Bloomberg BNA

Tax Management
Estates, Gifts and Trusts Journal™

Florida Homestead Law: A Client's Benefit Can Be an Advisor's Nightmare

By Brandon A.S. Ross, Esq.
Loeb & Loeb LLP
Washington, D.C.

INTRODUCTION

A recent Florida case, *Stone v. Stone*,[1] reminds estate planning advisors of how unique, complicated and confusing Florida homestead laws are. These laws not only baffle and surprise practitioners outside of Florida whose clients need advice on the Florida homestead law, but also stymie the Florida courts interpreting these laws. This Article explains Florida's homestead laws, raising issues that advisors outside of Florida should be aware of, providing a review of these laws for Florida practitioners and giving practical pointers for all practitioners on Florida homestead matters. Practitioners who are not admitted to practice law in Florida generally should engage Florida counsel in estate planning matters as appropriate in order to give their clients the benefit of Florida experience and to avoid any appearance of unauthorized practice of law.[2]

Florida homestead law has three parts: (1) restrictions on devise; (2) exemptions from real property tax and limitations on annual increases in property tax values; and (3) protection from creditors. Those three aspects of Florida homestead may be boiled down in their most basic and general sense as follows: A Florida resident may not freely choose who receives such resident's homestead at death, if the decedent is survived by a spouse or minor child; each Florida resident may exempt up to the first $50,000 in the appraised value of his or her homestead from real property tax and furthermore, the value of the homestead may not increase more than 3% a year, unless there is a change of ownership; and most creditors may not force a sale of a Florida homestead. Only a Florida resident and his or her heirs qualify for some or all of these three homestead benefits.

The homestead laws are intended to not only benefit the individual Florida resident, but also his or her family in certain situations. The public policy underlying these three Florida homestead benefits 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 family may live beyond the reach of financial misfortune and demands of creditors.[3] As explained in more detail below, there are certain exceptions to the creditor protection.

WHAT IS FLORIDA HOMESTEAD?

The start of the analysis of obtaining the Florida homestead real property benefits is determining if the

[1] 157 So. 3d 295 (Fla. Dist. Ct. App. 2014), *reh'g denied* No. 4D11-4541, 2015 BL 76161 (Fla. Dist. Ct. App. Mar. 16, 2015).

[2] For more information about the rules governing the unauthorized practice of law including Model Rule 5.5 of the American Bar Association Model Rules of Professional Conduct, see generally 801 T.M., *Conflicts, Confidentiality, and Other Ethical Considerations in Estate Planning*.

[3] *See McKean v. Warburton*, 919 So. 2d 341 (Fla. 2006).

ISSN 0886-3547

home qualifies as ''homestead.'' When determining qualification for homestead, there are three elements: (1) acreage; (2) residency; and (3) ownership. ''Homestead'' property is a real property interest in a home limited to a certain acreage, depending on the location of the home, deemed to be owned by a Florida resident and occupied by such resident or his or her heirs.

Acreage

The Florida Constitution provides the acreage criteria for homestead:

> A homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land upon which the exemption shall be limited to the residence of the owner or the owner's family.[4]

Accordingly, Florida protects a home located as follows: if the home is outside of a municipality, the homestead may consist of up to 160 acres and, inside a municipality, up to one-half acre. The protected area cannot be reduced if the location of the home becomes a municipality after homestead status is in effect, unless the owner consents to the reduction.

Residency

The Florida homestead real property benefits are for Florida residents. To qualify as a Florida resident, one must have a home in the state with the intent to reside in Florida permanently.[5] Specifically, an individual must have legal, beneficial or equitable title in the home and in good faith make the property his or her permanent residence. As there are many factors in the determination of Florida residency, including having a home and living in the state, which are weighed differently depending on the circumstances, establishing Florida residency will not be discussed in detail in this Article. Another element to residency is occupancy of the home by the Florida resident or his or her heirs. Occupancy is generally considered to be a prerequisite for obtaining the homestead benefits, prohibiting vacant lots and homes under construction from attaining homestead status.

