surviving spouse of _____, deceased, ("Decedent") and the owner of the real property described in item 1 above by virtue of that certain deed recorded _____ in O.R. _____, Page_____, and/or Instrument No. _____, Public Records of _____County, Florida.

3. Affiant was continuously married to Decedent from a time prior to taking title under the deed described in item 2 through the date of death of Decedent.

4. This affidavit is made to induce **Old Republic National Title Insurance Company** ("Title Insurer") to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

_____
(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Estates — Diligent Search and Inquiry Regarding Creditors]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [*insert legal description of real property*] ("Subject Property")

2. Affiant filed a Petition for Summary Administration in the Estate of _____ ("Decedent"), under Case No. _____ in the County of _____, State of Florida.

3. Decedent was the owner of Subject Property at time of death.

4. Affiant has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors of the Estate of Decedent and found none to which the estate is indebted.

_____

(Affiant)

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Affidavit

[Homestead — Devised Non-Homestead]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

   [i*nsert legal description of real property*] ("Subject Property")

2. Affiant, is the _____ [*state relationship to decedent*] of the decedent, _____ [*state name of decedent*], ("Decedent") for whom there was probate filed in the County of _____, State of Florida, under Case No._____.

3. Decedent was the owner of Subject Property on the date of his/her death, _____/_____/_____ [*state date of death*].

4. Subject Property was not the homestead of Decedent or that of his/her family, nor was it contiguous to the homestead of Decedent or that of his/her family.

_____
(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

NALA | THE PARALEGAL ASSOCIATION

CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the NALA online portal. Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at https://www.nala.org/certification/certtest2view. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	**Session Topics (Description and Speakers)**	**Validation of Attendance**
1.0 Substantive	*Small Estates, Summary Administration & Title Requirements* /	*Kara Scott*
	Kara Scott	

Name of CP (Please Print)				NALA Account Number (On Mailing Label)
				149113
Signature of CP				Name of Seminar/Program Sponsor
				Small Estates, Summary Admin & Title Requirements / ATFS, Inc.
Address				Authorized Signature of Sponsor Representative
				Kara Scott
				Date of Educational Event:
City:		State (XX):		
Preferred e-mail address				Location:
				Recorded Webinar

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	

FL BAR Reference Number: 2504059N

Title: Small Estates, Summary Administration and Title Requirements

Level: Intermediate

Approval Period: 06/01/2025 - 12/31/2026

CLE Credits

General	1.0

Certification Credits

Real Estate	1.0
Wills, Trusts and Estates	1.0