

## WFG Underwriting Bulletin



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: June 19, 2018  
Bulletin No: FL 2018-09  
Subject: Homestead Waiver

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On March 19, 2018, Governor Scott signed the Committee Substitute for Senate Bill 512 (CS/SB 512) into law. That Bill created a new Florida Statute, Section 732.7025, which takes effect on July 1, 2018.

New F.S. 732.7025, titled “Waiver of Homestead Rights Through Deed”, pertains to an express waiver in a deed of the spousal devise restriction contained in Art. X, Section 4(c) of the Florida Constitution. Art. X, Section 4(c) provides as follows:

*“The homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except the homestead may be devised to the owner’s spouse if there be no minor child.”*

Art. X, Section 4(c) is repeated in F.S. 732.4015(1), which provides as follows:

*“As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner’s spouse if there is no minor child or minor children.”*

F.S. 732.401(1) provides what happens if the devise restrictions under the Florida Constitution and Florida Statutes are violated. It states as follows:

*If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take 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.”*

The foregoing Constitutional Section and Florida Statutory Sections restrict who the homestead property may be devised to in a Will if the decedent is survived by a spouse and/or minor child or children. If the decedent is survived by a spouse and no minor children, the only person that the homestead property may be devised to is the decedent’s spouse. A devise in a Will of the homestead property to anybody other than the spouse, will fail, and the homestead will be inherited as if there had been no Will. For example, if the title-holder dies survived by a wife and 3 adult children, if his Will devised the homestead to the adult children, that devise would fail because the only person that the homestead may be devised

to under these facts is the surviving spouse. In this situation, the surviving spouse would receive a life estate and the deceased spouse's children would receive the remainder interest. If the decedent is survived by a minor child or minor children, the homestead may not be devised to anyone.

To further complicate the issues with homestead, F.S. 732.4015(2) applies the homestead devise restrictions to revocable trusts, as follows:

*(2) For the purposes of subsection (1), the term:*

*(a) "Owner" includes the grantor of a trust described in s. 733.707(3) [revocable trust] that is evidenced by a written instrument which is in existence at the time of the grantor's death as if the interest held in trust was owned by the grantor.*

*(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.*

I have reworded subparagraph (1) of F.S. 732.4015 to insert the definitions for "owner" and "devise" as set forth in subparagraph (2). With those insertions, F.S. 732.4015 (1) reads as follows:

*"As provided by the Florida Constitution, the homestead shall not be subject to **disposition by revocable trust** if the **settlor** is survived by a spouse or a minor child or minor children, except that the homestead may be **disposed of by revocable trust** to the settlor's spouse if there is no minor child or minor children."*

New F.S. 732.7025 authorizes a spouse to waive the spousal devise restriction under Art. X, Section 4(c) of the Florida Constitution by including the following or similar waiver language in a deed:

*"By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me."*

The foregoing waiver language contained in a deed of homestead property from one spouse to the other spouse, from both spouses to one spouse, from both spouses to each other, or from both spouses their revocable trust, will make transactions after the death of the first spouse easier because the surviving spouse will be treated as if he or she predeceased the first spouse to die. Therefore, a devise of the homestead property to anyone other than the surviving spouse will not be prohibited by the Florida Constitution or Florida statutes.

Whether we can rely on a waiver of the spousal devise restriction contained in a deed will depend upon the facts of the situation. The decision to rely on a homestead waiver must be approved in writing by WFG's Underwriting Department.

**The spousal waiver contained in F.S. 732.7025 does not pertain to the minor child devise restriction which cannot be waived; and it does not pertain to the Constitutional requirement of spousal joinder on deeds or mortgages of homestead property.**

Click [HERE](#) for a copy of the CS/SB 512.

**NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.**

**The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.**