Ownership

The last part of the general requirements for qualifying for Florida homestead real property tax benefits is deemed ownership of the home. As the specifics of this homestead requirement and the other two requirements vary depending on the homestead benefit being analyzed, the variations in the qualifications for homestead among the three homestead real property benefits are detailed in the discussions below.

HOMESTEAD DESCENT AND DEVISE

Law

Florida Statutes §732.401 provides for the descent of homestead property. If not properly devised, a Florida homestead will pass by intestacy. If not devised as authorized by law, however, and if the decedent's spouse and one or more descendants survive the decedent, the surviving spouse takes a life estate in the homestead, with a vested remainder to the descendants living at the decedent's death, per stirpes.[6] Alternatively, the surviving spouse may elect to take the homestead as a 50% tenant in common with the remaining undivided 50% interest vesting in the descendants living at the decedent's death, per stirpes.[7] The Florida legislature implemented this election for the surviving spouse to alleviate any burden caused by the costs and responsibilities of being a life tenant.[8]

The Florida Constitution provides the restriction on devise of a homestead as follows:

> The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse.[9]

Florida Statutes §732.4015 fleshes out the restrictions on homestead devise, stating that when the homestead owner is survived by a spouse and no minor children, the owner may devise the homestead to the owner's spouse.[10] For purposes of the restrictions on devise of homestead, ''owner'' includes the grantor of a written revocable trust and ''devise'' includes a

---

[4] Fla. Const. art. X, §4(a)(1).

[5] *See Hillsborough Inv. Co. v. Wilcox*, 13 So. 2d 448 (Fla. 1943).

[6] Fla. Stat. §732.401(1).

[7] Fla. Stat. §732.401(2).

[8] Staff of Fla. S. Comm. on the Jud., Bill Analysis and Fiscal Impact Statement for Bill CS/SB 1544 (Mar. 29, 2010); *see* Jeffrey A. Baskies, *The New Homestead Trap: Surviving Spouses Are Trapped by Life Estates They No Longer Want or Can Afford*, 81 Fla. Bar J. 69 (June 2007).

[9] Fla. Const. art. X, §4(c).

[10] *See* Fla. Stat. §732.4015(1).

ISSN 0886-3547

disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.[11]

Thus, constitutionally, a Florida resident decedent may not choose who will receive his or her primary residence at death if the residence qualifies as homestead property and the decedent is survived by a minor child. If the decedent is survived by a spouse and no minor child, the decedent may devise the homestead to his or her spouse, but no one else. The Florida Statutes extend the restrictions on devise to include a grantor who owns the homestead through a revocable trust and a bequest provided under revocable trust agreement. The statutory rules acknowledge that the grantor's lifetime beneficial interest, even if the grantor is not the legal owner because someone else is the trustee of the grantor's revocable trust, still qualifies the ownership for the purposes of the restrictions on homestead devise.[12]

Notably, except for the joinder of the spouse when transferring the homestead (whether or not the transferor owns the home individually or jointly), the homestead transfer restrictions do not apply during the life of the owner of the homestead.[13]

Joint Ownership

As for a jointly owned home, the restrictions on devise of homestead do not apply to a home owned as tenants by the entirety or as joint tenants with right of survivorship.[14] Those interests pass by operation of law to the surviving joint tenant or tenants. On the other hand, the restrictions on devise of homestead do apply to a tenant in common interest in homestead real property.

Similarities and Differences of Homestead Qualifications

General

The rules for the qualification of homestead for purposes of descent and devise are similar to the general requirements stated above. For the restrictions on homestead devise, the determination of homestead qualification is made as of the death of the owner.

