APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

January 24, 2018

CASE NO.: 4D16-3921

L. T. No.: 312013CA001523

PAMELA B. STUART,

Appellant/Petitioner(s),

versus

CATHERINE S. RYAN and DEBORAH A. STUART, ET Al.

Appellees/Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the appellant's December 15, 2017 motion for rehearing, suggestion for rehearing en banc, for clarification and certification is denied; further,

ORDERED that the appellant's January 16, 2018 response and motion to strike appellees' opposition to appellant's motion for rehearing, suggestion for rehearing en banc, for clarification and certification is denied in part and stricken in part. To the extent the filing is a response to the appellees' opposition it is stricken as unauthorized. No further motions for rehearing and/or clarification will be entertained.

Served:
cc: David P. Hathaway
David Presnick Pamela Bruce Stuart

/s/ Lonn Weissblum

LONN WEISSBLUM, CLERK
Fourth District Court of Appeals

APPENDIX C

IN THE DISTRICT COURT OF APPEAL
IN THE DISTRICT COURT OF APPEAL OF
FOURTH DISTRICT

No. 4D16-3921

Circuit Court for the 19th Judicial District in and for Indian River County, Florida Docket no. 31-2013CA-001523

PAMELA B. STUART,
individually and as Trustee of
The J. Raymond Stuart Revocable Trust
dated January 2, 1990, as amended, and
the Marital Deduction Trust and the Non-
Marital Deduction Trust created thereunder,

Appellant,

versus

CATHERINE S. RYAN and
DEBORAH A. STUART, as
Beneficiaries of The J. Raymond
Stuart Revocable Trust dated

January 2, 1990, as amended and
the Marital Deduction Trust dated
January 2, 1990, as amended, and
the Marital Deduction Trust and the
Non-Marital Deduction Trust created
thereunder,

Appellees.

[November 29, 2017]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Cynthia L. Cox and Paul B. Kanarek, Judges; L.T. Case no. 31-2013-CA-001523.

Pamela B. Stuart, Vero Beach, pro se.

David P. Hathaway of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A., Orlando, for appellees.

KUNTZ, J.

Pamela Stuart appeals the court's order approving a plan of distribution for her father's estate. Ms. Stuart argues the court erred when it determined that, while she qualified for the exemptions our state constitution provides to residents over their homestead, her wrongful acts as

trustee of the estate required the imposition of an equitable lien against her homestead interest. We agree the equitable lien would hae been improper if the properties were, in fact, her homestead. However, here, neither property was Ms. Stuart's homestead. Therefore, we affirm.[1]

Florida's homestead exemption is robust, and the Florida Constitution provides that "[t]here shall be exempt from forced sale under process of any court, and no judgment, decree, or execution shall be a lien thereon. . . the following property owned by a natural person . . . (1) a homestead." Art. X, § 4(a)(1), Fla. Const. Pursuant to our constitution, this homestead protection can only be breached in limited situations: "(1) government entities with a tax lien or assessment on the property; (2) banks or other lenders with a mortgage on the property which originated from the purchase of the property; and (3) crditors with liens on the property which originated from work or repair performed on the property." Art. X, § 4(a), Fla. Const.

We are required to liberally apply the homestead exemption and strictly construe the exceptions. *Butterworth v. Caggiano,* 605 So.2d 56, 58, 61 (Fla. 1992) (citations omitted). Therefore, the

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[1] We affirm all other issues raised on appeal without further comment.

availability of exceptions not found in the constitution is questionable. However, it is true that, as we recently recognized, our supreme court created a fourth exception for alimony creditors. *See Spector v. Spector,* 226 So.3d 256, 259 (Fla. 4th DCA 2017) (citing *Anderson v. Anderson,* 44 So.2d 652 (Fla. 1950)). And, what appear to be other exceptions can be found in various cases throughout our state's history. *See, e.g., Caggiano,* 605 So.2d at 60-61 n.5. But, as the court explained in *Caggiano*, each of those situations is factually distinct and nearly all involve application of the homestead exemption in a manner that complies with the plain language of our constitution. *Id.,* ("Most of those cases involve equitable liens that were imposed where proceeds from fraud or reprehensible conduct were used to invest in, purchase, or improve the homestead. . . . Other relevant cases cited involve situations where an equitable lien was necessary to secure to an owner the benefit of his or her interest in the property."). The court's skepticism regarding the availability of additional exceptions is not surprising, as both the legislature and the courts are powerless to create exceptions to Florida's homestead exemption not found in our constitution. *Id.* at 61,

Therefore, we would limit the exceptions to the constitutional homestead exemption to those specifically stated in the Florida Constitution and,

because we are compelled to do so, those specifically recognized by the Florida Supreme Court. *See, e.g., Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein,* 619 So.2d 267, 270 (Fla. 1993); *see also Anderson,* 44 So.2d at 652.

But, whether or not the court in this case had the authority to impose the equitable lien against Ms. Stuart's purported homestead interest in the property presumes it was her homestead. In this case, the availability of an exception is unnecessary, as the court incorrectly determined the property was her homestead. Ms. Stuart testified that she had a Florida driver's license, was registered to vote in Florida, and joined a community church in the area. While she testiied that she "intended" to make her permanent residence in Florida at some point in the future, she also testified that she spent an average of only fifty-nine days in the state each year from 1998 through 2013. Her current permanent residence is in Washington, D. C., and she executed a reversible mortgage on that property as recently as 2013. Notably, she was simultaneously seeking to have the court detrmine two separate pieces of property in Florida as her homestead. *See* Art. VII, § 6(b), Fla. Const. ("Not more than one exemption shall be allowed by any individual or family unit . . . ."). Nevertheless, her principal residence being in the District of Columbia, Ms. Stuart was not entitled to the benefits of Florida's homestead protection.

The court erred in its conclusion that due to Ms. Stuart's wrongful actions an equitable lien could be imposed on her homestead property. Instead, the equitable lien could be imposed because Ms. Stuart was not a permanent resident entitled to claim the benefits of the homestead exemption. Therefore, the court's order is affirmed.

Affirmed.

LEVINE AND FORST, JJ., concur.

Not final until disposition of timely filed motion for rehearing.

APPENDIX D

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

CATHERINE S. RYAN and
DEBORAH A. STUART, as
Beneficiaries of The J. Raymond
Stuart Revocable Trust dated
January 2, 1990, as amended and
the Marital Deduction Trust dated
January 2, 1990, as amended, and
the Marital Deduction Trust and the
Non-Marital Deduction Trust created
thereunder,

Plaintiffs,

v. CASE NO. 312013CA001523
Judge Paul B. Kanarek

PAMELA B. STUART,
individually and as Trustee of
The J. Raymond Stuart Revocable Trust
dated January 2, 1990, as amended, and
the Marital Deduction Trust and the Non-
Marital Deduction Trust created thereunder,

Defendants.

(October 21, 2016)

ORDER ON FINAL PLAN OF DISTRIBUTION

This matter having come on to be heard on March 11, 2016, and April 13, 2016 pursuant to an order of January 3, 2016 requiring an evidentiary hearing to approve a final plan of distribution, and the court, having heard the testimony of the witnesses and having considered the matters introduced into evidence, makes the following findings of fact.

Catherine S. Ryan, Deborah A. Stuart, and Pamela B. Stuart are the adult children of J. Raymond Stuart and Marion Stuart, and beneficiaries of the J. Raymond Stuart Revocable Trust, as amended, and the Marital Deduction Trust and the Non-Marital Deduction Trust created thereby. J. Raymond Stuart died on January 18, 1998, and at the time of his death he was survived by his wife, Marion Stuart. Marion Stuart died on April 29, 2012.

The defendant, Pamela B. Stuart, is a lawyer licensed to practice in the state courts of Maryland, Virginia, Florida, New York and the District of Columbia as well as the various federal district

courts in each of those states and the District, the Fourth Circuit Court of Appeals, and the Court of Appeals for the District of Columbia. Ms. Stuart testified that she practices in the areas of probate, estate planning, corporate law, commercial litigation and related areas. In an average year she earns approximately $170,000 from her law practice. She further testified that she is a member of the Real Property, Probate and Trust Law Section of the Florida Bar and has served on the Executive Committee of that Section. She lists her mailing and physical address with the Florida Bar as 5155 Yuma Street, NW, Washington, DC. This is the address of her personal residence in Washington, D.C.

The Trustees

J. Raymond Stuart established the J. Raymond Stuart Revocable Trust approximately eight years prior to his death. The Trust is governed by Florida law and has its principal place of administration in Indian River County, Florida. The Trust requires that there be at least two trustees. The initial trustees were the settlor, J. Raymond Stuart, and his daughter, Pamela B. Stuart. The settlor retained, during his lifetime, the unilateral authority to amend, alter, revoke, or terminate the Trust and to unilaterally make all decisions concerning the Trust. On his death, the trustees and Trust had certain additional

obligations and requirements, including that at least one of the trustees was required [to] be an "independent trustee." The Trust defines "independent trustee" as "a person who is not eligible to receive any income or principal, either presently or in the future, (other than the compensation of a trustee) under the trust and whose spouse, issue, dependents and ancestors are not eligible to receive such benefits."

