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## ESTATE PLANNING FOR NEW FLORIDA RESIDENTS

By: Dorothy L. Korszen  
July 2007



If you are like an estimated ten percent of Floridians, you are a new Florida resident having moved here within the last five years. Chances are, you have prepared Wills, Trusts and other estate planning documents in the state of your prior residence. Now, as a Florida resident, you question whether your documents should be changed or reviewed.

As an initial matter, whenever there is a major change in your life, such as if you move to a new state, change the make-up of your family or your assets, or simply desire to benefit persons or entities not already provided for in your documents, then it is a good time to review your estate plan. So, even if your documents otherwise comply with Florida law, you may want to amend your documents to reflect your changed situation and to state that you reside in Florida and that Florida law shall apply.

Often new Florida residents move into what was once their vacation home. Once this home becomes their permanent residence, Florida law affects how this homestead property can be devised (transferred through your Will) upon your passing. The Florida Constitution states that the homestead shall not be subject to devise (that is, being gifted through your Will) if the owner is survived by a spouse or minor child, except the homestead may be devised to the spouse if there are no minor children. If the homestead is owned as an estate by the entirety, where the husband and wife both own the property, this is not affected by the Florida Constitution. However, if the property is owned in the name of one spouse and that spouse passes away, then the surviving spouse will have a life estate in the homestead and the deceased spouse's children will have the remainder interest in the property. Generally, the surviving spouse will not be pleased with this result. If the surviving spouse later wishes to sell the property, the children must also agree, and the children will receive a portion of the proceeds for their remainder interest.

A spouse may waive rights to the homestead under a marital agreement. If you wish to title homestead property in one spouse's name, and if there are no minor children, you can do so as long as you have a valid marital agreement. Note that even with a marital agreement, if homestead property is sold or mortgaged, both spouses will be required to sign the deed or mortgage.

These Florida laws can not be avoided by transferring property to a Revocable Living Trust. If the husband and wife each create a trust and transfer the property into one of the trusts, absent a marital agreement, this will also violate Florida law. As described above, the surviving spouse would be left with a life estate interest, and the children would own the remainder interest.



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Often, Wills prepared in other states name as the personal representative an advisor who lives in that state. Florida law limits who may serve as personal representative. A blood relative or a Florida resident may serve, but an unrelated person who lives out of state may not. This would be a good opportunity to ensure that the person you have selected to serve as personal representative will be qualified to serve under Florida law.

You may also have a power of attorney and advanced medical directives, including a living will, which were prepared in your prior state of residence. Although these documents may be valid, you may find it easier to present Florida documents to persons in Florida. These documents often reference statutes from the state where they were prepared; people in Florida will not be familiar with the laws of other states. Thus, it is often more practical to prepare new documents. You may find that your power of attorney may be drafted to allow your agent to handle your banking, but it may not allow your agent to transfer real estate if it was not executed with the formalities of a deed, that is, it was not executed in the presence of two witnesses and notarized. Also, advanced medical directives prepared before 2000 will generally not include a Health Insurance Portability and Accountability Act of 1996 (HIPAA) Release. A HIPAA Release allows your designated health care surrogate to obtain access to your confidential medical records and information.

Reviewing and updating your estate planning documents also provides a good opportunity to discuss the current tax laws and see if changes in the tax law, or other estate planning laws, warrant changes to your documents. For example, with the increase in the estate tax exemption amount, couples with estates large enough to warrant separate trusts for each spouse may elect to modify their documents to provide more flexibility to the surviving spouse.

As a new Florida resident, you may find it useful to meet with a Florida estate planning attorney to ensure that your documents comply with Florida law. This way, you can be sure that your estate will be handled in accordance with your wishes.

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