Probate

If, upon the decedent's death, there is a question of whether a home qualifies as Florida homestead property, the decedent's Personal Representative may petition the probate court to determine if the home qualifies as homestead and to whom the property passes. This petition may cause an estate that was not being probated to be opened for probate. The homestead is not a part of the Florida probate estate, but a Personal Representative may take possession of the homestead to preserve and protect it until the probate court determines homestead status.[15] This determination of homestead provides assurance that the home will pass appropriately at death, though it is too late to change the homestead owner's estate planning documents if the court determines that the homestead had been invalidly devised.

Practical Considerations for Restrictions on Homestead Devise

As an invalid devise may result in the homestead passing to unintended beneficiaries, or to intended beneficiaries, but in a manner that was not intended by the client, advisors should pay careful attention to any planning for transfer of a Florida homestead.

Identity of Homestead

There are various techniques for avoiding the potentially adverse effects of the Florida restrictions on homestead. As a threshold issue, an estate planner for a Florida client needs to determine whether the client's primary home is his or her homestead. This determination may be as easy as reviewing on the internet the property tax records from the property appraiser's office for the client's county of residence because these public tax records show whether the client received the homestead real property tax exemption. The attorney should also make his or her own determination of homestead based on discussions with the client as to whether the client's home qualifies for homestead, independent of what the tax records show, because individuals may qualify for the real property tax exemption when, technically, they may not be entitled to receive that benefit.

Drafting Provisions for Homestead

After determining that the home is homestead property, the estate planner may choose not to provide any provisions for the transfer of the homestead where the client may be survived by a spouse or minor child, allowing Florida's laws of homestead descent to dictate the transfer of the property on the client's death. Alternatively, for a married client with no minor child, the attorney may choose to affirmatively provide in the client's will or revocable trust agreement that the homestead passes outright to the surviving spouse.

Waiver of Spousal Homestead Rights

If the estate planner decides that Florida's restrictions on homestead devise will inhibit the estate plan

[11] *See* Fla. Stat. §732.4015(2).

[12] *See* Fla. Stat. §732.4015(2)(a).

[13] *See* Fla. Stat. §732.4017.

[14] *See* Fla. Stat. §732.401(5).

[15] *See* Fla. Stat. §733.608(2).

ISSN 0886-3547

or does not want to take the chance of violating those rules, the planner may use a marital agreement, homestead waiver or irrevocable trust to avoid any adverse consequences. Notably, all three of these techniques rely on the Florida Statutes, though the use of a homestead waiver that is not a valid marital agreement has been questioned by some Florida practitioners.

Marital Agreements

Florida Statutes §732.702(1) allows a surviving spouse to waive rights to homestead, ''wholly or partly, before or after marriage, by written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses.'' Accordingly, a typical pre- or post-marital agreement requires full financial disclosure by both parties who should be represented by independent counsel, and may be used by a couple to avoid the homestead devise restrictions with respect to each other, but the agreement will not affect any minor child's interest in the homestead.

Homestead Waiver

As the typical marital agreement is an extensive endeavor and may be much more than the client wants, attorneys have used a document commonly known as a ''homestead waiver,'' which is typically only a few pages. Some attorneys do not think that a homestead waiver, which is an abbreviated marital agreement, will suffice for the waiver of the spousal right to homestead because the waiver is not often carried out in the same manner as a typical premarital agreement or postmarital agreement. The homestead waiver, however, may be acceptable to some Florida estate planners so long as there is some sort of financial disclosure, acknowledgement that the parties knew of their respective rights to consult independent counsel and the document is executed in the same manner as a marital agreement. If a waiver includes these features, Florida Statutes §732.702(1) would also be satisfied.

Joint Deed: Stone v. Stone

Unfortunately, judicial interpretation of Florida Statutes §732.702(1) has led to a disagreement in the courts whether the homestead restrictions on devise may also be waived in a deed executed by both spouses.[16] In a 2011 case, the Third District Court of Appeals ruled that a husband's joint execution of a warranty deed with his wife, transferring the homestead to his wife, constituted a waiver of his spousal rights to the homestead.[17] Common practice had been for real estate deeds to provide that the transferor was transferring the property with ''all the tenements, hereditaments and appurtenances thereto.'' Thus, a deed containing this language that transfers a home from one spouse to another or from joint name to one of their names has been construed to be a waiver of homestead rights by the transferring spouse because ''hereditaments'' means anything capable of being inherited.

