

## **Is Homestead Property really always Protected from Partition or Forced Sale?**

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Scenario: A debtor in a bankruptcy case owns a single-family residence with a non-debtor as tenants in common. In the debtor's bankruptcy petition, the debtor lists this real property as the debtor's exempt homestead property. Therefore, the property is not property of the bankruptcy estate and the debtor is allowed to retain ownership of the property. However, this parcel of real property is not the non-debtor's homestead property; rather, it is a second home for the non-debtor. The non-debtor funded the entire purchase of the property, as a loan to the debtor, and the debtor has promised to repay this money to the non-debtor in the form of monthly payments. The non-debtor was placed on the deed to the property as security for this loan. A proof of claim was filed by the non-debtor as a secured creditor in the debtor's bankruptcy case, seeking payment from the debtor in the amount of the loan plus accrued interest. Subsequently, the non-debtor also brought an adversary proceeding against the debtor, in bankruptcy court, seeking repayment of the debt or, in the alternative, seeking partition or forced sale of the real property in order to satisfy the debt. Is it permissible for this real property to be partitioned or subject to forced sale, even though it is the debtor's homestead property?

Your initial reaction might be no, but the actual answer is yes, based on the pertinent case law.

It is well-known in Florida that the general rule regarding homestead property is set forth in Florida's Constitution, under Article 10, Section 4. Under this general rule, a person's homestead property is protected from forced sale. Therefore, a person's homestead property cannot be seized by a creditor in the event that the creditor obtains a judgment against the owner of the homestead property. Similarly, a person's homestead property is also deemed an exempt asset, so it does not become part of the bankruptcy estate and the owner of the homestead property can retain the property even upon filing bankruptcy.

The Supreme Court of Florida stated in Tullis v. Tullis, 360 So.2d 375, 378 (Fla. 1978), that "[h]omestead interests should be protected from forced sale wherever possible, but not at the expense of others owning interests in the property." Therefore, the Court in Tullis held that Florida's Constitution permits partition or forced sale of a homestead property. Tullis, 360 So.2d at 376. The Court in Tullis prefaced this holding by stating that such partition or forced sale must be "necessary to protect the beneficial enjoyment of the owners in common to the extent of their interests in the property." Id.

With respect to our scenario, partitioning the parcel of real property probably is not an option since it is virtually impossible to partition a single-family residence. *See, In re Griffin*, 123 B.R. 933, 935 (Bankr. S.D. Fla. 1991). Therefore, in our scenario, it is likely that the real property will be subject to forced sale. As a result, the non-debtor owner of the property properly brought an adversary proceeding against the debtor owner, seeking partition or forced sale of the property to satisfy the debt owed to the non-debtor owner.

In conclusion, keep in mind that homestead property is not always protected from partition or forced sale, despite the language of the Florida Constitution. It is permissible for homestead property to be partitioned or subject to forced sale, in certain circumstances.

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