

## Florida Notice of Homestead (Married)

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## **Instructions and Checklist**

### **Florida Notice of Homestead (Married)**

- Both spouses should review the Notice carefully before signing.
- Both spouses must sign the Notice, and should retain an original signed Notice.
- The purchase and use of these forms is subject to the “Disclaimers and Terms of Use” found at [findlegalforms.com](http://findlegalforms.com).

## General Information

### Florida Notice of Homestead (Married)

Generally, a homestead is a dwelling (including its land and buildings) occupied by an owner as a home and which is exempted by law from seizure or forced sale for debt. For example, if you (the owner and debtor) are sued for money in court and lose, the person (or creditor) who sued you will receive a judgment from the court. If you do not pay the judgment, the creditor may seek satisfaction of the judgment in various ways, such as by garnishing your wages, having your automobile sold, or by having your home sold. The homestead law protects a certain amount of the equity in your home or land from being taken to pay the judgment.

Florida provides no limit to the dollar value of property that can be protected from creditors; rather, Florida limits a homestead exemption to a certain amount of land. A homestead exemption may consist of no more than: 1) 160 acres of contiguous land and improvements thereon, if such land is located outside a municipality (and which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality) or 2) one-half acre of contiguous land, if located within a municipality, and upon which the exemption shall be limited to the residence of the owner or the owner's family. A residence includes a mobile home or a modular home. Except in certain situations discussed below, exempt properties will be absolutely protected from attachment, execution or forced sale.

In Florida, the homestead exemption is generally automatic upon the establishment of a primary residence in [Florida](#); nevertheless, Florida law specifies three instances when an owner/debtor may claim his or her property as a homestead: 1) before a judgment has been filed, and before a levy has been made upon the property; 2) after a judgment has been filed, but before a levy has been made upon the property, and when there is a contract to sell or a commitment from a lender for a mortgage on the homestead; and 3) after a levy has been made upon the property. This packet describes how to designate your property as a homestead after a judgment has been filed, but before a levy has been made, and when there is a contract to sell or a commitment from a lender for a mortgage on your homestead. [NOTE: *If no judgment has been filed against your property, and no levy has been made, you should use a different form entitled "Declaration and Claim of Homestead." This form is available for separate purchase on our site.*]

If a judgment (but no levy) has been filed against your property, and you are either in contract to sell it or you have a commitment from a lender for a mortgage on it, you may file a "Notice of Homestead" in the public records of

the county in which the homestead property is located. Florida Statute 222.01 sets forth the specific language which must be included in the Notice, which is included in the form in this packet. It is important to note, however, that the Notice presupposes that you, the owner, have applied for and received a homestead property tax exemption, which renders the property tax-free to the extent of certain dollar amounts in the value of the homestead. **This is a separate process from filing a Notice of Homestead. Homestead property tax exemptions are administered by the office of the property appraiser of the county in which your property is located.** Some property appraiser offices require you to apply in person, while others allow you to apply online. Either way, you will need to fill out a specific form issued by the property appraiser, as well as gather the necessary documentation establishing your qualifications to file for the homestead tax exemption (e.g. Social Security Number, driver's license, proof of residency, recorded deed, etc.) Once you have successfully applied for the homestead property tax exemption, you may complete the Notice of Homestead. For more information on how to apply for a homestead property tax exemption, please contact the office of the property appraiser in the county where you live.

It is important to note that if a judgment has been filed and a levy has been made upon your property, and you have not already selected and set apart your property as a homestead, you or your agent or attorney may, in writing made under oath before any officer of the state duly authorized to administer oaths, notify the levying officer at the time of such levy, or at any time before the sale, of what you regard as the homestead, along with a description thereof. The remainder shall be subject to sale under such levy. Thus, while it is possible to make a homestead claim after a judgment has issued and a levy has been made, post-lien filing involves tight deadlines and the potential for costly error. Therefore, it is advisable that you claim your homestead exemption prior to the occurrence of a dispute to ensure that the process is completed thoroughly and accurately.

Finally, Florida law specifies situations in which the homestead exemption does not apply. For example, the homestead exemption does not protect an owner's property interest against liens and judgments for (i) the payment of taxes and assessments on real property, (ii) obligations contracted for the purchase of real property, (iii) labor, services, or materials furnished to repair or improve real property, or (iv) other obligations contracted for house, field, or other labor performed on real property.

*For more information, please refer to Section 4, Article X of the Florida State Constitution, and 222.01 et seq. of the Florida Statutes.*

## Step-by-Step Instructions

### Florida Notice of Homestead (Married)

#### A. GETTING STARTED – COMPLETING THE NOTICE

##### **Step 1: Requirements**

To use this Notice you must:

- i. Be an owner of real property or a dwelling (e.g. house, mobile home, modular home), not a renter;
- ii. Have a judgment, but no levy, filed against your property and be in contract to sell your property or have a commitment from a lender for a mortgage on your homestead;
- iii. Be married;
- iv. Reside in the dwelling at the time of the recording; and
- v. Be a resident of the state of Florida.

You may fill out the forms electronically by entering the requested information in the appropriate spaces, or you can fill them out manually. If you are filling out the forms manually and are not using a typewriter, use black ink and print as legibly and neatly as possible. The clerk of the circuit court may reject forms that are difficult to read or they may input the information incorrectly.

**Step 2: Completing the Notice.** Insert the appropriate information in the Notice. Below are additional instructions for the trickier sections:

**Return Address.** In the upper left hand corner, insert the address you would like the Notice mailed to once it is recorded.