After the death of J. Raymond Stuart, Pamela Stuart remained a trustee of the J. Raymond Stuart Trust, and Lewis L. Smith became the Trust's independent trustee. Lewis Smith resigned as a trustee on April 1, 2000. Shortly after Smith's resignation, Pamela Stuart appointed Edward Ryan, the husband of plaintiff Catherine S. Ryan, as the independent trustee. Article Twenty-First of the Trust which governs the appointment of trustees provides:

> Vacancies in trusteeships shall be filled by such persons (including a corporate trustee as the remaining trustees shall, by an instrument in writing, designate (and the remaining trustees shall determine the compensation to be paid to such persons).
>
> Normally there shall be no more than two trustees in office at any one time. Notwithstanding the foregoing, as soon as the trustees have determined they will

exercise their discretion under Article SECOND, but in any event, no later than the time when the trustees are holding the remaining principal and undistributed income under the provisions of Article FIFTH, at least one of the trustees then in office must be a person who is not eligible to receive any income or principal, either presently or in the future, (other than the compensation of a trustee) under the trust and whose spouse, issue, dependents and ancestors are not eligible to receive such benefits. To the extent necessary to achieve the foregoing objective, but ony to that extent, the remaining trustees shall, by an instrument in writing, designate a person (including a corporate trustee) to serve as an additional trustee. A person is qualified to serve as an additional trustee if said person is not eligible to receive any such benefits under the trust (other than the compensation of a trustee) and said person's spouse, issue, dependents and ancestors are not eligible to receive such benefits. A person who meets the qualifications of an additional trustee may be referred to herein as an independent trustee. If a vacancy occurs and there are two remaining trustees in office, one of who is an independent trustee, the vacancy shall not be filled.

It is clear from the terms of the Trust that there were to be two trustees, one of which was to be an independent trustee. It is also clear that Pamela Stuart had the exclusive authority and obligation to appoint an independent trustee following the resignation of Lewis Smith, and this she failed to do. Under the terms of the Trust, Edward Ryan was not eligible to serve as trustee because he was the husband of Catherine Ryan, a beneficiary of the Trust. Pamela Stuart never appointed another trustee, independent or otherwise. With Lewis Smith's resignation in 2000, she effectively began acting as the sole trustee of the J. Raymond Stuart Trust, thereby setting the stage, so to speak, for further abuses of her authority as trustee which, in turn, has resulted in a series of breach of trust adversely affecting her sisters, the co-beneficiaries of their father's Trust.

The evidence shows that Pamela Stuart began making withdrawals from the Trust in April 1998 and continued to do so through June 2013. She has testified that the withdrawals initially were for trustee fees. After she became trustee, she purchased, through her single-member limited liability company, a commercial building in Washington, D.C. as an investment property and to house her law practice. She also purchased a townhouse on John's Island in Indian River Shores, Florida. She already owned the property located at 5115 Yuma Street, N.W. in Washington, D.C. where

she lived and practiced law. Pamela Stuart testified that she made loans to herself from the Trust also in part to pay the carrying costs of these three properties. Review of the successor trustee's accounting, however, indicates that, in many months, she loaned herself tens of thousands of dollars in excess of the monthly mortgage payments.

The evidence shows that on July 23, 2009, Pamela Stuart, as both lender (trustee of the J. Raymond Stuart Trust) and borrower, individually, signed a "Loan Agreement and Promissory Note" (Plaintiffs' Exhibit #5). This document purports to be effective July 11, 2001, eight years before it was signed. The loan agreement is not for any fixed amount of money. It is not secured by any collateral and does not have an adequate interest rate, both of which are required by the terms of the Trust. The loan agreement also specifically provides that funds from the Trust may not be used to collect the loan and any interest due under the note.

Also in 2009, in the face of increasing resistance from her sisters and Edward Ryan concerning her failure to repay the Trust, Ms. Stuart asked Mr. Ryan to resign as co-trustee and told him he was never qualified to serve even though she had appointed him. At that point, Mr. Ryan suggested to the defendant that she appoint an institutional financial advisor as the independent co-trustee as called for in the Trust. In

August 2009, she sent an e-mail to Edward Ryan (Defendant's Exhibit #5) reminding him that he was no longer a trustee and saying, "I intend to appoint an independent trustee as soon as one can be arranged." No trustee was ever appointed and Pamela Stuart continued to act as the sole trustee.

Pamela Stuart's Plan of Trust Administration

On July 26, 2012, approximately three months after Marion Stuart's death, Pamela Stuart wrote a letter to herself and her sisters (Plaintiffs' Exhibit #6) which is a self-serving and revealing statement by the defendant concerning what had occurred over the term of the Trust and her plan for the future administration. It is entitled "PLAN OF TRUST ADMINISTRATION - the J. Raymond Stuart and Marion C. Stuart Trusts" and commenced with the statement:

> This is an outline of all matters that are planned to be accomplished relating to the trusts of Ray and Marion Stuart, as well as their estates. Because the obligations of the trustee are many and include paying creditor claims and taxes as well as fees and expensed (sic) of trust administration which in this case, continued fourteen and a half years, this process is likely to take many months. This report is being submitted to the

beneficiaries of the trust who have previously been provided with copies of the Trust Documents.

The Plan included the following sections.

a. Actions to Reclaim Trust Assets. In this section, Pamela Stuart points out that Edward Ryan was not authorized by the trust documents to be appointed and states that she "regrets the error in appointing Ed to serve as trustee" but arguing that at the time she made the appointment she had "no reason to anticipate the difficulties he would present to the administration of the trust assets." She further states that because he was not authorized to be appointed a trustee under Florida law he was disqualified from the date of his appointment. She also states that he has blocked efforts by her to obtain trust funds held by Morgan Stanley Smith Barney and that if he fails to resign by July 27, 2012, the trust will go to court to "reclaim its assets."

What is clear from the evidence is that Ms. Stuart was a Florida lawyer, holding herself out as knowledgeable in probate and estate matters, throughout this period of time, and she was obviously aware that Mr. Ryan was not permitted to serve as a trustee at the time she appointed him.

b. Outstanding Loans. In this section, the defendant states that she has borrowed money from the trust and has entered into a "loan agreement with the trust that memorializes the agreement with the trust regarding loans taken during the period of trust administration which is ongoing and the interest to be paid when the loans are repaid." She also writes:

> Per a loan agreement between Pam and the trust, she is obligated to repay the outstanding loans with interest at the statutory IRS rate contained in 26 USC 1274(d) with adjustments for fees, expenses, and her share of the estate. So it makes no sense for there to be a dollar figure agreed upon at this stage because of ongoing adjustments and expenses.

It is noteworthy that at no point does the defendant ever tell the other beneficiaries how much she has borrowed from the Trust. Nor is there any provision in her letter for the loans to be repaid.

c. Bank and Brokerage records of trust activities. The defendant states that all account statements for Smith Barney and Charles Schwab trust accounts are kept in a drawer in Marion Stuart's home.

d. Withdrawals and Depletion of Trust

Assets. The defendant discusses her mother's need for funds from the J. Raymond Stuart trust during her lifetime. She argues that she wanted to obtain those funds by drawing against a margin account while Mr. Ryan objected and wanted to sell assets in order to meet those needs. She states that based on the stock market performance between 1992 and 2012, the value of the trust would have increased by one third if assets had not been sold and the money had been borrowed on a margin account. As a result, she states:

> So, the interest charges (on her loans) should not be charged to Pam entirely because, had she been directing the trust assets without interference and had Ed not been involved in trust administration as dictated by the Trust Documents, the interest charges would have been offset by increased value of the assets. The accountant (and an outside attorney if litigation is undertaken) will be consulted regarding the appropriate source of payment for the interest charges incurred under the circumstances.

e. Plan for Deborah's share of trust assets following administration. The defendant discusses the requirements of the trust that Deborah's share be placed in an irrevocable trust for Deborah.

f. Sale of the property at 101 South Catalina Court. The property in question is the home owned by the J. Raymond Stuart Trust where Marion Stuart lived until her death. In discussing the division of this property the defendant states, "Since neither Pam, Cathy or Deborah have expressed interest in retaining Marion's residence as part of their share of the trust assets, it must be sold and the proceeds, less expenses, will be added to the trust assets." In the instant proceeding, Pamela Stuart now claims that this home is not property of the trust but instead was her father's homestead property and as such it descended on his death to his three children.

g. Appraisal of Personal Property owned by Trusts. The defendant indicates that there will need to be an appraisal of all of the personal property of the trust.

h. Trustee and personal representative fees and expenses. In this section the defendant details various Florida Statutes that authorize compensation for personal representatives and attorneys. Although she never states in this document how much her fees or expenses are she states:

> Pam has paid much of the trust expenses attributable to the trust administration for fourteen years (principally travel and meals,

> taxes and insurance for Marion's house) out of her personal accounts and credit cards. Because Pam devoted substantial amounts of her time to litigation to recover the funds expended as a result of the fraud for which loans from the trust were required, the accounts for the years since she purchased the J. Raymond Stuart building are not complete. The receipts and statements must be compiled for accounting to be completed which requires a review of all credit card and bank statements and "receipts" for the years of administration. The trust expenses paid by Pam vary but are approximately $20,000 to $30,000 annually. These amounts (with interest) should be deducted from the "loans" made to Pam out of the trust accounts. Trustee fees and expenses are a priority payment obligation of the trust under Florida law and are to be paid ahead of payments to beneficiaries. A lien against the trust assets exists to secure repayment of these expenses under Florida law.

