

## HOMESTEAD & PROBATE CHECKLIST

### IS PROPERTY OUTSIDE OF THE PROBATE ESTATE

(How was title vested at the time of death of the decedent?)

- Tenants by the Entirety
- Joint Tenants with Rights of Survivorship
- Life Estate or Enhanced Life Estate
- None of the above, but property was homestead of decedent (see below)

#### HOMESTEAD PROPERTY

Note: If Decedent not survived by spouse or minor child protected Homestead is freely devisable by Will or Trust to either Heirs at Law or to non-heirs.

##### TESTATE (Will)

must obtain the following:

###### OPTION 1 (Order Determining Homestead):

1. Will;
2. Order Admitting Will to Probate;
3. Proof of Release of Estate Tax Lien;
4. Order Determining Homestead;
5. Deed from Persons named in Order;
6. Deed from PR (if there are any non-heirs); and
7. Proceeds to persons named in Order Determining Homestead (and Estate if any are non-heirs).

###### OPTION 2 (No Order Determining Homestead):

1. Will;
2. Order Admitting Will to Probate;
3. Deed from PR (an Order Authorizing Sale may be needed if PR has no clear power to sell);
4. Deed from Heirs at Law under Will (If the specific Heirs at Law are not named, a court order may be needed);
5. Proof of Release of Estate Tax Lien;
6. Affidavit of no spouse or minor child; and
7. Proceeds paid to the Estate. Heirs at Law may sign a document directing payment to Estate and hold a harmless in connection with proceeds.

##### PROPERTY IN TRUST

must obtain the following:

1. Trust Affidavit w/relevant pages of Trust attached;
2. Deed from Trustee\*;
3. Proof of Release of Estate Tax Lien;
4. Deed from trust beneficiaries (if passive Trust);
5. Affidavit of no spouse or minor child; and
6. Proceeds paid to the trustee if trust is active and to Beneficiaries if trust is passive.

\*Trustee may have to sign individually and as Trustee if Trustee is sole beneficiary or if property is Trustee's homestead.

##### INTESTATE (No Will)

must obtain the following:

###### OPTION 1 (Order Determining Homestead):

1. Order Determining Homestead;
2. Deed from Heir(s) at Law named in order;
3. Proof of Release of Estate Tax lien; and
4. Proceeds to be paid to Heirs.

###### OPTION 2 (No Order Determining Homestead):

1. Order Appointing PR\*\*;
2. Order Authorizing PR to Sell\*\*;
3. Deed from PR\*\*;
4. Order Determining Heirs\*\*;
5. Deed from Heirs named in Order Determining Heirs\*\*;
6. Proof of Release of Estate Tax lien; and
7. Proceeds to be paid to Estate. Heirs are to sign document directing payment to Estate and a hold harmless in connection with proceeds.

\*\*Used in place of Order Determining Homestead.

#### NON-HOMESTEAD PROPERTY

NON-HOMESTEAD PROPERTY (any doubt as to homestead status is determined by Court Order)PR has the right to administer non-homestead real property under §733.608, F.S.

##### TESTATE (Will)

must obtain the following:

1. Will;
2. Order Admitting Will to Probate;
3. Deed from PR\*;
4. Proof of Release of Estate Tax Lien; and
5. Payment of proceeds will be to the Estate.

\*Order Authorizing Sale may be needed if no clear power of PR to sell in Will.

##### INTESTATE (No Will)

must obtain the following:

1. Order Appointing PR;
2. Order Authorizing PR to Sell;
3. Deed from PR;
4. Proof of Release of Estate Tax Lien; and
5. Payment of proceeds will be to the Estate.