

Ten Homestead Traps for the Unwary

Florida provides its residents very generous homestead protections and exemptions, but also restricts the ability to transfer the homestead. As a result, it is very important to understand these protections, how to apply for exemptions, common mistakes that can result in your loss of these benefits, and how you may be limited in your ability to transfer your homestead.

In order for your home to be considered your “homestead” you must both own and reside in the home as your permanent residence. Ownership of the home can include both legal title and equitable title (e.g. owning the property individually or in a trust for your benefit). If your home qualifies as your “homestead” then three different types of benefits and limitations will apply, relating to: (1) real estate taxes; (2) creditor protection; and (3) limits on the ability to transfer your homestead.

The following is a list of Ten Common Mistakes Relating to Florida Homestead.

1. Failure to “Homestead” the property before December 31st

If you purchased your dream home and it is your primary residence, then you must get your ducks in a row by December 31st. This means that you must complete the purchase of the home not later than the last day of the year, it must be your primary residence on that date, and all documentation evidencing Florida domicile must be dated on or before December 31st. Homestead protection does not require U.S. citizenship; all that is required is that the property is the individual’s primary residence. However, individuals who are not U.S. citizens must be resident aliens and possess a Green Card.

2. Failure to Apply for Exemption by March 1st

You must physically apply for the homestead property tax exemption between January 1st and March 1st at your local property appraiser’s office. Failure to apply by March 1st will result in not obtaining a reduction in assessed value of up to \$50,000. It will also result in your disqualification from the 3% “Save Our Homes” valuation cap.

3. Failing to Apply for All Exemptions for Which You Qualify

In addition to the standard homestead exemption, Florida also provides additional exemptions for surviving widows and widowers, disabled individuals, disabled veterans, individuals who are blind, and senior citizens with low incomes. The deadline for applying for these exemptions is also March 1st.

4. Married Couples Failing to Apply for Exemptions Together

Both spouses should sign the application for exemption. If one spouse dies and the surviving spouse did not sign the original homestead application then the homestead exemption may be lost unless further application is made by the surviving spouse. The loss of exemption may apply to not only the reduction in the assessed value but also the 3% “Save Our Homes” cap. In addition, although regaining the standard exemption may be easy, the loss of the 3% cap could be more difficult to correct resulting in revaluation of your property and considerably more tax liability.

5. Couples with Multiple Homes

Generally, a husband and wife may only have one homestead and obtain only one exemption. As a result, if a husband and wife each own a residence, they must choose one homestead. The penalty for maintaining two competing homesteads can be severe unless each of you is able to meet all of requirements for the homestead exemption with respect to the separate properties.

6. Adding Family Members to the Deed

It is common to hear that someone has advised a Florida homeowner to add their children to the deed in order to avoid probate. Be aware that while this technique may reduce the likelihood of a Florida probate, unless the child is also residing in the home as their primary residence, it also will result in a reduction in the homestead exemption and can eliminate or destroy the homestead protection from creditors. As a result, you should carefully consider the legal and financial affects before placing your homestead in joint names with your children.

7. Renting the Homestead

If you own your homestead and decide to rent it to others while you are up north for the summer, you could easily lose your homestead protections. Generally, only incidental rental of a property is allowed without homestead being considered abandoned and with that, loss of the Florida homestead protections.

8. Renovations or Improvements to Homestead

Any change, addition, or improvement to the homestead can affect the homestead valuation and "Save Our Homes" exemption. This is true unless the change is due to repairs resulting from a casualty loss and other requirements are met.

9. Failure to Obtain Long-Term Lease (99-year lease) after QPRT Expires

If you place your homestead in a Qualified Personal Residence Trust, in order to the maintain homestead protection and exemption after the expiration of the retained interest, you must maintain an equitable interest in the property. This means you must plan ahead with a long-term lease designed to qualify as an equitable interest in the property.

10. Failure to Obtain Homestead Waiver

There are Florida constitutional and statutory prohibitions against transferring your homestead away from your spouse or minor children. As a result, devising your homestead to a trust for the benefit of your spouse is not likely effective unless there is a valid waiver of spousal homestead rights. However, even with a valid homestead waiver, if you are survived by a minor child, the devise may still be ineffective. Because of the various Florida constitutional and statutory issues associated with Florida homestead, any transfers of the homestead or use of the homestead for estate planning should only be entered into after consultation with your legal advisors.