Many advisors believe that the court's finding of a spousal homestead waiver from a deed executed by both spouses was without merit. In the end the opinion was effectively vacated when the appeal was withdrawn,[18] leaving the Circuit Court's holding that the deed constituted a homestead waiver in place.

However, last November, the Fourth District Court of Appeals agreed with the original conclusion of the Third District in *Stone v. Stone*, holding that a joint deed from husband and wife to each of them as tenants in common waived their spousal homestead rights to the home.[19] This recent case confirmed advisors' fears of possible inadvertent waivers of spousal homestead rights through deeds signed by both spouses without even a mention of ''waiver'' where the deeds use the archaic term ''hereditaments.'' Even though many estate planners disagree with this ruling by the court, the ruling has not been overturned yet.

Homestead Trust

The last option for an estate planner to avoid Florida's restriction on the devise of homestead is for the client to transfer the property during his or her lifetime to an irrevocable trust. Florida Statutes §732.4017 permits the owner of homestead property to transfer the homestead during his or her life to an irrevocable trust without restrictions on post-death devise, even if the client reserves the right to a lifetime beneficial interest in the property that qualifies for the homestead real property tax exemption discussed below. The client may also have a reversion or possibility of reverter without being subject to the restrictions on homestead devise. Essentially, this type of trust would allow the client to continue to qualify for the homestead benefits discussed below while avoiding the restrictions on devise, and the homestead could revert back to the client when the restrictions on homestead cease to apply (e.g., the owner no longer has a spouse or minor child), or the trust could continue after the client's death for the beneficiaries that he or she chooses.

As the homestead waiver may still have its doubters, the full marital agreement or irrevocable homestead trust may be the safest techniques for avoiding

---

[16] *See Stone v. Stone*, 157 So. 3d at 304.

[17] *See Habeeb v. Linder*, No. 3D10-1532, 2011 BL 33451 (Fla. Dist. Ct. App. Feb. 9, 2011).

[18] *See Habeeb v. Linder*, 64 So.3d 1275 (Fla. Dist. Ct. App. 2011) (appeal withdrawn, causing original opinion to be vacated).

[19] *See Stone v. Stone*, 157 So. 3d at 304.

ISSN 0886-3547

any adverse consequences of Florida's restrictions on homestead devise.

REAL PROPERTY TAX EXEMPTIONS

Unlike the surprise that Florida clients may have on the restrictions on devise of homestead, many clients are acutely aware of the real property tax benefits of homestead. To be eligible, one must be a permanent Florida resident and must apply for the exemption.

Law

Ad Valorem Tax

The Florida Constitution grants the legal or equitable title owner (as of January 1) of a Florida home, who either lives at that home or whose legal or natural dependents live at the home, an exemption from the ad valorem tax for $25,000 of the assessed value of the home.[20] Further, Florida Statutes §196.031(1)(b) authorizes up to an additional $25,000 of exemption from tax (other than school district levies) for homes with an assessed value greater than $50,000.

This part of the Florida homestead law extends the benefit to home owners who have equitable title in the home, meaning that the holder of a life estate or beneficiary of a trust who has a lifetime beneficial interest in the trust qualifies as an ''owner'' for the real property tax exemption. Furthermore, a lessee who has a leasehold interest in a bona fide lease of a residence for at least 98 years is deemed to have equitable title for homestead purposes.[21] With the public policy of providing stability to families in mind, the real property homestead exemption benefits a home owner who allows his or her dependents to live at the home, even if the owner is not living there.

