Fraudsters Beware - Homestead Exemptions Don't Always Work.

by Brian Mahany

Why do so many fraudsters live in Florida? Some would say its the climate but more probably, it's Florida's unlimited homestead exemption. Under Florida law, creditors cannot force the sale of one's primary residence to satisfy claims and judgments. Many lawyers and creditors believe that protection is absolute and simply give up. It's not.

While Florida and that of a few other states (e.g. Texas) have very powerful asset protection laws to protect residents, courts have started to place limits on these statutes in the event of fraud.

In June of 2010, the United States Tax Court ruled that the IRS could pursue a condominium property that had been transferred from father to son at the time the father owed $112,000 to the IRS. Dad transferred the property for $10, a sum well below the value of the property. Although the son lived in the condo and it was his homestead, the court declared that dad's transfer to the son back in 2003 was made for the purpose of avoiding his debt to the IRS and was therefore a fraudulent conveyance.

Even though Florida has one of the strongest homestead protection laws in the nation, the court ruled that a transfer of a home to avoid creditors allows creditors to pursue their claims against the property.

Why is this case significant? First, Florida has strong asset protection laws that protect residents from claims against heir property. In Florida, creditors can pursue bank accounts, businesses, automobiles and vacation homes... just about everything except a person's home. Although the son had acquired the property 7 years ago and made the condo his primary residence, the court said it could still be sold to satisfy the father's tax debt.

The case is also significant because fraudsters routinely transfer real estate to friends and relatives for nominal consideration. Often this ruse works; suing a third party and proving their acquisition of the property was fraudulent is no easy task.

In this case, however, the court demonstrated there are limits on asset protections laws and those that engage in fraud should beware. Scott Rubenstein v. Commissioner of Internal Revenue Service, 134 T.C. No. 13 (June 7, 2010).

Asset protection and homestead laws remain a valuable tool for people seeking protection against creditors and runaway jury awards. When it comes to transferring property, however, timing is everything. Unfortunately, most people do not engage in asset protection until after they have been sued or incurred a huge debt. The doctor that attempts to put his home in a trust the day after he botches a surgery or the father that sells his condo to his son for $10 after he is insolvent and owes the IRS $100,000 generally will find it much more difficult to protect their homes from savvy creditors.

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