

# REAL ESTATE LAW

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## ye olde florida homestead—part 2



*A well respected Winter Park attorney, Frank Pohl practices in the area of real estate law.*

*His column covers a wide range of topics that can help you better understand and avoid potential legal issues related to buying, selling, and owning a home.*

*If you have topics or questions pertaining to the legal aspects of residential real estate that you would like to see addressed in this column, send them to Frank c/o:*

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Everybody loves to save money. Surprisingly, the Florida constitution and statutes provide an excellent opportunity to own your home and save property taxes at the same time.

As discussed in the Real Estate Law column that appeared in the May/June issue, Florida homestead laws evolved to protect the family unit. In that column, we focused on the joinder/alienation provisions of the laws. This column will cover the other two key aspects of the homestead statutes-- protection from creditors and real property tax reductions.

In order for property to be characterized as homestead, the property owner must intend to use the property as his/her principal residence and physically reside on the property. Furthermore, homestead property is limited in size (but not in dollar amount) to one-half acre within a city's limits, and up to 160 acres outside city limits, all of which must be contiguous.

### **The Homestead Exemption**

To qualify for the homestead exemption, you must own and reside on the property as of January 1st of the year in which you apply, and submit a formal application to the County Property Appraiser by February 28th of that calendar year. The application requires that you state under oath, that you are in fact residing on and will continue to reside on that property as your principal residence. Typically, if the deed is dated and notarized prior to January 1st, but not recorded until shortly after the 1st, the appraiser will treat the property as being owned by January 1st. Once the property owner has completed the filing process, the homeowner enjoys certain tax advantages and protections from creditors.

### **Tax Advantages**

The homeowner receives an automatic \$25,000 reduction in the assessor's valuation of the property, thereby creating a reduction in the amount of the annual property taxes for the homestead property. In addition, once the property is characterized as homestead, the County cannot reappraise and increase the valuation of the property, for assessment purposes, by more than 3 percent in any given year. Only homestead property enjoys this limitation.

Many people don't realize that it is also possible for a husband and wife to have two separate homesteads. For example, Michael Jones separately owns and resides in a home located in Seminole County. Mary, his wife, also separately owns and resides in a home in Orange County. Each is entitled to file a separate homestead exemption. There are also many scenarios in which one or more unrelated people own property, but only one of them qualifies for the homestead exemption. If Michael Jones and Sam Smith jointly own property and only Michael resides on the property, Michael can claim the homestead exemption, but the 3 percent appraisal exemption will only apply to Michael's share. The other half owned by Sam isn't exempt and is subject to taxation at the full valuation rate. This is true even if the County or the municipality allows the full \$25,000 reduction in tax valuation of the property.

### **Protection from Creditors**

The third important aspect of homestead law is protection from creditors.

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This area is the subject of constantly evolving law. According to the homestead laws, if you purchase property and immediately make it your homestead, the Florida Constitution provides that judgment creditors cannot take your property. Furthermore, any judgment lien against you cannot attach to your homestead property, nor to the proceeds of the sale of your homestead property (as long as those proceeds are used to purchase other homestead property). For instance, Michael has a \$2 million judgment against him stemming from a car accident in which he was at fault. The judgment creditor cannot take or attach his homestead property. Although, proving that the property is his homestead may (but does not always) require a court order, with notice to all of his creditors.

If a court order is obtained, it must also be timely. An order dated January 5, 2005, for the sale of property in February of 2005 will not be sufficient if the original sale fell through and the property is back on the market for sale in January of 2006.

Not surprisingly, title companies are reluctant to insure a sale of property in which a \$2 million judgment lien has been filed against the seller. The

cost to defend a subsequent action by the judgment creditor, even if the defense is successful, far exceeds the amount of premium that the Title Company would receive for the transaction.

Public records are laden with homestead affidavits that attempt to avoid the impact of judgment liens on property. Generally, these affidavits have not been accepted by title insurance companies, even though there is some statutory authority to do so. Recently, title companies have become more flexible, permitting reliance on affidavits that comply with their guidelines for smaller judgments.

Certain forms of liens are superior to the Florida Constitutional protections and cannot be avoided by either an affidavit or a court order. Federal tax liens “trump” state law, and must always be satisfied. Homestead property can be taken to satisfy these obligations. Real property *ad valorem* taxes are also given the same priority.

Finally, consult with your legal advisor before taking any “creative” steps with your homestead real property. Asset protection is a specialized field of law, and proper advice will not only anticipate the insulation of your homestead property from creditors, but will also factor in the evolving status of federal bankruptcy law. ▲