If an owner qualifies for the ad valorem tax exemption, then he or she also should qualify for the homestead benefit commonly known as the ''Save Our Homes Cap.'' The Florida Constitution prohibits changes in the annual assessment of the homestead exceeding the lower of 3% of the prior year's assessment or the percent change in the Consumer Price Index of the prior year.[22] This cap was implemented to prevent Florida residents from being adversely affected by skyrocketing housing prices because the value of each home in Florida is reassessed every year for real property tax purposes.

The cap, however, does not apply when there is a change in ownership and, on January 1 of the year following the change in ownership, the home will be reassessed at full value for real property tax purposes. Excepted from being considered a ''change in ownership'' are four types of transfers: (1) from the owner with legal title to the home to the same owner with equitable title to the home (e.g., transfers to a life estate for the original owner or a trust in which the original owner has a lifetime beneficial interest in the home); (2) between spouses, or ex-spouses due to a dissolution of the marriage, as long as the transferee spouse is otherwise eligible and timely files for the exemption; (3) by operation of the homestead descent and devise laws, to the surviving spouse or minor child; and (4) from the owner to someone who is a permanent resident and legally or naturally dependent on the owner.[23] Although the above exceptions are not considered changes in ownership, a transferee may still need to timely file for the exemption.

Lastly, the owner can transfer the tax benefit from the Save Our Homes Cap up to $500,000 of the underassessment, which is the amount by which the just value exceeds the assessed value, to another homestead established within two years of selling a homestead.[24] The owner obtains the transfer by timely filing an application for the homestead exemption, which is discussed below.

Other Exemptions

In addition to the ad valorem tax exemption and Save Our Homes Cap, Florida offers partial exemptions to widows, the blind, the disabled and veterans. The details of these exemptions are beyond the scope of this Article.

Joint Ownership

As for a jointly owned home, there are some intricacies to note.[25] If the home is owned as tenants by the entirety or as joint tenants with rights of survivorship, so long as one of the owners resides in the home, the owners will qualify for the homestead real property tax benefits. Differently, tenants in common will only receive the homestead real property tax benefits in proportion to the percentage ownership of any tenant in common who resides in the home.[26] The tenant in common who does qualify for homestead will receive the ad valorem tax benefit in proportion to his or her ownership in the home and his or her interest cannot increase more than the Save Our Homes Cap.

---

[20] Fla. Const. art. VII, §6.

[21] *See* Fla. Stat. §196.041(1).

[22] Fla. Const. art. VII, §4(d).

[23] Fla. Stat. §193.155(3)(a).

[24] *See* Fla. Const. art. VII, §4(d)(8).

[25] *See* Fla. Stat. §196.031(1)(a).

[26] *See id.*

ISSN 0886-3547

Similarities and Differences of Homestead Qualifications

To obtain these homestead real property tax benefits, the owner must apply with his or her county tax collector or property appraiser's office between January 1 and March 1 of the year that the house qualifies on January 1 as homestead property. The qualification for these homestead benefits is similar to the general requirements stated in ''What Is Florida Homestead,'' above. Importantly, qualifying for this homestead benefit does not depend on the person having legal title to the home, nor does it depend on the person living in the home. As mentioned above, the homestead qualification for the real property tax benefits extends to a lifetime beneficial interest in a home and permits the owner's dependents to live in the home without the owner. Thus, the qualification for this homestead benefit depends on who owns and resides in the house on January 1 and ultimately comes down to the homestead application being approved by the local county.

Practical Considerations for Real Property Tax Benefits

Homestead Application

Unlike the restrictions on homestead devise, clients often know about and want to qualify for the homestead real property tax benefits. Florida has made it easy for its residents to qualify for the homestead real property tax benefits. So long as the Florida resident qualifies on January 1 of the year in which he or she is applying for the benefits, and the application is filed by March 1 and accepted, the resident receives these tax benefits.

The homestead application is only a few pages long. The applicant must provide certain personal information and proof of residency, such as a Florida driver's license, Florida vehicle tag number, Florida voter registration number or declaration of Florida domicile, if any. Filing the application for these tax benefits is often very accessible and a quick process with short lines, if any. During the application period, there are kiosks established at various public places, such as shopping malls, which also serve as a reminder for new Florida residents. A knowing and willful lie on the application is a misdemeanor of the first degree punishable by imprisonment up to one year in addition to a possible fine of up to $5,000.