She then goes on to explain that trustees, executors, and/or personal representatives are entitled to "reasonable fees" for services rendered and the presumptive reasonable fee is set by the probate code. She also states that in addition to percentage fees, attorneys are entitled to extra fees for services provided, and her legal fees would be

based on her normal hourly rate of $675. Finally, she states that once all of her fees are determined, they will be an offset against any outstanding amounts of loans she may owe to the Trust.

i. Plans for loan repayments and other miscellaneous matters. The defendant in this section advises the other beneficiaries that she intends to raise money to repay any remaining deficiency in the loans (after deduction of her fees) by selling some of her artwork. She states that she has to have the artwork appraised and authenticated before she can sell it and suggests that the Trust should be charged for the expenses incurred in valuing her art work. She concludes this section by stating:

> Pam is not willing to authorize a recorded lien against her DC home as it might cause the current mortgages to be regarded as unsafe and unsound by the banks holding her current mortgages and would adversely affect her credit rating which has been negatively impacted by the fact that many of the trust expenses are charged on her personal credit cards (since Marion's accounts were cancelled after her death) and cannot be timely paid due to Ed's blockage of the transmission of funds needed to pay these accounts.

j. Accounting and Taxes. In this section Pamela Stuart indicates she has met with a local accountant to prepare Marion's past tax returns. As to the Trust's tax returns, she states, "Extension requests have been filed for each trust for each year since Ray died but that no returns have been filed since 2002 or 2003.

k. Litigation plan. The Plan of Trust Administration ends with the following ultimatum:

> If Ed fails to submit his written resignation to Morgan Stanley Smith Barney in a form acceptable to that fir by the close of business on July 27, 2012, this matter will be turned over to an attorney licensed in both New York (the location of the assets) and Florida (the domicile of the trust) for appropriate and immediate action on behalf of the trusts to reclaim the trust assets.

On the same date she authored the Plan of Trust Administration, July 26, 2013, Pamela Stuart executed a Home Equity Conversion Deed of Trust (reverse mortgage) on her home located at 5115 Yuma Street, NW, Washington, D.C. in the amount of $938,250.00 (Plaintiffs' Exhibit #7). This reverse mortgage effectively shielded her Washington, D.C. home from potential creditors, including the co-beneficiaries of the Trust.

The Agreed Order and Successor Trustee's Accounting.

The defendant's proposed Plan of Trust Administration was not acceptable to co-beneficiaries Catherine Ryan or Deborah Stuart and on November 8, 2013, they filed a four count complaint against Pamela Stuart for Removal of Trustee, Conversion, Breach of Trust, and for a Temporary and Permanent Injunction. The defendant filed an Answer and Counterclaims for Breach of Duty to Cooperate, Abuse of Process and malicious Prosecution, Tortious Interference with Business of the Trust, Damages to Defendant, and Damages to Trust.

A temporary hearing on the plaintiff's request to remove the trustee was scheduled for March 5, 2014. This hearing was cancelled, and on March 4, 2014, Pamela Stuart filed her resignation, and the parties submitted an Agreed Order for Immediate Removal of Trustee which was entered March 14, 2014. The Agreed Order provided in pertinent part that:

a. the defendant Pamela Stuart has resigned as trustee;

b. Certified Public Accountant Gina Rall would be appointed as successor trustee;

c. within 10 days from the date of the Order the defendant would deliver to the successor trustee all documents concerning the Trust since 1998 and would cooperate to provide all documents reasonably required by the successor trustee;

d. the plaintiffs would remove Edward Ryan's name as trustee from all trust accounts;

e. the successor trustee would prepare a full accounting for the trust and file any necessary tax returns with the IRS. If there was further information or documents the successor trustee required that were in defendant's sold possession the defendant would produce those documents within 5 days and/or furnish information upon written request of the successor trustee.

f. the fees for the successor trustee would be paid by the trust and "[a]t a trial or other adjudication of the merits of the case, the Court reserves jurisdiction to require payment or reimbursement from other sources."

Significantly, the Agreed Order further provided that the defendant

> shall not sell, transfer, jointly title, encumber, or otherwise attempt to make unavailable to creditors the real property located at 5155 Yuma Street, NW, Washington, DC 20016 or at 111 John's Island Drive 7, Indian River Shores 32963, nor any assets acquired in whole or in part with funds were once part of the trust. In reliance on this directive Plaintiffs will not file or record Notice of Lis Pendens on such properties.

The court notes that after the Agreed Order was entered, the defendant filed for a homestead exemption on her John's Island property, apparently in an attempt to shield it from creditors.

As the successor trustee, Gina Rall prepared an accounting and submitted it to the beneficiaries. On September 17, 2015, counsel for the plaintiffs filed a Motion to Approve Accounting, the final version which had been provided to the defendant along with the other beneficiaries by letter dated August 5, 2014. A hearing to approve the accounting was held on November 23, 2015.

On January 3, 2016, the Honorable Cynthia L. Cox entered an order granting the plaintiff's

motion to approve the final accounting. The final accounting (Plaintiff's Exhibit #1) found that as of February 1, 2014, the Trust had total assets of $2,565,216.95 which included the residence at 101 South Catalina Court, cash, miscellaneous property, and loans to defendant Pamela Stuart in the amount of $1,789,171.76 (plus interest to be determined by the court). A copy of this order is attached hereto as Exhibit "A" and incorporated herein.

Also as part of the January 3, 2016 order, Judge Cox found that the defendant had breached her fiduciary duties by failing to provide the annual accountings from 1998, the year of J. Raymond Stuart's death, to 2013.

Article Seventeenth of the Trust provides in part:

> After the death of the settlor, the trustees shall each year render an account (prepared under the supervision of a certified public accountant) of their administration of each trust under this instrument to the oldest living beneficiary (or his or her guardian) to whom income of such trust may be distributed. Such person's (or guardian's) written approval of such account shall, as to

> all matters and transactions stated therein or show thereby, be final and binding upon all persons . . .

Judge Cox additionally found that Pamela Stuart had loaned herself substantial monies and "wrongfully" taken assets from the trust. The court granted the plaintiff's motion, approved the successor trustee's accounting, and directed that the successor trustee prepare a plan of distribution. The Order further provided:

> . . .If the parties cannot agree to a final plan of distribution within the next 30 days, the Court shall hold an evidentiary hearing to determine the precise sum that should be allocated to each beneficiary, including the loan and interest due thereon payable by Defendant, together with attorney's fees and court costs incurred herein (together with any required corresponding sale or transfer of Defendant's property to the Trust). Any expenses, fee or claims of Defendant shall be provided to the Plaintiffs on or before January 22, 2016 and the Court shall specifically reserve jurisdiction to award any credits of setoffs, if any, to Defendant that she may be entitled at the evidentiary hearing. Defendant's failure to provide all documents by January 22, 2016 shall constitute a waiver of same and a violation of

> this Court's Order. The Trust shall have an equitable lien upon all of the Defendant's properties until a final distribution is in order, which shall include but not be limited to, 5115 Yuma Street NW, Washington, DC 20016 and 111 John's Island Drive, #7, Vero Beach, FL 32963. Plaintiff's shall obtain an appraisal of the Sea Forest residence and schedule an evidentiary hearing on any disputed issues herein within 45 days. The Court reserves jurisdiction to enforce this Order and to award such further relief as deemed just and proper.

The successor trustee's proposed plan of distribution (Plaintiff's Exhibit #4) was admitted at the hearing on March 11, 2016. The Trust assets to be distributed to the beneficiaries primarily consist of the property located at 101 South Catalina Court in Vero Beach; the loan receivable from Pamela Stuart in the amount of $1,789,171.76[2] (which

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[2] The loans to the defendant are identified by date and amount in the trustee's final accounting (Plaintiff's Exhibit #1, Schedule D) and in the attachment to the recommended plan for distribution (Plaintiff's Exhibit #3). The court has attached as Exhibit "B" to this order the section of the plan for distribution which specifically identifies the date and the amount of

amount was approved by the Court's order approving the final accounting of January 3, 2016) plus interest to be determined by the court; and a loan receivable from Trust beneficiary, Deborah Stuart.

Loans from the Trust and Pamela Stuart's Claims for Fees and Costs.

Pamela Stuart's position is that a portion of the funds the trustee found to be loans (payments between 1998 and 2001) were actually trustee fees. It is also her position that any balance due on the loan agreement she signed with the trust (Plaintiff's Exhibit #5) should be reduced by any amounts awarded to her as trustee or attorney fees.

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the loans. The court also notes, as stated by the trustee in her Notes to

Proposed Plan Distribution Schedule, that the loans recorded as numbers 103, 108, and 114 have been removed from the classification as a loan based on further proof provided by Pamela Stuart.

