

PERSONAL REPRESENTATIVE RECOVERY OF HOMESTEAD EXPENSES

By: James W. Mallonee

January, 2017

It is well known that Florida law protects homeowners against forced sale from creditors. This also holds true when the owner of his or her primary Florida residence dies leaving judgment holders waiting to be paid. The protection against forced sale of a decedent's homestead to pay creditors also passes to the heirs who inherit the homestead. But what happens if an heir who becomes the decedent's personal representative invests their personal funds to protect the homestead prior to and following the decedent's death.

Prior to 2003 if the personal representative of an estate expended his or her own funds to maintain the decedent's primary Florida residence, he or she had no means of recovering those expenditures because the law viewed the personal representative as a creditor. This situation was remedied in 2003 by the legislature which gave the personal representative the ability to file a lien against the decedent's homestead for personal funds expended to preserve, maintain, insure or protect the decedent's homestead.

Section 733.608 of the Florida Statutes was updated to give personal representatives a right to lien a decedent's homestead property in much the same means as a contractor who provides improvements to a person's property. There are a few steps that need to be undertaken prior to entitling the personal representative with a right to recover his or her expenditures while preserving, maintaining, insuring or protecting the decedent's property.

The first step is to determine whether the property meets the requirements of homestead status. Generally speaking that process is determined by a court of law and involves a review of whether the property was the domiciliary residence of the decedent. If this minimum threshold can be met, then it is likely that the protection against forced sale against creditors will be ordered by the Court and such protection passed to the heirs of the estate.

The next step is for the personal representative to gather up all their receipts and proof of payments made to preserve, maintain, insure, or protect the homestead property. Normally, these include electric, water, insurance, lawn maintenance or repairs caused by damages not covered by insurance. The law is not clear on whether expenditures made to shampoo rugs, paint walls or power-wash the outside of the homestead property for purposes of preparing it for resale qualifies as lienable expenditures. Until the Courts have clearly defined what is acceptable, it is recommended you discuss your expenditures with your attorney prior to making them.

The law does provide that expenditures made will include those incurred after the decedent's death and prior to the personal representative's appointment to the extent that the Court ratifies such expenditures.

The next step involves notification. The personal representative must have a court hearing to adjudicate the amount of the debt that is owed. The date of the hearing and a copy of

the petition must be sent to all parties who have an interest in the property. Ordinarily this will consist of the persons who are the heirs of the decedent or those individuals who are named in the decedent's Will as devisees of the homestead property.

Once the adjudication (the amount approved) is determined by the Court, a Notice of Lien must be recorded in the Official Records of the County where the property is located. Once again, a copy of the Notice of Lien is to be sent to each party who has an interest in the property. It is also strongly recommended that the recorded Notice of Lien be filed in the probate proceeding.

The final step to recover homestead expenditures made by the personal representative is to sell the property. The proceeds from the sale generally go to satisfying the lien with the remainder being distributed to the persons with an interest in the property. However, in a few situations selling the property is not practicable because of the uncooperativeness of family members. As a result, the personal representative can begin foreclosure proceedings as provided in Section 702 of the Florida Statutes, wherein the property may eventually be sold on the Courthouse steps by the Clerk of Court. If a minimum bid is not made to cover the personal representative's lien, then in that event, the personal representative will be issued a certificate of title from the clerk of court. Once this is done, the personal representative will become the sole owner of the property.

As you can see, the law now protects a personal representative from managing and protecting a decedent's homestead. If you are concerned that you may have to put forth your personal funds to protect a decedent's homestead property, it is highly recommended that you seek the advice and counseling of an attorney who can guide you through the steps of recovery.

This article is intended for informational use only and is not for purposes of providing legal advice or association of a lawyer – client relationship