**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