> [Note from Petitioner: the court did not attach an Exhibit B to the court's order as filed].

Article Fifteenth of the Trust, entitled "Authority of Trustees to Enter into Certain Transactions with Settlor's Estate or Other Trust Established by Settlor," authorizes the trustees to make loans to the settlor's "executors or administrators on such terms as the trustees deem advisable." Article Eighteenth entitled "Administrative Powers of Trustees" provides that the trustees can "make loans with adequate interest and with adequate security." The defendant was specifically aware of these provisions as noted by her in her Plan of Trust Administration of July 26, 2012.

As previously stated herein, the defendant's withdrawals from the Trust began in April 1998 and continued through June of 2013. Pamela Stuart testified that her withdrawals were initially for trustee fees in 1998 to 2000, yet she testified that in 2001 she decided that any further withdrawals should be classified as loans and not as fees. She also testified that the Trust never issued 1099's for the purported trustee fees between 1998 and 2000,[3] and that these payments she received were not itemized on her federal income tax returns as income from the Trust. The defendant testified that she spoke with the

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[3][Note from Petitioner: the IRS requires Form 1099's be filed for businesses, not trusts. *see* https://www.irs.gov/pub/irs-pdf/i1099msc.pdf]

successor trustee Rall; provided Rall with copies of certain pages from the Trust's purported tax returns from 1998 to 2001; and told her that the returns had been filed.

The successor trustee found insufficient evidence to support Pamela Stuart's claims that monies paid to her during this period of time could be considered as payment of trustee fees. Based on the failure of the Trust to issue 1099's for these purported trustee fees and the lack of any competent evidence support (sic) the defendant's claim of fees, the court finds that all payments made to the defendant from 1998 to 2001, as more specifically set forth in the trustee's accounting, were loans.

Pamela Stuart did not secure any of her loans from the Trust with collateral, as required by the Trust. She merely promised the other beneficiaries that she would repay all previous and future loans made to her and conditioned her promises to repayment on an ever changing set of circumstances. At first she committed to repay the Trust with her share of a judgment she expected to receive from a whistleblower lawsuit she filed, yet the funds were never transferred to the Trust even after the lawsuit was settled. Later, she said she would repay the Trust from the proceeds of a lawsuit she filed against the seller of the commercial building she had purchased in

Washington D.C., yet those funds were not repaid to the Trust. Finally, she promised to repay the Trust with the proceeds realized from her sale of the commercial building. After she sold the building in December 2009 for $2.5 million, netting approximately $1.95 million,[4] she did not repay the Trust. Instead, Pamela Stuart directed most of the money to herself and her personal creditors. She paid off the mortgage on her John's Island home, which she now claims is homestead and protected from creditors. Of the $705,000 that she claims to have repaid the Trust, $200,000 was used to repay a personal loan her mother had given her. The remaining $505,000 was placed in a new trust account with Charles Schwab; only she knew about and controlled this account from which she made new and secret loans to herself.

As to the interest rate applicable to the loans, the successor trustee testified and recommended that the court apply a 6% interest rate to the loan received from Pamela Stuart. This recommendation was based on a number of factors expressed by the successor trustee in her Recommendation for Plan of Distribution where she stated in pertinent part:

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[4] [Note from Petitioner: The HUD-1 form from that sale was in evidence and showed approximate $985,000 remained after paying off debts of the LLC that owned the building.]

> The former trustee (Pamela Stuart) was instrumental in the loan receivable from Deborah Stuart (one of the beneficiaries). The loan was a one-time loan taken in 1997, secured by real estate with an interest rate of six percent (6%).[5] While a trustee, Pam Stuart began taking loans from the Trust starting in 1998. No promissory note was drafted evidencing the Pam Stuart loan until 2011. This Pam Stuart note was unsecured and indicated an interest rate of the lessor of three (3%) percent or the federal imputed interest rate. Given that both loans started at approximately the same time and given that the Deborah Stuart note was secured by real estate while the Pam Stuart loan was (I) unsecured; (ii) executed more than a decade after the periodic loans started; and (iii) that Pam Stuart held a fiduciary position with respect to the Trust, the Trustee feels that the Pam Stuart loan should not be afforded preferential status in regard to the interest rate. It is the Trustee's position that both loans should have accrued interest at the same rate and given that the Deborah Stuart loan was more at arm's length between the

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[5] [Note from Petitioner: This mortgage on Deborah Stuart's home was taken out by J. Raymond Stuart before he died. Pamela Stuart had no involvement in it.]

> two loans, the Trustee recommends that both loans be treated similar (sic) and that an interest rate of six (6%) percent apply to both loans.

The defendant argues that as a beneficiary she should be entitled to a preferential rate of interest between .48% and 2.47%[6] The court agrees with the reasoning and recommendations of the successor trustee and will apply a six (6%) percent interest rate to the defendant's loan. The court also notes that it is inappropriate to give her a preferential rate because of her serious breaches of her obligations as trustee.

The defendant requests that this court determine her reasonable trustee and attorney's fees and costs for her work both as trustee and attorney in this matter since her father's death in 1998 and that those fees and costs be deducted from the monies owed pursuant to the loan agreement. In her proposed Order of Adjustments to Accounting and Granting Offset for Trustee's Fees and Costs filed April 28, 2016, Pamela Stuart proposes that her fees amount to $1,411,000.00.

In *Ortmann v. Bell,* the Second District Court

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[6] [Petitioner's note: The loan agreement provided for interest at the IRS statutory rate per 12 U.S.C.§ 1274(d) or 3%, whichever was lower.]

of Appeal discussed the burden of proof as it pertains to a trustee's request for reimbursement, stating:

> A trustee has the burden of proving the necessity of all expenses incurred by him or her, including attorneys' fees:
>
> > When a trustee seeks to charge a trust corpus with an expense incurred by him, including attorney fees, the burden of proof is upon the trustee to demonstrate that the expense was reasonably necessary and that such expense was incurred for the benefit of the trust, and not for his own benefit nor the benefit of others.
>
> *Barnett v. Barnett,* 340 So.2d 548, 550 (Fla. 1st DCA 1976); *see also Traub,* 135 So.2d at 244 ("If the trustee fails to keep clear, distinct, and accurate accounts, all presumptions are against him and all obscurities and doubts are to be taken adversely to him. If he loses his accounts, he must bear any resulting damage . . . .
>
> The burden of proof is upon him to show that the money expended was a proper disbursement." (quoting *Benbow v. Benbow,* 117 Fla. 37, 157 So. 512, 519 (1934))).

Ortmann v. Bell, 100 So.3d 38, 46 (Fla. 2d DCA 2011).

Pursuant to the Agreed Order of March 4, 2014, Pamela Stuart was required to deliver to successor trustee Rall all documents concerning the Trust since 1998, and to cooperate with the successor trustee to provide all documents reasonably required by her. The Agreed Order also provided that if the successor trustee required additional documents or information from the defendant then within five days of a written request, the defendant would produce copies of the documents or provide the information to the successor trustee. However, the defendant had provided only very limited information to Rall concerning fees and expenses by the time Rall prepared the final accounting in August, 2014. The cover letter to the accounting for the period of January 18, 1998 through May 31, 2014 (Plaintiff's Exhibit #1) identifies requests for additional information and states in pertinent part:

> 4. Throughout the accounting, you will see entries that are referenced as "unknown." Even though the trustee was given a plethora of documentation to review, there were still many instances where the trustee could not ascertain what the nature of an expense was or what generated a deposit into the trusts' financial accounts. Thus, the

trustee simply referenced the transaction as "unknown." If the trustee is able to gather such information in the future, the trustee will update the accounting with that information.

5. Pamela Stuart has acknowledged to the trustee that certain distributions to her from trust accounts during the Accounting Period constituted a loan to her. The trustee has requested verification of what distributions to her during the Accounting Period compromised (sic) this loan and for Pamela to provide the trustee verification of any other payments made to her during the Accounting Period. Pamela has requested additional time from the trustee to assimilate such information gut (sic) given the desire of the other beneficiaries to get the accounting completed as soon as possible, we have recommended to the trustee to present the attached accounting now and to list each unverified distribution/payment to Pamela as a loan payment. The trustee reserves the right to amend the accounting if Pamela can verify to the trustee that any of the payments to her referenced as a loan on the accounting are in fact something other than a loan to her (reimbursement for trustee expense for instance).

In the Order Approving the Accounting dated

> January 3, 2015, the court addressed the trustees request for further information to support defendant's claim for an award of fees and expenses:
>
> > . . . Any expenses, fees or claims of Defendant shall be provided to Plaintiffs on or before January 22, 2016 and the Court shall specifically reserve jurisdiction to award any credits or setoffs, if any, to Defendant that she may be entitled at the evidentiary hearing. Defendant's failure to provide all the documents by January 22, 2016 shall constitute a waiver of same and a violation of this Court's Order.

