

SUPREME COURT OF FLORIDA

In re Amendments to Florida Probate Rule 5.405

No. SC2025-0266 (Fla. Aug. 28, 2025) · No. SC2025-0266 · Decided August 28, 2025

SUMMARY

The Supreme Court of Florida adopts amendments to Florida Probate Rule 5.405 concerning proceedings to determine the protected homestead status of real property. The amendments require petitions to state whether the decedent died testate or intestate and, when applicable, identify the method by which a surviving spouse waived homestead rights; they also revise related numbering, order language, notes, and references. The amendments become effective October 1, 2025, at 12:01 a.m.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Carlos G. Muñoz, Chief Justice; Charles T. Canady, Justice; Jorge Labarga, Justice; Renatha Francis, Justice; Robert J. Luck, Justice; Jamie R. Grosshans, Justice; John D. Couriel, Justice; M. Casey Sasso, Justice
JURISDICTION	Supreme Court of Florida
DECIDED	August 28, 2025
DOCKET	SC2025-0266
DISPOSITION	approved
PROCEDURAL POSTURE	Original rulemaking proceeding in which the Florida Bar's Probate Rules Committee proposed amendments to Florida Probate Rule 5.405.
PRECEDENTIAL VALUE	Published rulemaking opinion adopting amendments to a Florida Probate Rule

TOPICS

- probate procedure
- probate
- homestead
- pleadings
- intestacy

PRACTICE AREAS

- probate
- real estate
- civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida should adopt the proposed amendments to Florida Probate Rule 5.405 governing proceedings to determine protected homestead status of real property.
2. What information a petition must contain concerning the decedent's testamentary status and any surviving spouse's waiver of homestead rights.

HOLDINGS

1. The Supreme Court of Florida adopted the proposed amendments to Florida Probate Rule 5.405.
2. A petition under Florida Probate Rule 5.405 must state whether the decedent died testate or intestate and, if applicable, whether the surviving spouse waived homestead rights and the method by which the waiver occurred.
3. Florida Probate Rule 5.405(d) was amended to remove references to 'of the decedent' when referring to homestead.

KEY QUOTATIONS

“We adopt the amendments to rule 5.405 as proposed by the Committee.” (-2-)

“The amendments shall become effective on October 1, 2025, at 12:01 a.m.” (-2-)

FACTUAL BACKGROUND

The Florida Bar's Probate Rules Committee proposed amendments governing petitions to determine the protected homestead status of real property owned by a decedent or held by a trustee of a trust of a deceased settlor. The amendments address whether the decedent died testate or intestate, the method by which a surviving spouse waived homestead rights, terminology concerning protected homestead, and related rule references.

PROCEDURAL HISTORY

The Florida Bar's Probate Rules Committee proposed amendments to Rule 5.405. The proposal was published for comment twice, no comments were received, and the Florida Bar Board of Governors unanimously recommended acceptance; the Supreme Court of Florida adopted the amendments.

DISPOSITION

approved

CASES CITED

- In re Noble's Estate, 73 So. 2d 873 (Fla. 1954)

OPINION

In Re: Amendments to Florida Probate Rule 5.405

PER CURIAM.

Supreme Court of Florida _____ No. SC2025-0266 _____ IN RE:
AMENDMENTS TO FLORIDA PROBATE RULE 5.405. August 28, 2025 PER CURIAM. The Florida Bar’s Probate Rules Committee proposes amending Florida Probate Rule 5.405 (Proceedings to Determine Protected Homestead Status of Real Property).¹ Both the Committee and the Court published the proposal for comment in The Florida Bar News; no comments were received in response to either publication. The Florida Bar’s Board of Governors unanimously recommends acceptance of the proposed amendments. We adopt the amendments to rule 5.405 as proposed by the Committee. Subdivision (b)(4) is added to require that a petition to determine the protected homestead status of real property owned by

