**HOMESTEAD SWEET HOMESTEAD**

**BY: WILLIAM G. MORRIS, ESQ.**

Florida homestead property is special. It is protected from creditor claims and gets property tax discounts. Florida even limits the ability to give away homestead in a Will or trust. All but the property tax benefits are automatic.

Protection from creditor claims is provided by Article X, Section 4 of Florida’s Constitution. That section provides no judgment is a lien against homestead property except for the payment of taxes and assessments thereon, obligations contracted for purchase, improvement or repair of the homestead or obligations contracted for house, field or other labor performed on the homestead.

Size of protected homestead depends on location. If located outside a municipality, homestead extends up to 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.

Courts have explained the purpose of the constitutional exemption is to provide the homeowner a home and to promote stability and welfare of the state when the homeowner has financial misfortune. Florida’s Supreme Court explained the exemption is to protect families. Florida courts have liberally applied the exemption to reach the intended result. That liberal application has been more expansive in some courts than others.

Some cases have held that boats and recreational vehicles can qualify as homestead and are exempt from creditor claims. Other courts have disagreed. A careful review of the decisions indicates that when the boat or recreational vehicle is used primarily for transportation, even if claimed to be used as a residence, courts are more likely to find the asset is not protected.

Florida courts have also been liberal in allowing use of part of the property for non-residential purposes and still protecting the entire property from creditor claims. The most recent example is the case of *Anderson v. Letosky*, in which a debtor rented 3 of the 4 bedrooms in his home. Creditors argued at least part of the home should not be exempt from creditor claims and that the home should be sold and the proceeds apportioned between exempt and nonexempt homestead. The trial court ruled 75% of the house was not homestead but was reversed on appeal. The appellate court ruled the entire property was protected.

The constitutional protection is automatic but the homeowner must prove the homestead is the homeowner’s residence. Cases actually go further and require that the homestead be one’s permanent residence. In one recent case, the court opined that Florida courts have not set a minimum occupancy term to establish homestead.

Review of court decisions shows a focus on primary residence in addition to permanency. Primary residence is often evidenced by such factors as location of personal property, financial accounts, memberships, physicians, lawyers and address on one’s tax return in addition to physical location. That means, there is not an automatic confirmation of homestead by simply residing in a Florida home for 183 days in a year.

Creditor protection stays attached to the property even after death as long as the property passes to heirs of the decedent. Heirs are family members defined by Florida law. If the decedent directs homestead be sold and the proceeds distributed to the heirs, or devises the homestead to someone who does not qualify as an heir, the protection is lost.

Florida’s Constitution continues its protection of the family through homestead by prohibiting transfer of a homestead by deed, mortgage, sale or gift without joinder of the owner’s spouse, even if the spouse is not on the title. The Constitution also limits devise by the owner at death if the owner is survived by a spouse or one or more minor children.

The statutes carrying out the constitutional restrictions provide that if the owner attempts to devise homestead in a constitutionally prohibited manner, the homestead passes to the decedent’s heirs and if the decedent is survived by a spouse and one or more descendants, the surviving spouse takes a life estate and after the surviving spouse’s death, homestead passes to the descendants. Surviving spouse has the option of trading his or her life estate for 50% ownership, and could then demand the homestead be sold and take his or her 50% of the proceeds.

Perhaps the best-known special treatment of Florida homestead is property tax exemptions. Unlike the constitutional protections for the benefit of families, property tax exemptions are not automatic. Application must be timely filed with the Property Appraiser of the county in which the homestead is located and the owner must prove that the homestead is the owner’s permanent residence.

Homestead property is exempt from taxes on the first $25,000 of the appraised value of the homestead, gets an additional exemption of $25,000 of valuation greater than $50,000, and another $25,000 exemption from property taxes other than school district taxes for homestead value above $100,000. Those discounts alone are valuable, but even more valuable is the “Save Our Homes” cap.

The “Save Our Homes” cap limits the annual increase in assessed value to the lesser of 3% or the percent change in the Consumer Price Index each year. In 2008, Florida’s Constitution was amended to allow portability for up to $500,000 of the cap when one sells an existing homestead and acquires a replacement homestead. The homeowner must establish the homestead exemption on the replacement homestead within 3 assessment years after abandoning the homestead exemption on the previous property.

Florida’s special treatment of homestead property can be a real financial benefit. Limitations on deeding, devising and descent can pose unexpected problems. Restrictions applicable to Florida homestead are much more complicated than can be addressed in this column. One Florida appellate court even opined that an attorney’s failure to fully understand Florida homestead was not malpractice. Nevertheless, when dealing with homestead property and its many facets, discussion with an experienced attorney is well advised.

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