It appears that the defendant did provide some additional information and proof to the successor trustee after the full accounting was completed in August 2014, as evidenced by the adjustments to the defendant's loan balance shown in Note D to the Trustee's Recommendation for Plan of Distribution which was admitted in evidence as Plaintiff's Exhibit #3. No other supporting evidence was provided to the trustee or the plaintiffs. At the hearing on April 13, 2016 – well after the cutoff date set by the court of January 22, 2016 – Pamela Stuart offered into evidence (Defendant's Exhibit #12) a document she identified as a summary from the check register for the trust of the expenses she says she incurred as trustee.

In this case, the court finds that Pamela Stuart has not provided any competent substantial evidence supporting her claim for reimbursement of expenses other than those the successor trustee has already given here credit for as part of the final accounting. *Ortmann v. Bell* at 46.

Furthermore, under Florida law, a trustee may forfeit the right to compensation if the trustee has committed a breach of the trust or otherwise willfully engaged in bad faith or misconduct with respect to the management of the trust. *Ortmann v. Bell* at 45 (citing *Traub v. Traub,* 135 So.2d 243, 244 (Fla. 2d DCA 1961)). Section 736.1001(1)(h), Florida Statutes, provides that if a trustee commits a breach of trust one of the remedies available to the court is to reduce or deny compensation to the trustee. The defendant had various statutory obligations which the court finds that she failed to satisfy, including that she failed to:

a. administer the trust "in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this code. § 736.0801, Fla. Stat.;

b. as between the trustee and beneficiaries, administer the trust solely in the interests of the beneficiaries. § 736.0802(1), Fla. Stat.

c. administer the trust as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust and in doing so, exercise reasonable care, skill, and caution. § 736.0804, Fla. Stat.'.

d. use her special skills or expertise as a Florida lawyer holding herself out as knowledgeable in areas of probate and trusts. § 736.0806, Fla. Stat.;

e. keep "clear, distinct, and accurate records of the administration of the trust. § 736.0810, Fla. Stat.; and

f. keep the beneficiaries reasonably informed of the trust and its administration including providing a trust accounting. §§ 736.0813, 736.08135, Fla. Stat.

Additionally, Pamela Stuart failed in her duty as trustee under the specific terms of the Trust in that she:

a. failed to appoint a qualified independent trustee after the resignation of Lewis Smith on April 1, 2000 as required by Article Twenty-

First of the Trust. Had such an independent trustee been appointed, this would have surely prevented her various flagrant breaches of the Trust;

b. failed to make loans with adequate interest and adequate security as required by Article Eighteenth of the Trust. Instead, she borrowed large sums of money for herself without securing the loans with any collateral, all to the detriment of her sister co-beneficiaries. She wrote into the loan agreement that she signed as both lender and borrower, that "no funds of the trusts shall be used for collection of loan and interest amounts due under this note." The agreement further provided that if she was unable to pay what she owed or had not paid off the loan at the time of her death, then the other beneficiaries would be authorized to collect the money from her estate. She has encumbered her million-dollar home in Washington, D.C. through a reverse mortgage and here attempts to claim homestead on her John's Island property in order to keep these assets from the hands of her co-beneficiary creditors; and

c. failed to make a yearly accounting prepared under the supervision of a certified public accountant as required in Article Seventeenth of the Trust. She argues to this court that although she did not file accountings the beneficiaries had access to the monthly statements from the various brokerage accounts and could see what she was doing. Had she filed a yearly accounting she would have been required to show all income, expenses, compensation paid to the trustee, and fluctuations in the value of the Trust. The beneficiaries would have been able to see that she was taking large sums of money from the trust for her own benefit and could have acted promptly and accordingly.

Pamela Stuart was, and is, a lawyer licensed to practice in multiple states, including Florida, and in numerous federal trial and appellate courts. He (sic) areas of legal expertise include probate and estate planning. She was a member of the Real Property, Probate and Trust Section of the Florida Bar and testified that she has served on its Executive Committee. In light of this background it can be fairly concluded that she clearly knew that her brother-in-law was not qualified to serve as an independent trustee; that she was required to

provide security for her loans; that she was obligated to file yearly accountings; and that she was obligated to act in the best interest of all the Trust's beneficiaries, not just herself.

Based upon her multiple and flagrant abuses of her authority as trustee, the court finds that it is appropriate to deny Pamela Stuart's request for an award of fees and costs.

The Home at 101 South Catalina Court in Vero Beach

The home located at 101 South Catalina Court in Vero Beach was originally purchased by J. Raymond Stuart and Marion C. Stuart. Title was later transferred by the husband and wife to the husband who then transferred title to the J. Raymond Stuart Revocable Trust. After J. Raymond Stuart died, his wife continued to live in the home until her death. The property remains titled in the name of the Trust. The property was appraised on November 30, 2015 as part of the accounting and was valued at $550,000.00. The successor trustee has used this value for the property in her accounting and has taken the position that the home is a Trust asset and has included it in her plan to distribution.

Prior to the time this litigation commenced Pamela Stuart consistently had taken the position

that this property was a Trust asset. She was named the personal representative of her father's estate but made no claim that the property was homestead at the time of his death. In her July 26, 2013 (sic) Plan of Trust Administration, she took the position that the property was a Trust asset and should be sold with the proceeds going into the trust. After her mother, who had been living in the home died, she continued to pay the expenses of the home from the Trust, including paying homeowners association fees, utilities, putting on a new roof, replacing the air conditioning, and making other improvements to the home. However, after this litigation began, she changed her position on this issue and now claims that the South Catalina Court home was homestead property at the time of her father's death; that it descended to her and her sisters as a matter of law at the time of her father's death, *see* Article, Section 4, Fla. Const. (sic); *Aronson v. Aronson,* 81 So.3d 515 (Fla. 3d DCA 2012); that no formal order was necessary to pass title to her and her sisters, *see In re Estate of Hamel v. Parker,* 821 So.2d 1276 (Fla. 2d DCA 2002); and that her interest is exempt from the claims of creditors, i.e., sisters and co-beneficiaries, *see JBK Associates, Inc. v. Sill Bros., Inc.* 191 So.3d 897 (Fla. 2016).

Although her position is supported by the law, the constitutional exemption on homestead property is not absolute. *Partridge v. Partridge,* 790

So.2d 1280, 1283 (Fla. 4th DCA 2001). In *Partridge v. Partridge,* the Fourth District Court of Appeal discussed the purposes of the homestead protections found in the Florida Constitution and the exceptions, writing:

> The purpose of the homestead provision is to protect the family, to "provide a refuge from the stresses and strains of misfortune." Article X, section 4 was amended in 1985 to extend protection of the provision to a 'natural person,' without regard to status a head of a family. (sic)
>
> The exemption should be liberally construed in favor or (sic) protecting the family home and those who it was designed to protect. While all exceptions to the exemption should be strictly construed such constructions are inappropriate when the exemption becomes an instrument of fraud.
>
> The constitutional exemption on homestead property is not absolute. As such, the homestead can be subject to an equitable lien and the foreclosure by a forced sale in an appropriate case. The Florida Supreme Court stated in *Palm Beach Savings & Loan Ass'n v. Fishbeing,* 619 So.2d 267, 270 (Fla. 1993), "that where equity demands it this court has not hesitated to permit equitable

> liens to be imposed on homesteads beyond the literal language of article X, section 4," the first district echoed out (sic) supreme court when it stated:
>
> > Despite the exemption of homestead property from forced sale as provided in Art. X § 4(a)(1), the trial court correctly concluded and an equitable lien can be imposed against such property under certain circumstances, namely *where a plaintiff can establish fraud or "reprehensible conduct" on the part of the beneficiary of the constitutional protection.*

Partridge at 1283 (internal citations omitted)(emphasis added).

In this case, Pamela Stuart seeks the protection of the homestead exemption against her sisters' claims arising from her "reprehensible conduct" as trustee of their father's Trust as described above. The successor trustee found that the total value of the trust was $4,281,905.47 of which $3,407,783.93 – 80% of the total value of the trust assets – represents the value of the loan Pamela Stuart made to herself. Under the terms of the successor trustee's proposed Final Accounting, the loan receivable due from Pamela Stuart to the trust is divided between the beneficiaries with the

amount of $902,937.28 being awarded to Cathy Ryan and the amount of $1,109,811.82 being awarded to Deborah Stuart. The balance of the loan receivable ($1,395,034.82) is awarded to Pamela Stuart. Given these circumstances, the court finds that it is entirely appropriate to impose an equitable lien against Pamela Stuart's interest in the 101 South Catalina Court homestead residence so that the her (sic) interest in the value of this property can be used to reduce the obligation she owes under the unsecured note.

The John's Island Property

The plaintiffs request that this court award to them a lien against the defendant's Johns Island townhouse located at 111 John's Island Drive 7, Vero Beach, Florida. Notwithstanding the Agreed Order of March 4, 2014 wherein the parties agreed that Pamela Stuart would not "sell, transfer, jointly title, encumber, or otherwise attempt to make unavailable to creditors" the John's Island property, Pamela Stuart claims that the John's Island property is her homestead and, as such, is exempt from claims of creditors under Article X, section 4 of the Florida Constitution. In making this claim that the property is her homestead, Pamela Stuart relies on the following facts:

a. she purchased the property in January of 2000;

b. she registered to vote in Indian River County, Florida, on September 30, 2004 (Defendant's Exhibit #16);

c. she purchased a burial plot in Indian River County in September 2007;

d. she obtained a Florida Driver's license on December 28, 2015;

e. she obtained a homestead tax exemption (Article VII, section 6, Fla. Const.) for the property from the Property Appraiser effective 2016; and

f. she intended her John's Island home to be her domicile since the time she registered to vote in 2004.