After qualification for and acceptance by the local government of the Florida homestead real property tax benefits, the client does not need to file an application again until there is a change in ownership. A transfer of the homestead from a homestead owner to his or her revocable trust may be thought of as a change of ownership, but as mentioned above, this is not the type of change in ownership that triggers loss of the homestead tax benefits.

The owner does need to inform the county of the new form of ownership in the revocable trust, however. Notification requirements can vary by county. For example, some counties may require the owner to re-apply for the tax benefits, while other counties may simply request a letter of instruction. Added to the application or letter of instruction will be either copies of relevant pages of the trust agreement or a certificate of trust, stating that the trustee has the legal ownership of the home and the original, individual owner still has the requisite beneficial ownership. Copies of the relevant pages of the trust agreement or the certificate of trust would also be needed for the initial application for homestead if a trust owned the home initially. Some counties provide a certificate of trust form on their tax collector or property appraiser's website. Notably, Florida counties have different forms for the application for homestead and certificate of trust, along with different requirements, necessitating obtaining these forms and confirming the requirements with the particular county of residence of the owner.

Sample language for the settlor meeting the requirements of homestead ownership through a trust is as follows:

> If the trustee shall own a residence in the State of Florida which would qualify as the settlor's homestead if the settlor owned such residence, the settlor shall have the right to use, possess and occupy such residence in such manner as will qualify the settlor's rights as an ''equitable title to real estate'' pursuant to Section 196.041 of the Florida Statutes.

Obviously, there are many ways to draft this provision, which can be made more generic by not referencing Florida or its statutes and may allow the settlor to more easily qualify his or her home for real property tax benefits in another state if the settlor changes residency. This language may be used in irrevocable trusts for the settlor. Furthermore, this language may be adapted to allow for a homestead which continues to be held in a trust or passes to a trust for a surviving spouse or surviving dependent to not trigger a change of ownership and continue the homestead benefit for those beneficiaries.

Qualified Personal Residence Trust

A specific estate planning technique that requires particular attention is a transfer of the homestead to a qualified personal residence trust (''QPRT''). The first issue arises upon the contribution of the homestead to the QPRT. This initial issue is solved by using language similar to the sample provided above. The sec-

ISSN 0886-3547

ond issue would arise if the settlor wanted to continue to use the home after the end of the QPRT term, when the beneficial interest in the home passes from the settlor to the remainder beneficiaries.

If the settlor enters into a lease of the homestead property for at least 98 years before the expiration of the QPRT term and has that lease recorded, he or she will continue to qualify for Florida's homestead and the Save Our Homes Cap benefit.[27] In a 2008 case, the lease was found to be an equitable title in the home because the settlor was considered to have use of the home for life.[28] Although this lease technique satisfies the homestead requirements, if fair market rent is not paid (which may be very hard to determine), then the settlor may be deemed to have retained an interest in the home under IRC §2036. Thus, the purpose of the QPRT may be defeated by the 98-year lease.

As the real property homestead tax exemptions can be very beneficial to a Florida client, estate planners advising Florida clients on transfers of homestead property should take extra precaution and, as mentioned above, if not licensed to practice law in Florida they should engage Florida counsel to advise on homestead matters.

CREDITOR PROTECTION

Many Florida advisors refrain from using Florida homesteads in lifetime gifting techniques because of not only the potential adverse real property tax consequences, but also the potential loss of the homestead protection from creditors. Although the homestead creditor exemption is best left to asset protection or bankruptcy specialists, estate planners often find themselves involved in advising about this aspect of Florida homestead.

