

"The following is a very general checklist. This checklist may be helpful in preparing for a scheduled hearing before the court. Since each case is different, other documents may be required."

IN THE CIRCUIT FOR THE ELEVENTH JUDICIAL CIRCUIT IN MIAMI-DADE COUNTY, FLORIDA
CHECKLIST for Petition to Determine Homestead

ESTATE OF: _____ Case No: _____ Date of Death: _____

Attorney of Record _____ (Please circle and/or check the boxes below)

TYPE OF ESTATE: Testate: () Intestate: () Formal: () Summary: () Ancillary: ()

STEP A:

- | | |
|---|----------|
| 1. Certified Death Certificate filed? | Yes / No |
| 2. All required Notices to Creditors, Beneficiaries and Interested Parties Given? | Yes No |
| Notice served as required by Florida Probate Code Rule 5.240? | Yes No |
| And/or waivers _____ & proofs filed _____? | Yes No |
| Notice to creditors served _____ on DOR _____ on AHCA age 55+ F.S. 733.2121? | Yes No |
| Proof of publication of notice to Creditors filed? _____ or claims barred? _____ | |
| Verified diligent search Statement Regarding Creditors filed F.P.R. 5.241? | Yes No |
| Notice or consents & waivers to Petition to determine Homestead filed? | Yes No |
| 3. Verified Inventory filed as required by F.S. 733.604? | Yes No |
| All proofs of service of inventory filed as required by Rule 5.340? | Yes No |
| 4. Taxes – Affidavit of no FL tax due pursuant to F.S. 198.32(2) filed? | Yes No |
| Notice of Federal Tax return filed and served F.P.R. 5.395 filed? | Yes No |
| Federal Estate Tax Closing Letter filed? | Yes No |
| 5. Verified Petition to Determine Homestead complying with F.P.R. 5.405 filed? | Yes No |
| To include: | |
| Statement that the decedent was a Florida resident? | |
| Statement that the decedent owned and resided on the property at death? | |
| Legal description of homestead real property listed? | |
| Statement that property is inside or outside of municipality with acreage? | |
| Surviving Spouse and lineal heirs with dates of birth listed for minors | |
| Statement that property descended to, or was validly devised, and that decedent's exemption from claims of decedent's creditors inured to spouse/heirs? | |

STEP B:

- | | |
|---|--------|
| 6. Supporting Documentation: | |
| Has an affidavit of heirs been filed in this Intestate estate? | Yes No |
| Has a copy of property Tax or utility bill been filed in support of Homestead? | Yes No |
| Has a Third Party Affidavit in Support of Determination of Homestead (from a Disinterested Independent Third Party) been filed? | Yes No |
| (see requirements of Disinterested Independent Third Party on page 3) | |
| 7. Proposed Order Determining Homestead: to include: | |
| Should have the legal description and that the property is the homestead of the decedent? | |
| That the homestead property descended to or was validly devised? | |
| Identify the persons entitled to decedent's exemption from decedent's creditor claims? | |
| Define the interest of persons receiving the protected homestead? | |

8. A. Does the property of the decedent meet all four homestead criteria? Yes No
1. The property was owned by the decedent at death?
 2. The decedent was a Florida Resident?
 3. The Property was the residence of the decedent or his/her family?
 4. Property meets the size and contiguous requirement of the Florida Constitution?
 No Yes, inside municipality less than ½ Acre
 No Yes, outside municipality less than 160 contiguous acres
- B. Was the decedent's homestead validly devised? Yes No
- If so, to whom, _____,
the decedent's _____
 Intestate, and descends by intestacy to _____
- C. Does the decedent's exemption from forced sale by the decedent's creditors inure to anyone?
 No Yes, if so, to whom, _____, the
decedent's _____
9. Need a petition to designate depository to hold the proceeds from the sale of homestead property separate from other estate assets if the property is sold prior to the expiration of the creditor's period. It is suggested that the separate depository account be titled "Potential Homestead Property Account."
10. Sale of Homestead- If seeking to sell potential homestead property before it can be determined homestead property, you must verify that you published a notice to creditors and you must obtain consents from all potential persons having an interest in the property and all known creditors. If you cannot obtain consents you may set the petition for sale of homestead for hearing with notice to all persons stated above.

