

## Home Alone

By Mitchell A. Jacobs  
and Tam B. Nguyen

With the decline in the economic market, residential property foreclosures are on the rise. Parties may be forced to subject their properties to foreclosure proceedings since homeowners are unable to pay their mortgages. Some parties may dispute whether residential property should be sold under these unfavorable conditions. The party making the ultimate decision to sell certain property may depend on the form of title taken on the property. A recent 4th District Court of Appeal decision determined the characteristic of certain residential property owned by a spouse having sole title, which was purchased during the marriage.

*Marriage of Brooks*, 2008 DJ-DAR 18376, involved a residential property taken by the wife solely in her name without reference to her marital status with her husband. The two were married in 1997 and later purchased a home in October 2000. The husband paid the down payment on the house, while the wife did not contribute any money toward the down payment.

In order to facilitate the parties in obtaining financing to purchase the house, the parties' real estate agent recommended that title be taken solely in the wife's name, which she did. The two deeds of trust to the property stated that title was held in the wife's name as "a single woman." The husband had knowledge that the title was solely taken in his wife's name and did not object.

In February 2005, the parties separated. Around the time of separation, the house was in foreclosure. In April 2005, the wife sold the property to Executive Capital Group, a company that purchases "distressed" properties, or properties that are the subject of foreclosure proceedings, without including the husband in the transaction. Shortly after the company recorded the deed, the husband filed a petition for dissolution of the marriage.

The husband also requested to set aside the sales transaction, contending that the property was community property and that he was not joined in on the conveyance. In supporting his contention, the husband stated that the property was purchased during the marriage, which created the presumption that it was community property.

He also noted that he paid the down payment on the residence, and made payments

on the loans secured by the two deeds of trust. At the time Executive Capital met with the wife to show the property, the husband claims that she introduced him as her husband. The husband advised the company that the property was community property and that he wanted to refinance the house, and refused to sell it.

Executive Capital disputed the events of the meeting. It asserted that its representatives were not introduced to the man as the wife's husband, and did not talk to him.

Executive Capital contended it believed the wife was the sole owner of the property based on its search of the record title and the language in the grant deed and deeds of trust. The husband acquiesced that the wife took the title to the property solely in her name. The wife advised Executive Capital that her husband was just a "tenant" who would be out of the house by a certain date in April 2005. The company was unaware of any potential claims of community property interest to the property prior to the sale of the residence.

The trial court agreed with Executive Capital and held that it was a bona fide purchaser. The court stated that Executive Capital could take the title "free of any unknown community property claims" the husband may have had.

The Court of Appeal only determined the issue of the applicability of the rebuttable presumption of form of title. According to the "form of title" presumption, the description in a deed as to how the title is held is presumed to reflect the actual ownership interests in the property. This form title presumption is codified in Evidence Code Section 662, which states that the owner of legal title to a property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.

In making its determination, the Court of Appeal cited *Marriage of Lucas*, 27 Cal.3d 808 (1980), which held that the presumption arising from the form of title is to be distinguished from the general presumption set forth in Family Code Section 760 that property acquired during marriage is community property. The *Lucas* court determined that the community property presumption has no application to a case where a different intention is expressed in the instrument.

In 1983, the California Law Revision Commission attempted to eliminate the title presumption expressed in *Marriage*



*of Lucas*. Specifically, the commission recommended that a new Civil Code Section 5110.630 be enacted to provide: "Except as otherwise provided by statute, the form of title to property acquired by a married person during marriage does not create a presumption or interference as to the character of the property and is not in itself evidence sufficient to rebut the presumptions established by this article." The Estate Planning Trust and Probate Law Section of the State Bar of California opposed the proposed elimination of the form of title presumption. The Legislature rejected the recommendation by the commission and the form of title presumption was not affected.

The Court of Appeal affirmed the trial court's ruling and held that the husband did not have an interest in the property. It stated that "a deed to community real property given to a third-party purchaser is presumed valid if the purchaser received the deed 'in good faith without knowledge of the marriage relation.'" The Court of Appeal also determined that "Where one spouse takes title to property in his or her name, without reference to the marital relationship or the other spouse, it is presumed that the property is the separate property of the spouse who holds title." The Court of Appeal determined that the property was not acquired in any style of joint form, but was unambiguously acquired by the wife in her name only.

The presumption, the court found, can be overcome only by "clear and convincing" evidence "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind". This title presumption can be overcome by an agreement or understanding between the parties that the title reflected in the deed is not what they intended. The presumption cannot be overcome solely by tracing the funds used to purchase the property, by testimony of an intention not disclosed to the grantee at the time of the execution of the conveyance or that the title was taken in a particular manner merely to obtain a loan.

The Court of Appeal agreed with Executive Capital that the husband did not rebut the presumption of form title of the property. The wife took the title of the property solely in her name with the husband's knowledge and agreement, which presumptively made the property the wife's separate property. The husband did not provide clear and convincing evidence that there was an agreement or understanding between him and his wife that the property was to be held as community property. The fact that the parties were married at the time the wife acquired the property had no bearing and did not overcome the presumption. The husband's evidence that he contributed his earnings toward the down payment to purchase the home also did not rebut the presumption. The Court of Appeal held

that wife's subsequent sale of the property to Executive Capital without obtaining the husband's consent demonstrated that the form of title as stated on the deed was intended to make the home her separate property.

The Court of Appeal did not address issues regarding whether the husband would be entitled to reimbursement for contributions to the property.

Characterization of real property can be presumed by the form of title taken on the deed. The burden is on the spouse disputing the form of title to rebut the presumption with "clear and convincing" evidence that there is an agreement or understanding between the parties that the title reflected in the deed is not what the parties intended. The form of title presumption gives an attorney representing a party seeking to sell property title taken as their separate property and without the other party's consent, a better opportunity to prevail on such claims as long as long as the spouse opposing the sale had knowledge as to the form of title taken and cannot rebut the presumption with "clear and convincing" evidence to the contrary as to form of title.

Mitchell A. Jacobs of the Law Office of Mitchell A. Jacobs in Los Angeles is a certified family law specialist who limits his practice to marital dissolution and other family law matters. Tam B. Nguyen is an associate with the Law Office of Mitchell A. Jacobs.

*There once was a lawyer who rhymed  
In pleadings succinct and refined.  
The judge said without smile,  
"Check my Journal Profile,  
You'll find it's to prose I'm inclined."*



**With nearly 3,000 sitting judges in California  
How are you going to know which ones like limericks?**

THE DAILY JOURNAL'S JUDICIAL PROFILES SETS INCLUDE:

- courtroom questionnaires completed by the judges
- comments on trial court procedures
- education and personal history
- firm and court history
- bar associations, professional activities and hobbies
- and in-depth profiles covering important stuff like preferences in poetry

*Southern or Northern California Judges – \$376/year*

*All California Judges – \$515/year*

**Call 213-229-5402 or subscribe at [dailyjournal.com](http://dailyjournal.com)**

**Daily Journal**