

Exceeding the Limitations of the Homestead Exemption and the Ability to Partition Your Land.

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You are a homeowner in Florida and your parcel of land spans two acres. You find yourself in a financial deficit and creditors have been contacting you to collect on your debt. You want to preserve your home and have it qualify under Florida's homestead exemption to prevent any forced sale by court judgment or decree. Unfortunately for you, your property exceeds the acreage allowed by law. While you are unable to declare your property as exempt in its entirety under Florida law, you still have the opportunity to partition your land to clear your arrears and protect your home from court ordered sale.

In order for a homestead exemption to apply within a municipality, your property must not extend more than one-half acre of contiguous land. Fla. Const. art. X, §4 (a)(1). The exemption shall be limited to the residence of the owner and his or her family. Id. When a debtor's property exceeds the one-half acre, "he cannot declare as exempt his entire parcel, but may select his homestead in any contiguous shape from his qualifying lands." In re Kellogg, 197 F.3d 1116, 1120 (11th Cir. 1999).

Stated differently, you have the ability to designate a one-half acre portion of your land to remain exempt and contract the remainder for payment of your debt. Siewak v. Amsouth Bank, 2007 U.S. Dist. LEXIS 3030 (M.D. Fla. Jan. 16, 2007) (quoting In re Englander, 95 F.3d at 1031). At this stage, your petition to the court to partition the land and designate an exempt area will be decided based on the court's interpretation of the legal and practical use of the parcel. In re Kellogg at 1120.

As evidenced by In re Englander, appellants claimed their entire lake front residence as their homestead exemption. The residence rested on a parcel of land spanning over one acre

thereby exceeding the constitutional limits. However, the property could not be subdivided pursuant to local zoning and building regulations. The partition would have no legal use as its conveyance would violate local zoning law. Id. at 1032. The Court held where debtors' claimed homestead property exceeds the limitation on area set by the Florida constitution and is indivisible, a sale of the entire property and apportionment of the proceeds is an equitable solution. Englander v. Mills (In re Englander), 95 F.3d 1028, 1032 (11th Cir. Fla. 1996), cert. denied, 520 U.S. 1186 (1997).

The court in In re Kellogg furthered this holding by acknowledging when a homeowner is on notice of zoning ordinances and the inability to subdivide his property, a variance from the zoning laws will not be permitted simply because it is an economic disadvantage, especially when self-created. In re Kellogg at 1122.

The homestead exemption governed by the Florida Constitution allows for protection of your family from destitution and preservation of your home. Although the laws must be liberally construed, the courts have been clear that these laws should not be construed as a means of escaping debt or as tools for fraud. Frase v. Brach, 362 So.2d 317, 319 (Fla. Dist. Ct. App. 1978).