Characterization of property as homestead pursuant to Article X, section 4 of the Florida Constitution depends on the intention of the head of family to make the property their family's permanent residence. *Cooke v. Cooke,* 412 So.2d 340 (Fla. 1982). In discussing how a court should go about determining someone's intention the Florida Supreme Court in *Semple v. Semple,* 82 Fla. 138, 142 (1921) stated that "[t]he intention of a person is a difficult matter to establish, and can only reliably be shown by circumstances and acts in support of expressions of intention." The evidence in this case

shows the following:

a. The defendant currently owns a home located at 5115 Yuma Street NW, Washington, D.C. which is her principal place of residence and she has owned this home while serving as the trustee of her father's trust. The defendant testified that she has used and continues to use the 5115 Yuma Street NW, Washington, D.C. address on her federal income tax returns.

b. Rule 1-3,3, Rules Regulating The Florida Bar, requires each Bar member to designate their mailing address, and if their physical location is not their principal place of employment, the member must also provide an address for their principal place of employment. The defendant lists 5115 Yuma Street NW, Washington, D.C. as both her mailing address and physical address with the Florida Bar. Throughout her service as a trustee in this matter she actively practiced law and maintained her law office in Washington, D.C. In addition to being a member of the Florida Bar she is also a member of the bar associations of the District of

Columbia, Maryland, Virginia, and New York. For each of those bar associations, she lists her address as being in Washington, D.C.

c. The defendant admitted a series of calendars (Defendant's Exhibit #10) showing the dates she was in Florida between 1998 and 2013. These calendars were offered in support of her claim for expenses and work on the Trust. In 1998, the year her father died, she spent 39 days in Florida. From 2000, when she purchased her home in John's Island, through 2013, she averaged 59 days per year in Florida. In 2004, the year she registered to vote in Florida, she reported that she was in Florida for only 38 days. The longest period of time she has reported as being in Florida occurred in 2012, the year her mother died. In that year, she reported that she spent 139 days in Florida.

d. On December 4, 2014, the defendant executed a Declaration of Domicile, a copy of which was admitted as Plaintiff's Exhibit #8. In this document, made pursuant to section

222.17, Florida Statutes, Pamela Stuart states under oath that she considers her John's Island home to have been her domicile since 2004. Her signature is notarized by a notary public in Indian River County; however, the acknowledgment shows that she used her Washington, D.C. driver's license as proof of identification. The defendant did not obtain a Florida driver's license until December 28, 2015. This Declaration of Domicile was executed in direct contravention to the terms of the Agreed Order providing that Pamela Stuart "not sell, transfer, jointly title, encumber, or otherwise attempt to make unavailable to creditors the real property located at . . . 111 Johns Island Drive 7, Indian River Shores, Florida 32963. . . ."

e. In July 2013, the defendant executed an "Adjustable Rate Home Equity Conversion Deed of Trust" (reverse mortgage) (admitted as plaintiffs' Exhibit 7") on her home located at 5115 Yuma Street NW, Washington, D.C. In that instrument she agreed that she was and would continue to occupy that residence as her "principal

> residence" for the term of the security agreement. This reverse mortgage provides that the debt is due in full if the property ceases to be the principal residence of the borrower for reasons other than death.

The court finds that the defendant's reliance on the fact that she registered to vote in Indian River County in 2004 as a basis for her homestead claim is unfounded. In order to be qualified to register to vote a person must be a legal resident of the state and county. § 97.041, Fla. Stat. The term "legal residence" when used in statutes dealing with suffrage is synonymous with the term "domicile." *Herron v. Passailaigue,* 110 So.539, 543 (Fla. 1926). In *Bloomfield v. City of St. Petersburg Beach,* 82 So.2d 364, 368 (Fla. 1955) the Florida Supreme Court described the requirements required to establish domicile as said: (sic)

> We recognize the rule announced in the landmark case of Smith v. Croom, 7 Fla. 81, where it was stated: 'The mere intention to acqure a new domicil (sic) without the fact of an actual removal avails nothing; neither does the fact of removal without the intention.' Applying the rule in converse, however, we have consistently held that where a good faith intention is coupled with an actual removal evidenced by positive overt

acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor. In Wade v. Wade, 93 Fla. 1004, 113 So. 374, 375, the governing principles were announced as follows:

> In Phillmore's Law of Domicile (page 18) quoted with approval by this court in Smith v. Croom, 7 Fla. 81, it is said that 'domicile' answers very much to the common meaning of our word 'home.' Used in this connection 'legal residence' or 'domicile' means a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.

When the defendant registered to vote, September 30, 2004, she was living and practicing law in Washington, D.C.; she had spent only 16 days in Florida that year, 34 days the year before, and 46 days the year after; she continued to have a Washington, D.C. driver's license; and she used her Washington, D.C. address as her home address for tax purposes. Florida was not her domicile and she was not eligible to register to vote in Florida.

Based upon all of the facts described above, the court finds that Pamela Stuart's property located at 111 John's Island Drive 7, Vero Beach, Florida is not and was not her homestead despite her claims. Although she says that she intended to make this her home the evidence shows clearly and unequivocally that her home was and remains in Washington, D.C.

Fees and Costs Related to the Instant Litigation

Finally, in determining the defendant's loan balance due the Trust, the trustee made a reduction in the amount of $25,000.00 (See Note D to Trustee's Recommendation for Plan of Distribution) based on a personal check written by defendant on January 31, 2014, to the law firm of Shutts & Bowen. This is the law firm she retained to represent her in this litigation. The court finds that defendant was not entitled to have the Trust fund her defense in this case. Her total loan from the trust is therefore corrected by adding this $25,000.00 amount back to the principal due, resulting in a total amount due to the Trust by the defendant of $3,432,783.93.

It is therefore;

ORDERED AND ADJUDGED as follows:

A. The Plan of Distribution, recommended by the Successor Trustee, is hereby approved by this court with the following three exceptions:

1. The Successor Trustee shall not reduce the total of Defendant's loans by $25,000.00 made payable to her prior lawyers, Shutts & Bowen as the court has determined that this expense is not chargeable against the Trust.

2. The Successor Trustee shall divide the personal only among the plaintiffs Catherine S. Ryan and Deborah A. Stuart, given that the defendant has already received almost the entire Trust corpus; and

3. The Successor Trustee shall make the Specific bequests in the Trust as percentages of "the fund" as therein defined, calculated as a percentage of the remaining liquid account assets in the Trust.

B. The defendant's request for an award of trustee fees, costs, ad attorney fees is hereby denied based on the reasons as more specifically set forth above.

C. The fees and costs for the service of the Successor Trustee, and for the Successor Trustee's legal counsel, shall be added to the defendant's debt. The Agreed Order dated March 4, 2014, allowed

such fees and costs to be reimbursed from "other sources," and a Successor Trustee was necessary only because the defendant failed to make an accounting and breached her obligations as trustee.

D. The plaintiffs are entitled to recover their reasonable attorneys' fees and costs pursuant to Sections 736.1004 to 736.1006, Florida Statutes. The court hereby reserves jurisdiction to determine a reasonable fee.

E. As more specifically set forth above, the court hereby imposes an equitable lien against Pamela Stuart's one third interest of the real property located at 101 South Catalina Court, Vero Beach, Florida, and more particularly described as:

> Lot 30, SEAFOREST COURT, according to the plat thereof recorded in Plat Book 11, Page 97, public records of Indian River County, Florida.

Within 20 days of the entry of this final judgment the defendant, Pamela Stuart, shall execute a quit claim deed in favor of the successor trustee so that the trustee may distribute that property as more particularly set forth in her Final Plan of Distribution. If the defendant fails to comply, this final judgment shall constitute an actual grant, assignment and conveyance of property and rights in such matter pursuant to Rule 1.570, Florida

Rules of Civil Procedure.

F. Based on its findings that the defendant's John's Island property is not her protected homestead, the court hereby imposes an equitable lien against the defendant's real property located at 111 John's Island Drive 7, Vero Beach, Florida, more particularly described as:

> Apartment 7, THE TENNIS TOWNHOUSES, A CONDOMINIUM, according to the Declaration of Condominium thereof, recorded in Official Records Book 482, page 764, of the Public Records of Indian River county, said property lying and being in Indian River County, Florida

The lien shall be in favor of Catherine S. Ryan and Deborah A. Stuart and shall be in the amount due to plaintiff's (sic) under the terms of the Successor Trustee's Plan of Distribution as amended by this order.

G. The court hereby retains jurisdiction to enter a money judgment against the defendant and in favor of the plaintiffs for any monies remaining due and owing them once the real property has been liquidated.

DONE AND ORDERED this 21st day of October, 2016 at Vero Beach in Indian River

County, Florida.