**Name and Address of Creditors.** Insert the name and address of the judgment creditor as shown on the recorded judgment, as well as the name and address of any other person shown in the recorded judgment who should receive a copy of the Notice of Homestead.

**Legal Description.** Fill in the legal description of the property. This description can be found on the deed to the property. If you do not have this description, the clerk of the circuit court may accept the complete address alone.

**Tax Identification Parcel Number.** Insert the Tax Identification Parcel Number of the property as issued by the office of the property appraiser.

**Date of Residence.** Insert the date you began to reside in the property.

**Contract of Sale or Loan.** Describe the contract of sale or loan commitment by date, names of parties, date of anticipated closing, and amount. The name, address, and telephone number of the person conducting the anticipated closing must be set forth.

**Official Records Book and Page Numbers.** Insert the filing date of the judgment lien, as well as the book and page numbers of the judgment

lien as designated in the official records of the clerk of the circuit court in the county where the property is located.

**County.** Insert the name of the county where the property is located/where the judgment lien was filed.

**Signature and Date.** You will need to have this form notarized, so wait to sign it until you are in front of the notary.

**Notarization.** This section will be completed by the notary.

## **B. RECORDING THE NOTICE**

**Step 3: Notary Acknowledgement.** Take the form to a Notary Public. You can find one in your telephone directory or at local bank. Take personal identification with you (e.g. social security card, driver license, passport, etc.).

**Step 4: Copies.** You should make at least two copies of your completed Notice in case additional copies are required by the clerk of the circuit court and for your personal records.

**Step 5: Recording.** You can either record the Notice in person or by mail.

**In Person.** Recording your Notice in person will be quicker because you won't have to wait for delivery. You can take the Notice to the office of the clerk of the circuit court where the property is located. You will need to bring in the original and two copies (just to be safe) of your completed and notarized Notice, as well as a self-addressed stamped envelope. You will tell the clerk there that you want to record a Notice of Homestead. The clerk will help you from here.

**Fees.** You will need to pay the clerk the amount of the recording fee, probably around \$10 for the first page, and \$8.50 for each additional page. To get the specific amount of the recording fee you can contact the office of your clerk of the circuit court. You can find its address and telephone number in your local telephone directory.

- **Mail.** If you choose to mail your Notice to the clerk of the circuit court's office, you will need to begin with a cover letter explaining what you have included and what you need done. You will want the clerk to record the Notice and mail back it back to you (in the self-addressed stamped envelope you've enclosed).

You will need to include the following items:

**Forms.** The original and a copy of the Notice

Fees. You will need to include a check for the recording fee. To get the specific amount of the recording fee you can contact your clerk of the circuit court's office. You can find addresses and telephone numbers in your local telephone directory.

One Self-Addressed Stamped Envelope. You will need this because you will be asking for a returned copy of the recorded Notice.

## **DISCLAIMER:**

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Recording Request By )  
 and When Recorded Mail To )  
 )  
 \_\_\_\_\_ )  
 Name )  
 )  
 \_\_\_\_\_ )  
 Address )  
 )  
 \_\_\_\_\_ )  
 City State and Zip )

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**NOTICE OF HOMESTEAD**

To: \_\_\_\_\_  
*(Insert name and address of judgment creditor as shown on recorded judgment and name and address of any other person shown in the recorded judgment to receive a copy of the Notice of Homestead).*

You are notified that the undersigned claim as homestead exempt from levy and execution under Section 4, Article X of the State Constitution, the following described property *(give complete legal description)*:

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

The undersigned certify, under oath, that they have applied for and received the homestead tax exemption as to the above-described property, that \_\_\_\_\_ is the tax identification parcel number of this property, and that the undersigned have resided on this property continuously and uninterruptedly from \_\_\_\_\_ *(date)* to the date of this Notice of Homestead. Further, the undersigned will either convey or mortgage the above-described property pursuant to the following:

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

*(Describe the contract of sale or loan commitment by date, names of parties, date of anticipated closing, and amount. The name, address, and telephone number of the person conducting the anticipated closing must be set forth.)*

The undersigned also certify, under oath, that the judgment lien filed by you on \_\_\_\_\_ *(date)* and recorded in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of \_\_\_\_\_ County, Florida, does not constitute a valid lien on the described property.

YOU ARE FURTHER NOTIFIED, PURSUANT TO SECTION 222.01 ET SEQ., FLORIDA STATUTES, THAT WITHIN 45 DAYS AFTER THE MAILING OF THIS NOTICE YOU MUST FILE AN ACTION IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, FLORIDA, FOR A DECLARATORY JUDGMENT TO DETERMINE THE CONSTITUTIONAL HOMESTEAD STATUS OF THE SUBJECT PROPERTY OR TO FORECLOSE YOUR JUDGMENT LIEN ON THE PROPERTY AND RECORD A LIS PENDENS IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE HOMESTEAD IS LOCATED. YOUR FAILURE TO SO ACT WILL RESULT IN ANY BUYER OR LENDER, OR HIS OR HER SUCCESSORS AND ASSIGNS, UNDER THE ABOVE-DESCRIBED CONTRACT OF SALE OR LOAN COMMITMENT TO TAKE FREE AND CLEAR OF ANY JUDGMENT LIEN YOU MAY HAVE ON THE PROPERTY.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Address

State of Florida  
County of \_\_\_\_\_ } ss.

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that

by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
WITNESS my hand and official seal.

NOTARY SEAL

\_\_\_\_\_  
NOTARY SIGNATURE

\_\_\_\_\_  
(Name of Notary)

\_\_\_\_\_  
(Expiration Date of Notary Appointment)