Florida Constitution Article X, Section 4, Homestead; exemptions. See also F. S. 732.401, 732.4015

- (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, 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 owner's family; (2) personal property to the value of one thousand dollars.
- (b) These exemptions shall inure to the surviving spouse or heirs of the owner.
- (c) 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 if married, 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. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

ADDITIONAL INFORMATION

HOMESTEAD

Requirements for *Disinterested Independent Third Party**

Affidavits filed in support of a Petition for Determination of Homestead Real Property

1. The affiant must have personal knowledge of the facts alleged in the affidavit.
2. The affiant must establish their standing to make the affidavit.
3. The affiant must either list the name of the surviving spouse of the decedent, or if the spouse did not survive the decedent, state that the decedent remained unmarried until demise.
4. The affiant must list the names of the issue of the decedent, and if any issue predeceased the decedent, the names of the issue of the predeceased issue of the decedent.
5. The affiant must state affirmatively whether there are, or are not, any surviving minor children of the decedent or unborn children of the decedent.
6. The affiant must list the street address of the real property and state whether it was, or was not, the homestead of the decedent and that the decedent did, or did not, reside upon the property until demise.
7. The notary public must state that the affiant is known to the notary public, or if not known, list the identification produced by the affiant, that the affiant was sworn in, and that the affiant recited the facts listed in the affidavit.
8. The notary public must witness the signature of the affiant and notarize the affidavit.

*Disinterested Independent Third Party is defined as someone with no business or family relationship.

CLAIMS

Claims must be resolved (withdrawn, satisfied or stricken by Court*

Only at Hearing or Through Formal Notice (not in small estates)

(see below if claims are NOT resolved)

IF CLAIMS ARE NOT RESOLVED, ADDITIONALLY: HEARING WITH NOTICE ON CREDITORS WITH UNRESOLVED CLAIMS **OR** THE PETITION FOR HOMESTEAD MUST BE SERVED BY FORMAL NOTICE ON CREDITOR(S) WITH UNRESOLVED CLAIMS, PROOF OF SERVICE OF FORMAL NOTICE FILED, TIME FOR OBJECTION(S) LAPSE, NO OBJECTION(S).

SUMMARY ADMINISTRATION

JUDGES WILL NOT ALLOW THE SALE OF REAL ESTATE IN A SUMMARY ADMINISTRATION. You must upgrade to formal administration, to strike claims or require a depository to hold cash assets.

SALE OF REAL ESTATE

ALL JUDGES WILL REQUIRE THE FOLLOWING FOR SALE OF REAL ESTATE: PETITION SIGNED BY PERSONAL REPRESENTATIVE(S) AND ATTORNEY(S); COPY OF REAL ESTATE CONTRACT; SIGNED BROKER LETTER WITH COMPS OR REAL ESTATE APPRAISAL* (Appraisal mandatory on all sales exceeding 600k) CONSENTS TO SALE OF ALL RESIDUARY BENEFICIARIES OR DEVISEES IF DEVISED; or set the matter for hearing and notice must be provided to all potential persons having an interest in the property and all known creditors. You must also publish a notice to creditors.

ALSO: PETITION DESIGNATING A RESTRICTED DEPOSITORY UNDER FLORIDA STATUTE 69.031 FOR CASH ASSETS WITH PROPOSED ORDER DESIGNATING THE DEPOSITORY (UNLESS ALREADY ON FILE).

REMINDER: Once the Court has entered an order declaring the homestead nature of a property, the Court loses jurisdiction to enter any further orders regarding the property such as a petition for sale of the property.

Note- Please see the forms section of the [Probate Attorney's Corner](#) as it contains numerous standardized petitions and orders that must be used where available.

