

New Florida Homestead Law Takes Effect October 1

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In early June, we blogged about the new Florida Homestead Law that Governor Crist signed into law regarding the way a [homesteaded property may pass to a surviving spouse](#).

That new law goes into effect on October 1, and will have a dramatic effect on the passing of real property to a surviving spouse and children:

Current Law: Husband with adult children from first marriage is married again to Wife 2. Husband dies without a will or estate plan. Wife 2 gets a life estate in the property (meaning she can live there as long as she lives) with the remainder going to the children. Wife 2 cannot sell the home without the permission of the children. Wife 2 has no ownership rights but is solely responsible for all taxes and upkeep of the property.

New Law: Husband with adult children from first marriage is married again to Wife 2. Husband dies without a will or estate plan. Wife 2 can now decide to take a life estate or 50 percent interest in the homestead as a tenant in common with the children. This must be done within six months of Husband's death and is irrevocable. If Wife 2 decides she no longer wishes to live in the home, she can force a sale of the property and is entitled to half the proceeds.

If Husband wants to leave the property to his children, he will need to execute the proper [estate planning](#) documents to do so through a [prenuptial agreement](#), [postnuptial agreement](#) or [trust](#).