

Florida Homestead Provisions Can Be Trap For the Unwary

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This intra-family dispute on ownership of a residence in Broward County has important implications for probate and real estate lawyers and has become a favorite of those who teach Florida homestead constitutional principles.

If you do not specialize in Florida constitutional homestead law, do not dabble in it, as the lawyers learned here, where the court applied principles of standing to a unique set of facts.

This family saga began when Norma Lyons and her late husband, Richard, bought a single-family residence in Florida. After he retired from the practice of medicine, the couple moved to Florida and resided in that home until June 2007 when he passed away.

About 14 years earlier, Norma and Richard engaged in a series of simultaneous transactions designed to transfer the residence to a trust for all five of their children. The couple conveyed the residence solely to Norma, who had established a trust on the same day, and then she conveyed the residence to the trust on the same day. In one fell swoop, the couple executed two simultaneous transfers of the residence. Both deeds were dated the same day, prepared by the same law firm and signed in front of the same witness and notary public.

In 2010, after reaping the full benefits of this trust arrangement, the widow attempted to convey the residence to her daughter, Valerie, despite having previously conveyed title in the residence to the trust some 17 years earlier. This invalid transfer led to the underlying litigation.

The three sons sued their mother, their sister and the attorney to set aside the 2010 deed.

The sons, in their capacity as trustees, sued Norma Lyons, their sister and the attorney who prepared the deed from mother to daughter and herself. The sons asked the court to set aside the deed on the basis that the residence was, and still is, the property of the trust.

Deed Challenged

The primary defense asserted by Norma Lyons was that her deed to the trust (made some 20 years earlier) was void ab initio because it lacked the signature of her husband in violation of his homestead rights under Article X, Section 4(c), of the Florida Constitution.

The trial court agreed, finding the deed to the trust was void because Richard Lyons had not signed it.

The constitutional provision limiting the devise and alienation of homestead property, which Norma Lyons relied upon, is governed by Article X, Section 4(c), which provides: "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."

Norma Lyons argued that even though Richard Lyons deeded all his rights to his wife before she deeded the residence to the trust, Richard Lyons was still required by the constitutional language "joined by the spouse if married" to sign the deed to the trust or it was void from the outset. Norma argued the conveyance to the trust violated 100 years of Florida constitutional law.

The sons appealed, and the Fourth District Court of Appeal reversed the trial court decision. It held Norma Lyons cannot claim the deed she signed was void ab initio, as she is not the non-owner surviving spouse, one of the classes that Constitution was designed to protect. At the time of Norma Lyons' quitclaim to the trust, the only non-owner spouse was Richard Lyons.

The Fourth District stated that if there were any infirmities in the wife's action of quitclaiming the homestead residence to the trust (because her husband had not signed the deed), only Richard Lyons as the non-owner spouse could rely on the provisions of Article X, Section 4(c). The court stated that clearly Norma Lyons does not have standing to assert Richard Lyons' potential rights had he been the surviving spouse. In other words, she should not be able to attack the quitclaim deed as void ab initio where she drafted, relied on and was the sole signatory to it.

Norma Lyons had no better luck when she petitioned the Florida Supreme Court to exercise its discretionary jurisdiction to hear the case. On Sept. 24, the court denied that request.

In reversing the trial court decision, the Fourth District applied homestead standing principles to a unique set of facts. Florida's constitutional homestead provisions can be a trap for the unwary as demonstrated by this case.

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