

Home Sweet Home: Homestead in Florida

The Florida Homestead laws are some of the most misunderstood laws. Most people are not aware that there are three sets of Homestead laws.

The most common Homestead law that people are familiar with is the \$25,000 exemption off of the assessed value of your Homestead.

However, most people are not aware that there are two other sets of Homestead laws. Florida has a State Constitutional protection of the Homestead from creditor's claims. No creditor can force the sale of your Homestead for a debt that is not connected to the property. Examples of debts connected to the property include property taxes, home owners or condo association assessments, mortgages, mechanic's liens (someone worked on your house or supplied materials and was not paid) or Federal income taxes (they trump everything). This even applies when you file bankruptcy. Thus, you can have \$500,000 in unsecured credit card debt and they cannot touch your house. Attorneys are split on the issue of whether your Homestead maintains this creditor protection if it is in a trust. The Florida Supreme Court has never ruled on the issue though lower State Courts have held that it is protected from creditors. Federal Bankruptcy Court for the Middle District of Florida has split authorities on the issue. In the Bossonetto case, the Judge ruled that it was not creditor protected. Since that time another Federal Judge has ruled the other way.

Additionally, as long as you leave your house to your relatives (and certain of your spouse's relatives) at death, the Homestead remains exempt from creditor's claims including Medicaid liens (payments for State/Federal care). This protection applies to a one-half acre in a municipality and up to 60 acres outside of a municipality. You must reside in your house for it to be Homestead. Persons in long term care facilities are presumed to be returning to their house and can maintain the Homestead protection. Obviously, rental property is not Homestead.

Next, Florida has a Homestead law that applies to the transfer of the Homestead. You cannot transfer your Homestead property without your spouse's consent even if your spouse's name is not on the deed. Additionally, unless your property is owned as a Tenancy-by-the-Entrities (as "husband and wife"), then upon your death your spouse gets a life estate in the property with the remainder interest going to your children. Again, this is true even if your spouse's name is not on the deed. Also, if the Homestead is in your trust and your spouse has not waived their Florida Constitutional Homestead protection, you may have just created a title problem for the trust's beneficiaries.

One last word of caution, by adding the name of a child who is not a resident of the Homestead to the deed, you may lose some of your Homestead creditor protection as well as opening up your property to the creditors of that child. Not a wise move!