**CLERK OF THE CIRCUIT COURT**

**PROBATE DIVISION, FLAGLER COUNTY, FLORIDA**

**IN RE: ESTATE OF CASE NO: \_\_\_\_\_\_\_\_\_\_ CP 000 \_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­\_­\_\_\_\_\_\_\_ DIVISION: 48**

**PETITION TO DETERMINE HOMESTEAD**

**Rule 5.405 – Petition to Determine Homestead must:** **Rule 5.240 - \*30 days after PR is appointed**

[ ] Be a verified statement [ ] Notice of Administration. is filed or waived

[ ] Give name of surviving spouse, if any [ ] Proof of service of Notice of Administration is filed

[ ] Contain decedent date of death

[ ] State county of decedent’s domicile at death **Rule 5.241 - \*30 days after PR is appointed**

[ ] Name surviving spouse and descendants, [ ] Notice to Creditors showing publication date

 [ ] Date of birth for minor descendants, if any [ ] Proof of publication is filed (45 days after 1st pub)

[ ] Provide legal description of property [ ] Proposed Order reflects proceeds to be held in a Trust

[ ] State the decedent owned & resided on the property account until creditor period expires [ ]  N/A

@ time of death

[ ] State how the real property was owned @ time of death **Rule 5.205**

(ex: sole ownership / joint tenancy / tenancy in common / etc) [ ] Decedent’s death certificate is filed

[ ] State that the property is homestead & passes free of creditors; **or**

[ ] Property does not pass free from creditors

 **Relation of person(s) receiving the property -**

**Order \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

[ ] Describe the real property (legal description) ­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] The property is protected homestead of the decedent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] Identifies the person(s) entitled to the homestead \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[ ] Defines the interest of each person(s) receiving homestead \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notes:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Pursuant to FL Probate Rule 5.405 Petition may be filed by any interested person**

**Intestate**

* Surviving spouse and lineal descendants (children, grandchildren, etc.) whether or not they are also descendants of the spouse (e.g. step-children of the spouse) – life estate to the spouse, vested remainder to the lineal descendants of the decedent

**Testate**

* Wife entitled to a life estate, regardless of the will
* If there is a minor child, then the homestead cannot be willed to anyone
* No minor child, homestead can be willed to spouse

**Miscellaneous – PR shall promptly send notice and promptly publish for creditors so 30 days is a reasonable amount of time for these items to be filed**.

* Homestead rights can be waived, in writing;
* To waive or transfer homestead rights of a minor, a formal guardianship is required
* Homestead owned by decedent and spouse (tenancy by the entireties) passes to the spouse alone, outside the estate.

**I hereby certify that I have personally reviewed the documents filed in this matter and that the foregoing check sheet is accurate.**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney of Record Probate Clerk