

FLORIDA PROBATE LAW UPDATE CHANGE TO THE HOMESTEAD REAL PROPERTY RIGHTS OF A SURVIVING SPOUSE

On May 27, 2010, Governor Christ signed into law a bill that amends Section 732.401, Descent of homestead, of the Florida Statutes. The law becomes effective on October 1, 2010, and forever changes the way homestead property may pass to a surviving spouse. Under current Florida law, if less than 100% of Florida homestead real property was distributed to a surviving spouse, the surviving spouse would receive a life estate in the property with the decedent's children receiving the remainder. In many occasions this caused a financial hardship to the surviving spouse as they were responsible for the upkeep of the real property but retain no remainder interest in it. The new law changes the playing field and provides a surviving spouse with the option to receive either: (i) a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes; or (ii) an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes. The surviving spouse will have 6 months after the decedent's death to make the irrevocable election. The election must then be approved by the Florida Probate Judge as being "in the best interests of the surviving spouse during the spouse's probable lifetime." Once approved, a notice of election must be filed and recorded in the official record books of the county or counties where the homestead property is located. Additionally, until the surviving spouse makes his or her election, the costs to maintain the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants as remaindermen.

Marc J. Soss, Esquire is a Lakewood Ranch resident and nationally published author. He practices law in the areas of estate and tax planning; probate and trust administration and litigation; and corporate law. He can be reached at mjs@flestateplanning.com.