1. We have jurisdiction. Art. V. § 2(a), Fla. Const.; see also

Fla. R. Gen. Prac. & Jud. Admin. 2.140(b). a decedent or trustee of a trust of a deceased settlor state “whether the decedent died testate or intestate.” This change will allow courts to determine the proper beneficiaries of a decedent’s homestead. In addition, the remaining numbered paragraphs under subdivision (b) are renumbered. Lastly, newly renumbered subdivision (b)(5) is amended to require the petition to include, if applicable, the method by which the surviving spouse waived homestead rights. This will provide clarity for both practitioners and courts regarding the basis of the waiver. Next, we amend subdivision (d) (Order) to remove references to “of the decedent” when referring to homestead. That language is not included in the definition of “protected homestead” in section 731.201(33), Florida Statutes, the general definitions provision in the Probate Code. Last, a new revision note is added for these amendments to detail the adopted changes, and two of the rule references are reordered to place them in numerical order. Accordingly, we amend Florida Probate Rule 5.405 as reflected in the appendix to this opinion. New language is underscored; -2- deleted language is stricken through. The amendments shall become effective on October 1, 2025, at 12:01 a.m. It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS,
FRANCIS, and SASSO, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER

THE EFFECTIVE DATE OF THESE AMENDMENTS. Original Proceeding – Florida Probate Rules Michael A. Sneeringer, Chair, Probate Rules Committee, Bonita Springs, Florida, Erin Farrington Finlen, Past Co-Chair, Probate Rules Committee, Fort Lauderdale, Florida, Zackary T. Zuroweste, Past Co-Chair, Probate Rules Committee, Clearwater, Florida, Joshua E. Doyle, Executive Director, The Florida Bar, Tallahassee, Florida, and Heather Savage Telfer, Staff Liaison, The Florida Bar, Tallahassee, Florida, for Petitioner -3-

APPENDIX

RULE 5.405. PROCEEDINGS TO DETERMINE PROTECTED
HOMESTEAD STATUS OF REAL PROPERTY

(a) [No Change] (b) Contents. The petition must be verified by the petitioner and must state:

(1)-(3) [No Change]

- (4) whether the decedent died testate or intestate;
- (5) whether the decedent was survived by a spouse, and if so, the name of the decedent's surviving spouse, and whether the surviving spouse waived the surviving spouse's homestead rights, and if so, the method through which the surviving spouse waived those rights;
- (56) the names of surviving descendants, and a statement as to whether the decedent had any minor children as of the date of death, identifying any minor children by name and year of birth;
- (67) a legal description of the property owned by the decedent on which protected homestead is claimed;
- (78) whether the property was the domicile of the decedent, or if not, whether the property was located within a municipality and was the domicile of a member of the decedent's family;
- (89) how the real property was titled at the time of the decedent's death; and
- (910) any other facts in support of the petition.

(c) [No Change] -4- (d) Order. The court's order on the petition must describe the real property and determine whether any of the real property constituted the protected homestead of the decedent. If the court determines that any of the real property was the protected homestead of the decedent, the order must identify by name the person or persons entitled to the protected homestead real property and define the interest of each. Committee Notes This rule establishes the procedure by which the personal representative or any interested person may petition the court for a determination that certain real property constituted the decedent's protected homestead property, in accordance with article X, section 4 of the Florida Constitution. The jurisdiction of the court to determine constitutional protected homestead property was established by *In re Noble's Estate*, 73 So. 2d 873 (Fla. 1954). Rule History 1984-2024 Revision [No Change] 2025 Revision: Amends subdivision (b) to require the petition to include whether the decedent died testate or intestate and to detail the method through which the surviving spouse waived homestead rights, if the surviving spouse waived homestead rights. Amends subdivision (d) to avoid conflict with section 731.201(33), Florida Statutes. Committee notes revised. Constitutional Reference [No Change] Statutory References [No Change] Rule References Fla. Prob. R. 5.020 Pleadings; verification; motions. -5- Fla. Prob. R. 5.040 Notice. Fla. Prob. R. 5.041 Service of pleadings and documents. Fla. Prob. R. 5.180 Waiver and consent. Fla. Prob. R. 5.205(a)(6) Filing evidence of death. Fla. Prob. R. 5.340 Inventory. Fla. Prob. R. 5.404 Notice of taking possession of protected homestead. Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents. Fla. R. Gen. Prac. & Jud. Admin. 2.425 Minimization of the Ffiling of Ssensitive Iinformation. Fla. R. Gen. Prac. & Jud. Admin. 2.516 Service of pleadings and documents. -6-

