

# PUBLICATION

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## Florida Court Reverses *Desbrunes* Decision Based on Homestead Status

Authors: Eve Alexis Cann, Matthew R. Feluren

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Florida's Fourth District Court of Appeal issued on May 8, 2024, its much-anticipated new opinion on the lender's motion for rehearing in *Ronald Desbrunes v. U.S. Bank National Association, as Trustee*, which affirms the final judgment of foreclosure entered by the trial court. Judge Martha C. Warner wrote the opinion with Judges Dorian K. Damoorgian and Alan O. Forst concurring.

In the newly released opinion, the Court has now held that "[a]s the property was the decedent's homestead, a legal representative of the decedent, such as a personal representative, did not have to be appointed, because homestead passes outside any administration of the decedent's estate." See [2024 WL 2065510](#) (Fla. 4th DCA May 8, 2024) citing *Clifton v. Clifton*, 553 So. 2d 192, 194 n.3 (Fla. 5th DCA 1989); *Ray v. Rotella*, 425 So. 2d 94, 96 n.3 (Fla 5th DCA 1982).

The Court's holding is based on the property being the decedent's homestead and the lender's argument that it complied with Florida Rule of Civil Procedure 1.260 by substituting the decedent's heirs in its foreclosure action. The Court notes that the withdrawal of its prior opinion is based upon the fact that the property was the decedent's homestead, which was overlooked in its prior decision, as it was not expressly mentioned in the briefing of the case. The Court's decision is final as no further motions for rehearing will be entertained by the Court.

This opinion should ease concerns over foreclosure cases in Florida involving homestead properties when a borrower has died or dies during the course of the foreclosure proceedings. In such a scenario, lenders will be able to continue to amend their foreclosure complaints to add the decedent's heirs and appoint a guardian ad litem in lieu of potentially opening a probate estate to have a legal representative of the decedent's estate, such as a personal representative or curator, appointed and added to the foreclosure action. The ability to avoid this extra step when it comes to homestead property should allow lenders to avoid extended time and expenses associated with opening probate and pursuing such an appointment in a separate action.

Should you have any questions about this ruling, how it may impact your business or ongoing matters, or have questions generally related to this topic, please contact [Eve A. Cann](#) and [Matthew R. Feluren](#).