

Real Estate Issues for Family Lawyers

by Cynthia Stamp Swanson

The Family Law Section had a great meeting on March 28, 2007, and not just because we had actual refreshments! We owe many thanks to Ramona Chance and Jodi Cason for a great presentation on several real estate issues that family lawyers come up against all the time. They prepared a great handout for us, chock full of information. I have a couple extra sets of the handouts, so if you want one, just contact me.

They talked about the need to use actual, full legal descriptions on deeds. Do not use the abbreviated descriptions found on tax bills or the property appraiser's or tax collector's websites. And proofread (by reading out loud to someone else) every legal description. Also, remember that names on deeds must match the names on the deed by which the owners received their interest.

You can use the "now known as" (NKA) or "formerly known as" (FKA) designations.

They also warned us to always have both the husband and wife sign the deed where the property is their homestead even if the spouse's name is not on the title.

"You can never make a mistake having the spouse sign." If the property is the beach condo, for example, and is thus not homesteaded, be sure to include the statement that the property is not the homestead of the grantor nor is it contiguous to the grantor's homestead. And include a statement as to the grantor's marital status on all deeds.

Also, a word to the wise: be sure to include the following clause on all deeds that you prepare: "This deed prepared without benefit of title search or examination."

You need two witnesses and a notary for all deeds you want to record, and, really, when would you NOT want to record a deed? The notary can also act as a witness, but must sign the deed twice in that case.

Ramona and Jodi also discussed the differences between Quit Claim Deeds (often erroneously referred to as quick claim deeds) and Special Warranty Deeds. The former includes no warranties and only says, "I have any interest in this property, I'm giving it to you." This cannot be used as a root of

title and it will not convey an after acquired interest. The Special Warranty deed, on the other hand, does warrant the ownership of title with respect to acts by the Grantor, just not everybody back through the whole chain of title. But at least it's warranting that "I have this particular interest in this property which I am giving to you." According to Ramona, you should always use a Special Warranty Deed whenever possible.

We next moved to a discussion of the documentary stamp tax. The rate is set in Fla. Stat. §201.02 at 70 cents per \$100 of consideration. And don't overlook the fact that consideration includes the principal balance on any existing mortgage. The transfer of a homestead between a husband and wife incident to a divorce is not a taxable event (i.e., no doc stamps are required). However, this applies only to the homestead. So, the conveyance of the wife's interest in the non-homesteaded beach

condo to the husband does require doc stamps. And even if there is no payment by the husband to the wife, if the husband is taking over a mortgage, doc stamps must be paid for an amount equal to one-half of the mortgage balance. Ramona advises that if

you have a question about whether doc stamps are due or not, call Eleanor Glick at the Department of Revenue at (305) 419-4405. She points out that it is a misdemeanor to intentionally not pay the correct doc stamp tax, and whether the failure is intentional or not, a penalty equal to one-half the amount due is assessed, plus 1% per month.

More words to the wise: include the following language on a deed conveying an interest in the marital home pursuant to a divorce: "This deed is between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein."

However, you can avoid the need for the preparation of a deed if you use language in the final judgment that makes it self-executing. This way, when the final judgment is recorded, the judgment itself acts as an instrument of conveyance. Suggested



Family Law

Continued from page 7

language: "The Husband/Wife shall become the sole owner of the marital home, located at [INSERT ADDRESS], as more particularly described as follows: [INSERT LEGAL DESCRIPTION]. Pursuant to Florida Statutes §61.075(4) and Fla R. Civ. P. 1.700(d), this Final Judgment shall have the effect of a duly executed instrument of conveyance of the real property upon the recording of this judgment, or a certified copy thereof, in the Official Records of [INSERT COUNTY NAME] County, and shall act as a conveyance of all the Husband/Wife's interest in and to the property described above from the Husband, _____, to the Wife, _____."

Here are the good things about self-executing judgments: (1) they avoid taking the extra step of preparing and getting parties to exchange deeds; (2) they will avoid the requirement of doc stamps even on non-homestead property. But maybe the most important good thing is that (3) this will avoid the attachment of liens to the property which might occur between the date of the dissolution of marriage and the actual conveyance (exchanging of deeds). If you've ever had a situation where one party wouldn't sign the deed, or wouldn't return it, or got sick, or went on an extended trip, or whatever, you know the value of self-executing judgments.

One caveat here: Ramona pointed out that if the final judgment refers to or incorporates the property settlement agreement, a title company will very likely want to see the actual property settlement agreement to be sure that there are no other provisions which would affect title, such as a requirement for the payment of one spouse's interest in the property. Ramona suggested we might want to record the settlement agreement in that case; however, I'm not so sure about that. In many cases, the parties want their settlement agreement to remain private; in fact, we sometimes negotiate and include provisions specifically providing that the agreement will not be filed with the court. However, if a title agent needs to see it, it seems to me it can be provided privately to the agent without being recorded.

Ramona and Jodi recommended that we obtain an Owner and Encumbrance search from a title agent on properties if we have any concern about actual ownership, existence of mortgages and other liens, etc. They cost about \$125 and only take a week or so to obtain on Alachua County property, a little longer in other counties.

As I mentioned, I have a few more sets of

handouts. Contact me if you'd like one. And when you talk to them, please join me in thanking Ramona Chance and Jodi Cason for a great presentation. And what a bonus that they brought a cooler full of cold water bottles and Girl Scout cookies! They're setting the bar pretty high for future meetings! Speaking of future meetings, our next one will be Wednesday, April 25, 2007 at 4:00 p.m. We will have an interesting presentation at that time from Ruth Angaran and Lisa Winn. They have initiated a new parenting course for divorcing and divorced parents. It's called "New Beginnings: Shielding Children From Conflict." According to their promotional material, this is a psycho-educational program designed to improve the quality of the parental relationship in situations of divorce. The course is comprised of 10 sessions which last two hours each, and it will be given four times a year. Here's the promise: "This is a 20-hour intensive course devoted to changing the hostility to civility. Upon completion, you and your children's other parent will communicate/negotiate more effectively and your children will love it. You may take this class as a result of the order of a Judge in the Family Court, as a referral by your Parenting Coordinator, or at the recommendation of your family therapist. It may be the best thing you have done for your family in a long time!"

Our May meeting will be a seminar presented by Judge Griffiths on contempt proceedings. He's going to help us in distinguishing between civil and criminal contempt, and between indirect and direct contempt, as well as the burden of proof, range of possible punishments, and so on. We're going to start that day, May 30, 2007, at 3:00 p.m. and apply for two hours of CLE credit for the seminar. Mark your calendars for the earlier time that day!

Correction: Two months ago I mentioned in an article about the software applications that several family lawyers are using that a certain well known family lawyer was using WordPerfect version 5.1, which was a DOS version. She pointed out that I had this all wrong. She is actually using version 5.1 for Windows and wants me to get that straight. This version came out in 1991 - 16 years ago!! I think she wins the prize! But I'm not sure - is anybody using any equipment, piece of technology, software, etc. in their office that has been in use longer than 16 years? Let me know and maybe you'll get the prize.