

## **EXEMPT PROPERTY FROM CREDITORS**

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March, 2016

Suppose a parent (who is the major bread winner of a family) should die leaving a surviving spouse and two children. The result of this type of outcome could be disastrous by suddenly placing a surviving family squarely on welfare. This article discusses a seldom recognized probate statute, Section 732.402, of the Florida Statutes by keeping a family on its feet. It complements Florida's Constitution Article X, Section 4, which protects a decedent's homestead property from claims of creditors.

As you may know, Florida's Homestead protection (Article X, Section 4, of the Florida Constitution) protects a family by not allowing their home to be subject to creditor claims and forcibly sold. NOTE: There are limitations to this such as the failure to pay your mortgage; failure to pay for home improvements made by contractors; failure to pay property taxes; and failure to pay your income taxes to the IRS.

Section 732.402, Fla. Stat. provides the following additional exemptions to Florida's Constitution protections:

1. Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$20,000 as of the date of death.
2. Two motor vehicles (including motorcycles) which do not, individually as to either such motor vehicle, have a gross vehicle weight in excess of 15,000 pounds, held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal motor vehicles. Historically, this statute provided for all automobiles, however, the term "automobiles" was not defined and Florida's Courts determined that automobiles did not include recreational vehicles or travel trailers which severely limited the use of the exemption to less costly transportation. Section 732.402, Fla. Stat., limits you to two vehicles of any kind except for any bicycle, motorized scooter, electric personal assistive mobility device, moped or vehicle the exceeds a gross weight of 15,000 pounds. As a result, regardless of the value of the vehicle it is exempt from non-secured creditors. Although the statute uses the term "vehicle" without defining it, collateral statutes define a vehicle as a device, in, upon, or by which any person or property is or may be transported or drawn upon a highway. This raises the question of whether a boat or yacht can be claimed as exempt property.
3. Additional exempt property includes qualified tuition programs authorized by §529 of the Internal Revenue Code of 1986, as amended, including, but not limited to, the Florida Prepaid College Trust Fund; advance payment contracts under §1009.98 Fla. Statutes; and, the Florida Prepaid College Trust Fund participation agreements under §1009.981 Fla. Statutes. A prior statute limited your exemption to the Stanley G. Tate Florida Prepaid College Program contracts purchased and Florida College Savings agreements established under Part IV of Chapter 1009, Fla. Statutes. This is a major

change since it generally protects every college pre-paid plan from creditors in a probate action.

Section 732.402, Fla. Stat., also includes your right to exemption of other statutory exemptions (e.g. Chapter 222, Fla. Statutes) that would be available to the decedent or beneficiary including:

- a. Garnishment;
- b. Life Insurance Policies;
- c. Annuities;
- d. Unemployment Compensation;
- e. Disability Income;
- f. Pension Funds;
- g. Medical Saving Accounts;
- h. Workers Compensation Benefits;
- i. Coverdell Education Savings Account, also known as an educational IRA;
- j. Any Hurricane Savings Account (with certain limitations);
- k. A debtor's interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption under Article X, Section 4, of the Florida State Constitution.

To be eligible to receive the above exemptions and protections, the decedent must have been domiciled in the State of Florida at the time of death. In addition, the request for such exemption must occur on or before the later of the date that is 4 months after the date of service of a Notice of Administration or a date that is 40 days after the date of termination of any proceeding involving the construction, admission to probate, or validity of the will or involving any other matter affecting any part of a decedent's estate relevant to §732.402, Fla. Statutes.

Lastly, if any of a decedent's property is determined to be exempt under §732.402, Fla. Statutes, such property shall be excluded from the value of a decedent's estate "before" residuary, intestate, pretermitted or elective shares are determined. Why is this important? Because, it is possible that a given estate may have to be distributed by means of the intestate statutes due to children being born or marriage occurring after a Will is written; or, if a surviving spouse elects to take advantage of their right to an elective share of their spouse's estate.

Section 732.402, Fla. Stat., protects a family from devastation by not taking assets away following the death of a parent. Florida's protection of its citizens against creditors is one of the strongest in the all fifty states. If you have questions concerning exemptions to your estate proceeding, contact your attorney and have that discussion. It may be the best investment in time you make.

Next month we'll explore the impact same sex marriages has on Florida's probate and estate administration laws.

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