Title Chat

Volume 8, June 2002

Homestead, Part 3, Legal Separation

"My spouse does not have to sign the document because we are legally separated."

In our hypothetical closing in the last two Title Chats we have had difficulty convincing the sole titleholder to have his or her spouse join in the conveyance where the property is their homestead. Continuing on, and still trying to avoid having his spouse join in the deed, the seller now says " I know the general rule is that my spouse is required to join in the conveyance of our homestead, however for this closing, my spouse does not have to join in the conveyance because we are legally separated.

Remember the rule in Florida and in Texas is that if title to the land is vested in an individual and it is his or her homestead, then the titleholder's spouse must join in any conveyance or mortgage.

So, if they are "legally separated", what is their marital status? What does being "legally separated" mean? It means that they have either entered into an agreement to live apart and to share or divide income, expenses and other rights and responsibilities in an agreed upon manner; or they are subject to a court decree which accomplishes the same result. You may also hear words such as "separate maintenance", or "living apart". In any such case, the spouses are <u>not</u> divorced.

Florida does not recognize "legal separation" but does recognize the legal concept of "separate maintenance" where the marriage continues and each spouse can inherit for the other's estate upon death. See *25 Fla. Jur. Family Law Section 511 and Pacheco v. Pacheco 246 So.2d 778*.

Texas does not recognize any of these concepts. See for example, *Pilot Life Insurance v. Koch 617 SW 2d 786*.

Other states and foreign countries do recognize these concepts and since we encounter their citizens buying and selling property in Florida and Texas, we need to be aware of these concepts, although our requirements will not be changed.

Whether the titleholder is legally separated or is living apart from his or her spouse or is the party to a separate maintenance decree, he or she is still married and joinder by the spouse in a conveyance or mortgage of homestead property is necessary.

Next month we will look at the case where the spouse is "incapacitated".

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