Kelley's Homestead Paradigm

Not Protected Homestead. Subject to probate, administrative expenses, and creditors' claims.

Protected Homestead. NOT subject to probate (F.S. 733.608, McKean v. Warburton, 919 So. 2d 341), administrative expenses (Engelke v. Estate of Engelke, 921 So. 2d 693) or creditors' claims (art. X sec. 4(b)).

If the homestead was owned as tenants by the entireties or JTWROS, this Paradigm does not apply. Title passes automatically to the surviving tenant or tenants free of decedent's creditors. 732.401(5). Ostyn v. Olympic, 455 So. 2d 1137 (Fla. 2d DCA 1984).

At Level 2 — protected homestead may not be devised by will or rev trust. F.S. 732.4015
At Level 3 — protected homestead may be devised only to spouse.**
Below Level 3 — protected homestead may be freely devised.

* Protected Homestead is defined in 731.201(33). Also see F.S. 733.608.

** Devise of protected homestead is limited in the same manner whether title is held by an individual or by a revocable trust. 732.4015(2)(a).

By operation of law, life estate*** to spouse, if any, with remainder (or fee simple if no spouse or if waiver of spousal rights or spousal disclaimer****) to descendants in being.

* 732.401, 732.4015, 732.103, 732.702,
** Estate of Finch, 401 So. 2d 1308
Estate of Cleeves, 509 So. 2d 1256
City Nat'l Bank v. Tescher, 578 So. 2d 701

Cavanaugh v. Cavanaugh
542 So. 2d 1345

Spouse takes a life estate*** with remainder in fee simple to descendants in being.

*** The spouse may elect to take a ½ interest as tenant in common rather than a life estate. F.S. 732.401(2)

**** A disclaimed intestate or validly devised spousal interest passes pursuant to 739.201. Disclaimer of a surviving spouse's life estate does not divest a descendant's vested remainder interest. 732.401(4).

Decedent's intestate heirs take as tenants in common.

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