



David M. Goldman

Home > Beneficiary Devise / Devisee Estate Planning Homestead Probate Wills > Florida Defective Wills: Poor Drafting or Intentional?

« Previous | Home | Next »

Posted On: **August 14, 2008** by [David M. Goldman](#)

## Florida Defective Wills: Poor Drafting or Intentional?

The Florida Constitution protects one's Homestead from creditors. One provision that is often misunderstood is a devise of a homestead in a will when there are minor children in the family. In some cases a two people are getting married and one has a home and a minor child. The spouse may draft a will that states that the home goes to the future husband, but what happens if the spouse dies before the child reaches the age of 18?

Under the Florida Homestead Protections, the house does not pass as the will states, but the homestead goes to the minor child with a life estate going to the surviving spouse. Sometimes this appears to be an intentional mistake in a will to appease a future spouse but the clause does little to provide a fee simple ownership the the decedent's homestead.

If you are getting married or your spouse had a home prior to your marriage that is now your Homestead, be careful that any attempted devise of the home when there are minor children will create a default condition establishing a life estate for the surviving spouse and remainder for the children even if one is a minor.

To have your will reviewed for invalid clauses or to update a Florida will [Contact a Florida Estate Planning Lawyer](#)

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David Goldman – Jacksonville Florida Estate Planning Lawyer

331 East Monroe Street, Jacksonville, FL 32202

Phone: (904) 685-1200 Fax: (904) 212-0678 Email

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