/s/ Paul B. Kanarek

PAUL B. KANAREK
CIRCUIT JUDGE

Copies furnished to:

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EXHIBIT A TO APPENDIX D

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, IN AND FOR INDIAN RIVER COUNTY, FLORIDA

CATHERINE S. RYAN and DEBORAH A. STUART, as Beneficiaries of The J. Raymond Stuart Revocable Trust dated January 2, 1990, as amended, and the Marital Deduction Trust and the Non-

Plaintiffs,

v. CASE NO. 31-2013-CA-001523

PAMELA B. STUART, individually and as Trustee of The J. Raymond Stuart Revocable Trust dated January 2, 1990, as amended, and the Marital Deduction Trust and the Non-Marital Deduction Trust created thereunder,

Defendant.
_____/

AGREED ORDER ON PLAINTIFFS' MOTION FOR IMMEDIATE REMOVAL OF TRUSTEE,

FOR REFUND OF ALL ATTORNEYS' FEES AND COSTS PAID FROM THE TRUSTS, AND FOR APPROVAL TO RECORD NOTICES OF LIS PENDENS

THIS MATTER having come before the Court on submission of the parties' Agreed Order, ad the Court, having considered same and being otherwise duly advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant has resigned as Trustee of The J. Raymond Stuart Revocable Trust dated January 2, 1990, as amended, and the Marital Deduction Trust and the Non-Marital Deduction Trust created thereunder (the "Trust") by previously serving a notice of resignation on Plaintiffs. This Court acknowledges that Defendant has resigned as Trustee of the Trust,

2. There are no appropriate successors designated by the Trust documents but the qualified beneficiaries of the Trust, who are also the parties to this action, unanimously agree on Gina Rall, CPA to serve as the successor trustee ("Successor Trustee").

3. Defendant shall cooperate with the Successor Trustee to have her name removed as

Trustee from all accounts, titles, and other records relating to property owned by the Trust. These include, but are not limited to, bank and investment accounts, and accounts for maintenance and insurance of real property and vehicles. All property of the Trust will be titled only in the name of the Successor Trustee as Trustee.

4. Within ten (10) days from the date of this Order, Defendant shall deliver to the Successor Trustee all documents concerning the Trust since 1998, including those for any accounts that were funded, or properties acquired, in whole or in part, with assets from the Trust. Defendant shall cooperate with Successor Trustee to provide all documents reasonably required by the Successor Trustee to assume its duties as Successor Trustee.

5. Plantiffs shall cause Edward Ryan's name to be removed as Trustee from all accounts with Morgan Stanley Smith Barney, and any other Trust account. All property of the Trust will be titled only in the name of the Successor Trustee as Trustee.

6. The Successor Trustee is directed to have a full accounting prepared for the Trust by any certified public accountant, including himself/herself, for a reasonable fee and within a reasonable deadline. The accountant may prepare a final accounting and file any necessary tax

returns with the IRS. If and when further documents and information are requested for the accountings, which are in Defendant's sole possession, custody or control, Defendant shall have five (5) days to produce true and correct copies and/or furnish information upon written request by the Successor Trustee. Such documents and information may be inspected and copied by Plaintiffs at any time. Discovery in this matter shall be stayed until fifteen (15) days after the full accounting is completed and provided to the qualified beneficiaries of the Trust.

7. Fees for the services of a Successor Trustee and to prepare the accountings shall be paid by the Trust during the pendency of this case. At a trial or other adjudication of the merits of the case, the Court reserves jurisdiction to require payment or reimbursement from other sources.

8. Defendant shall not sell, transfer, jointly title, encumber, or otherwise attempt to make unavailable to creditors the real property located at 5115 Yuma St., N.W. Washington, DC 20016, and at 111 John's Island Drive 7, Indian River Shores, Florida 32963, nor any assets acquired in whole or in part with funds were once part of the Trust. In reliance on this directive, Plaintiffs will not file or record Notices of Lis Pendens on such properties.

9. The Court reserves jurisdiction to enforce the terms of this Order and to enter such further relief as deemed just and proper.

DONE AND ORDERED in Chambers in Vero Beach, Indian River County, Florida, on this 4th day of March, 2014.

/s/ Cynthia L. Cox

CYNTHIA L. COX
Circuit Judge

Copies to:

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APPENDIX E

CONSTITUTIONAL , STATUTORY, AND REGULATORY PROVISIONS INVOLVED

I. UNITED STATES CONSTITUTION

U.S. Const., Amend. V

> . . . No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. XIV

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. FEDERAL STATUTES

12 U. S. C. § 1715z–20 - Federal Housing Act, Insurance of home equity conversion mortgages for elderly homeowners

(a) Purpose The purpose of this section is to authorize the Secretary to carry out a program of mortgage insurance designed—

(1) to meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing, and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets; and

(2) to encourage and increase the involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners.

(b) Definitions For purposes of this section:

(1) The terms "elderly homeowner" and "homeowner" mean any homeowner who is, or whose spouse is, at least 62 years of age or such higher age as the Secretary may prescribe.

(j) Safeguard to prevent displacement of homeowner

The Secretary may not insure a home equity conversion mortgage under this section unless such mortgage provides that the homeowner's obligation to satisfy the loan obligation is deferred until the homeowner's death, the sale of the home, or the occurrence of other events specified in regulations of the Secretary.

(b)(3)The term "home equity conversion mortgage" means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor (as defined in section 3802(2) of this title) is authorized to make (A) under any law of the United States (other than section 3803 of this

title) or applicable agency regulations thereunder; (B) in accordance with section 3803 of this title, notwithstanding any State constitution, law, or regulation; or (C) under any State constitution, law, or regulation.

28 U. S. C. § 1257(a)

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

52 U.S.C. §20501. Findings and purposes

(a) Findings
The Congress finds that—

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this chapter are—

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to

implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

§20502. Definitions
As used in this chapter—

(1) the term "election" has the meaning stated in section 30101(1) of this title;

(2) the term "Federal office" has the meaning stated in section 30101(3) of this title;

(3) the term "motor vehicle driver's license" includes any personal identification document issued by a State motor vehicle authority;

(4) the term "State" means a State of the United States and the District of Columbia; and

(5) the term "voter registration agency" means an office designated under section 20506(a)(1) of this title to perform voter registration activities.

§20503. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsection (b), notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 20504 of this title;

(2) by mail application pursuant to section 20505 of this title; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the

residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 20506 of this title. . . .

§20504. Simultaneous application for voter registration and application for motor vehicle driver's license

(a) In general

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) Limitation on use of information

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) Forms and procedures
(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license—

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph ©);

(B) may require only the minimum amount of information necessary to—

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that—

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 20507(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) Change of address

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes. . . .

§20505. Mail registration
(a) Form

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 20508(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 20508(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration

programs.

(c) First-time voters
(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction. . . .

III. FEDERAL REGULATIONS

24 C. F. R. § 206.3 Definitions

Principal residence means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time.

IV. FLORIDA CONSTITUTION

Article IX of the Florida Constitution of 1868:

Section 1. A homestead to the extent of one hundred and sixty acres

of land, or the half of one acre within the limits of any incorporated city or town, owned by the head of a family residing in this State, together with one thousand dollars worth of personal property, and the improvements on the real estate, shall be exempted from forced sale under any process of law, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes, or for the payment of obligations constructed for the purchase of said premises, or for the erection of improvements thereon, or for house, field, or other labor performed on the same. The exemption herein provided for in a city or town shall not extend to more improvements or buildings than the residence and business house of the owner.

Section 2. In addition to the exemption provided for in the first section of this article, there shall be and remain exempt from sale by any legal process in this State, to the head of a family residing in this State, such property as he or she may select, to

> the amount of one thousand dollars; said exemption in this section shall only prevent the sale of property in cases where the debt was contracted, liability incurred, or judgment obtained before the 10th day of May, A. D. 1865. Nothing herein contained shall be so construed as to exempt any property from sale for the payment of the purchase money of the same, or for the payment of taxes or labor.
>
> Section 3. The exemptions provided for in sections 1 and 2 of this article, shall accrue to the heirs of the party having enjoyed or taken the benefit of such exemption, and the exemption provided for in section 1 of this article shall apply to all debts, except as specified in said section, no matter when or where the debt was contracted, or liability incurred.

Florida Constitution of 1968, as amended:

Article I – Declaration of Rights of the Florida Constitution:

> SECTION 2. Basic rights.—
>
> All natural persons, female and male

alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

SECTION 17. Excessive punishments.—

Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. . . .

SECTION 21. Access to courts.—

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Article VI of the Florida Constitution:

> SECTION 2. Electors.—
>
> Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, if registered as provided by law, shall be an elector of the county where registered.

Article VII of the Florida Constitution:

> Finance and Taxation
>
> SECTION 6 - Homestead Exemptions
>
> (a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment

> of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. . . .
>
> (b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

Article X of the Florida Constitution:

> SECTION 4. Homestead; exemptions.—
>
> (a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment

of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's

spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

SECTION 6. Eminent domain.—

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

(c) Private property taken by eminent domain pursuant to a petition to initiate

condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

SECTION 13. Suits against the state.---

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

V. FLORIDA STATUTES

90.702 Testimony by experts.—

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

(1) The testimony is based upon sufficient facts or data;
(2) The testimony is the product of reliable principles and methods; and
(3) The witness has applied the principles and methods reliably to the facts of the case.

