



THE LAW OFFICES OF  
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FAMILY WEALTH & LEGACY COUNSELLORS

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**Descent of Homestead: The New Election  
of the Surviving Spouse**

The Florida Constitution and Florida law term certain property "homestead" property. Homestead property is provided special treatment under the law. One area of special treatment involves the descent of homestead property titled solely in the name of one spouse. A recent change in this area now provides the surviving spouse with options for dealing with the descent of homestead property.

For example: Henry and Wanda have been married for 20 years. Henry has two adult children, Billy and Kathy, from a previous marriage. Their permanent residence in Orange County, Florida, where they have lived for the past 20 years, is titled solely in Henry's name. Henry dies without a valid Last Will. What happens to the property?

Under former law, upon Henry's death, Wanda would receive a life estate in the homestead property; Billy and Kathy would receive the remainder interest in fee simple. Unfortunately, if Wanda wanted to sell the property and move away, she would first have to get the consent of Billy and Kathy. This transaction can be especially difficult when dealing with step-children or estranged children. Even if consents were given by Billy and Kelly, Wanda would only receive the proceeds from the sale representative of her life expectancy. Life tenants, however, have the responsibility to properly maintain the property, which includes paying the taxes and assessments, the mortgage interest, and possibly even the mortgage principal. On the up side, Billy and Kathy would not be able to oust Wanda from the property during her lifetime.

Recent changes in the law give Wanda new options. Now, at Henry's death, rather than a life estate in the homestead property as provided above, Wanda may elect an undivided one-half interest in the property as a tenant in common with Billy and Kathy, who will share the remaining one-half interest. Each tenant has a percentage interest in the property and share in all costs equally. Each can sell, transfer or devise their interest without consent. On the down side, Billy and Kathy, could petition the court to partition the property and institute a forced sale.

Effective October 1, 2010, Florida law will provide a surviving spouse with options for how to receive an interest in homestead property. These options arise when prior proper planning has not taken place. If you have questions about homestead property, please contact our office for more information.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration,

Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders, Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.