Law

The Florida Constitution provides the creditor protection for homestead:

> 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.[29]

This creditor protection receives extensive coverage in the national news, providing the public with general knowledge about the protection, but also misleads the public because much of the details about the law are left out of the coverage. The Florida Constitution carves out exceptions for creditors relating to the taxes and assessments on the homestead property, and the purchase, building and improvements of the homestead.

Similarities and Differences of Homestead Qualifications

Along with the general requirements to qualify for Florida homestead discussed in ''What is Florida Homestead?'' above, there are some other notable qualification requirements for purposes of homestead creditor protection. Unlike the homestead real property tax benefits, the creditor exemption is not examined as of January 1 of the year in question, but rather when the creditor attempts to assert its rights over the home. Again, this homestead benefit is for an owner who is a Florida resident, which Federal bankruptcy courts have held does not occur until the owner has resided in the state for at least the past 180 days.[30] Similar to the other homestead benefits, the creditor protection inures to the benefit of the debtor's family as well and the owner need not live in the home to obtain this benefit.[31] The debtor may own the home directly or indirectly, in the same forms as are eligible for the other homestead real property benefits discussed above, despite the Florida Constitution referring to a ''natural person'' — though individual ownership may be the best option for qualifying for creditor protection.[32]

Florida's homestead creditor protection has been extended to many types of homes. Florida Statutes §222.05 provides:

> 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

---

[27] *See Higgs v. Warrick*, 994 So. 2d 492 (Fla. Dist. Ct. App. 2008).

[28] *See id.*

[29] Fla. Const. art. X, §4.

[30] *See In re Whitehead*, 278 B.R. 597 (Bankr. M.D. Fla. 2002).

[31] *See Friscia v. Friscia*, 161 So. 3d 513 (Fla. Dist. Ct. App. 2014).

[32] *See In re Alexander*, 346 B.R. 546 (Bankr. M.D. Fla. 2006); *but see Crews v. Bosonetto*, 271 B.R. 403 (Bankr. M.D. Fla. 2001) (finding that a home owned in a revocable trust does not qualify for the protection from creditors).

ISSN 0886-3547

entitled to the exemption of such house, mobile home, or modular home from levy and sale.

The Florida Statutes mention various types of homes (e.g., mobile homes) and deemed ownership through a lease qualifying for the homestead creditor protection. There are even decisions by the courts ruling that a motorboat qualifies for homestead because the debtor lived in the boat as his or her home, which had permanent connection with utilities.[33] Not surprisingly, motorboats have also been found not to be the type of permanent home that Florida wants to protect from creditors.[34] Accordingly, advisors of Florida clients interested in asset protection should be open to many ideas about what qualifies for Florida's homestead creditor protection.

Similar to the homestead real property tax benefits, the homestead creditor protection qualification will remain in effect until the homestead is abandoned.

Practical Consideration for Homestead Creditor Protection

To reiterate, the homestead creditor protection is a matter best dealt with by attorneys specializing in asset protection or bankruptcy. The estate planner, however, may become involved before those specialists and may need to ensure that Florida clients do not inadvertently discard the homestead creditor protection through transfers of the homestead. Many of the same practical considerations discussed with respect to the homestead real property tax benefits and the Save Our Homes Cap benefit would also apply to the homestead protection from creditors. Specifically, when a homestead is transferred in whole or in part by adding another person to the deed, estate planners should analyze whether creditor protection continues to apply in the hands of the transferee or whether the document transferring the homestead waives the homestead creditor protection.

CONCLUSION

The surprising confirmation of a homestead waiver by joint deed from *Stone v. Stone* reiterates the unique and ever-changing characteristics of Florida homestead law. Unquestionably, advising a Florida resident client whose property qualifies for homestead treatment on estate planning matters involving the transfer of homestead property or other homestead protections necessitates frequent review of the current Florida homestead law and fastidious planning for transferring the homestead.

---

[33] *See In re Mead*, 255 B.R. 80 (Bankr. S.D. Fla. 2000).

[34] *See In re Hacker*, 260 B.R. 542 (Bankr. M.D. Fla. 2000).

ISSN 0886-3547