90.956 Summaries.—

When it is not convenient to examine in court the contents of voluminous writings, recordings, or photographs, a party may present them in the form of a chart, summary, or calculation by calling a qualified witness. The party intending to use such a summary must give timely written notice of his or her intention to use the summary, proof of which shall be filed with the court, and shall make the summary and the originals or duplicates of the data from which the summary is compiled available for examination or copying, or both, by other parties at a reasonable time and place. A judge may order that they be produced in court.

95.011 Applicability.—

A civil action or proceeding, called "action" in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or governmental authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere.

95.11 - Limitations other than for the recovery of real property.—

Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—
(a) An action founded on negligence. . . .
(p) Any action not specifically provided for in these statutes.

(6) LACHES.—Laches shall bar any action unless it is commenced within the time provided for legal actions concerning the same subject matter

regardless of lack of knowledge by the person sought to be held liable that the person alleging liability would assert his or her rights and whether the person sought to be held liable is injured or prejudiced by the delay. This subsection shall not affect application of laches at an earlier time

97.041 Qualifications to register or vote.—

(1)(a) A person may become a registered voter only if that person:
1. Is at least 18 years of age;
2. Is a citizen of the United States;
3. Is a legal resident of the State of Florida;
4. Is a legal resident of the county in which that person seeks to be registered; and
5. Registers pursuant to the Florida Election Code.

104.011 False swearing; submission of false voter registration information.—

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm

falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

196.012 - Definitions—

(16) "Permanent resident" means a person who has established a permanent residence as defined in subsection (17).

(17) "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

196.015. Permanent residency; factual determination by property appraiser.—

Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) A formal declaration of domicile by the applicant recorded in the public records of the county in which the exemption is being sought.

(2) Evidence of the location where the applicant's dependent children are registered for school.

(3) The place of employment of the applicant.

(4) The previous permanent residency

by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

(5) Proof of voter registration in this state with the voter information card address of the applicant, or other official correspondence from the supervisor of elections providing proof of voter registration, matching the address of the physical location where the exemption is being sought.

(6) A valid Florida driver license issued under s. 322.18 or a valid Florida identification card issued under s. 322.051 and evidence of relinquishment of driver licenses from any other states.

(7) Issuance of a Florida license tag on any motor vehicle owned by the applicant.

(8) The address as listed on federal income tax returns filed by the applicant.

(9) The location where the applicant's bank statements and checking

accounts are registered.

(10) Proof of payment for utilities at the property for which permanent residency is being claimed.

196.031 Exemption of homesteads.—

(1)(a) A person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who in good faith makes the property his or her permanent residence or the permanent residence of another or others legally or naturally dependent upon him or her, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution. Such title may be held by the entireties, jointly, or in common with others, and the exemption may be apportioned among such of the owners as reside thereon, as their respective interests appear. . . .

222.01 Designation of homestead by owner before levy.—

(1) Whenever any natural person residing in this state desires to avail himself or herself of the benefit of the provisions of the constitution and laws exempting property as a homestead from forced sale under any process of law, he or she may make a statement, in writing, containing a description of the real property, mobile home, or modular home claimed to be exempt and declaring that the real property, mobile home, or modular home is the homestead of the party in whose behalf such claim is being made. Such statement shall be signed by the person making it and shall be recorded in the circuit court.

222.02 Designation of homestead after levy.—

Whenever a levy is made upon the lands, tenements, mobile home, or modular home of such person whose homestead has not been set apart and selected, such person, or the person's agent or attorney, may in writing notify the officer making such levy, by notice under oath made before any officer of this state duly authorized to administer oaths, at any time before

the day appointed for the sale thereof, of what such person regards as his or her homestead, with a description thereof; and the remainder only shall be subject to sale under such levy.

222.17 Manifesting and evidencing domicile in Florida.—

(1) Any person who shall have established a domicile in this state may manifest and evidence the same by filing in the office of the clerk of the circuit court for the county in which the said person shall reside, a sworn statement showing that he or she resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home.

(2) Any person who shall have established a domicile in the State of Florida, but who shall maintain another place or places of abode in some other state or states, may manifest and evidence his or her domicile in this state by filing in the office of the clerk of the circuit court for the county in which he or she resides, a sworn statement that his or

her place of abode in Florida constitutes his or her predominant and principal home, and that he or she intends to continue it permanently as such.

(3) Such sworn statement shall contain, in addition to the foregoing, a declaration that the person making the same is, at the time of making such statement, a bona fide resident of the state, and shall set forth therein his or her place of residence within the state, the city, county and state wherein he or she formerly resided, and the place or places, if any, where he or she maintains another or other place or places of abode.

(5) The sworn statement permitted by this section shall be signed under oath before an official authorized to take affidavits. Upon the filing of such declaration with the clerk of the circuit court, it shall be the duty of the clerk in whose office such declaration is filed to record the same in a book to be provided for that purpose. For the performance of the duties herein prescribed, the clerk of the circuit court shall collect a service charge for

each declaration as provided in s. 28.24.

(7) Nothing herein shall be construed to repeal or abrogate other existing methods of proving and evidencing domicile except as herein specifically provided.

718.104 - Creation of condominiums; contents of declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

732.401 Descent of homestead.—

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

733.607 Possession of estate.—

(1) Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except the protected homestead, but any real property or tangible personal property may be left with, or surrendered to, the person presumptively entitled to it unless possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by a beneficiary is conclusive evidence that the possession of the property by the personal representative is necessary for the purposes of administration, in any action against the beneficiary for possession of it. The personal representative shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it.

. . .

733.608 General power of the personal representative.—

(1) All real and personal property of the decedent, except the protected homestead, within this state and the rents, income, issues, and profits from it shall be assets in the hands of the personal representative:

(a) For the payment of devises, family allowance, elective share, estate and inheritance taxes, claims, charges, and expenses of the administration and obligations of the decedent's estate.
(b) To enforce contribution and equalize advancement.
(c) For distribution.

(2) If property that reasonably appears to the personal representative to be protected homestead is not occupied by a person who appears to have an interest in the property, the personal representative is authorized, but not required, to take possession of that property for the limited purpose of preserving, insuring, and protecting it for the person having an interest in the property, pending a determination of its homestead status. If the personal

representative takes possession of that property, any rents and revenues may be collected by the personal representative for the account of the heir or devisee, but the personal representative shall have no duty to rent or otherwise make the property productive.

(3) If the personal representative expends funds or incurs obligations to preserve, maintain, insure, or protect the property referenced in subsection (2), the personal representative shall be entitled to a lien on that property and its revenues to secure repayment of those expenditures and obligations incurred. These expenditures and obligations incurred, including, but not limited to, fees and costs, shall constitute a debt owed to the personal representative that is charged against and which may be secured by a lien on the protected homestead, as provided in this section. The debt shall include any amounts paid for these purposes after the decedent's death and prior to the personal representative's appointment to the extent later ratified by the personal representative in the court proceeding provided for in

this section. . . .

736.0708 Compensation of trustee.—

(1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:
(a) The duties of the trustee are substantially different from those contemplated when the trust was created; or
(b) The compensation specified by the terms of the trust would be unreasonably low or high.

(3) If the trustee has rendered other services in connection with the administration of the trust, the trustee shall also be allowed reasonable compensation for the other services rendered in addition to reasonable compensation as trustee.

736.0709 Reimbursement of expenses.—

(1) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for reasonable expenses that were properly incurred in the administration of the trust.

(2) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

736.0816 Specific powers of trustee.—Except as limited or restricted by this code, a trustee may:

(6) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust and advance money for the protection of the trust.

(19) Make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions that are fair and reasonable under the circumstances, and the trustee has a

lien on future distributions for repayment of those loans.

736.1001 Remedies for breach of trust.—

(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(2) To remedy a breach of trust that has occurred or may occur, the court may:
(a) Compel the trustee to perform the trustee's duties;
(b) Enjoin the trustee from committing a breach of trust;
(c) Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
(d) Order a trustee to account;
(e) Appoint a special fiduciary to take possession of the trust property and administer the trust;
(f) Suspend the trustee;
(g) Remove the trustee as provided in s. 736.0706;
(h) Reduce or deny compensation to the trustee . . . .
(i) Subject to s. 736.1016, void an act of the trustee, impose a lien or a

constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
(j) Order any other appropriate relief. . . . .

736.1009 Reliance on trust instrument.—

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(1) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act.

Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued. However, any such action against a state university board of trustees shall be brought in the county in which that university's main campus is located or in the county in which the cause of action accrued if the university maintains therein a substantial presence for the transaction of its

customary business.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Florida Space Authority.
. . .

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of $200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same

incident or occurrence, exceeds the sum of $300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $200,000 or $300,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $200,000 or $300,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign

immunity before July 1, 1974. . . .

(18) No provision of this section, or of any other section of the Florida Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.

VI. FLORIDA RULES

Florida Rule of Civil Procedure 1.120(g)

Special Damage. When items of special damage are claimed, they shall be specifically stated.