

THE FLORIDA SENATE
2018 SUMMARY OF LEGISLATION PASSED
Committee on Community Affairs

CS/SB 512 — Homestead Waivers

by Rules Committee and Senator Young

The Florida Constitution protects homestead property in three ways. The Florida Constitution provides homesteads with an exemption from taxes; protects homesteads from forced sale by creditors; and limits the manner in which homestead owners may alienate (transfer property to another person) or devise (leave to someone by the terms of a will) the property.

To protect the interests of the family unit, the Florida Constitution provides in Section 4(c) of Article X that a homestead property may not be devised when the owner is survived by a spouse or minor child. However, the homestead may be devised to the owner's spouse if there is no minor child in certain circumstances. Specifically, the Florida Statutes provide a procedure for waiving spousal rights, particularly homestead rights, under written contracts, agreements, or waivers. However, there is a difference of opinion among practitioners as to whether a deed is covered under the umbrella of "contracts, agreements, or waivers."

CS/SB 512 provides form language that a spouse may include in a deed to demonstrate that he or she knowingly waives the right to inherit homestead property.

The bill provides that a spouse waives his or her rights as a surviving spouse with regard to the devise restrictions contained in the Florida Constitution if certain language, or substantially similar language, is included in a deed.

This waiver language is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 38-0; House 113-0