ADDING FAMILY TO PROPERTY TITLES: WHAT'S IN A NAME? ACTUALLY, A LOT BY ARIEL G. SINER

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By Ariel G. Siner

Family members are often added on title to property in order to use that family member's good credit to get better financing on the property. Son puts mom's name on title and she co-signs the loan to get a good interest rate, and son pays the mortgage each month. Everyone knows that son owns the property and mom does not have any actual ownership interest. And everyone is fine and goes on their way, right? Unfortunately, as with most things, it is not that simple.

Adding someone to title or changing title altogether can have far-reaching effects on title and ownership to real property, even in this common situation. The McMillin family found this out in 2021 when the court of appeal in McMillin v. Eare (2021) 70 Cal.App.5th 893 that drastically impacted the

properties owned by Sharon McMillin in Long Beach.

Sharon McMillin purchased a fourplex in May of 2010. The property produced good rental income for Sharon, and she knew that it would one day help her son, Joshua. She also owned a single-family residence that Joshua's wife, Som Rathmeny Eare, used at times as a business address and at times lived in as a personal residence with Joshua. Sharon knew that Joshua did not have good credit and that he would need assistance with financing in order to be able to purchase both the fourplex and the residence from her one day.

In order to help out her son and, presumably in her mind, take care of administrative details that would one day be done anyway, Sharon executed a grant deed to Joshua in July of 2010 for the fourplex. She gave it to Josh, telling him to not record it until she died or until he purchased the property from her, and Josh agreed.

Sharon then went through a number of complicated conveyances on her other property, the residence. She set up revocable land trusts and eventually conveyed the residence to her daughter, Sarah McMillin, in order to get financing on that property. In July of 2011, Sarah executed a grant deed to Joshua for the residence, giving the same instructions, that Josh should not record the deed until their mother, Sharon, passed away or until such time as Josh purchased the residence from her. After all, this is what Sharon had done with the fourplex already, so everything was understood between the family without much bother.

Throughout this time, Sarah and Joshua and Sharon all believed that Sharon was the sole owner of both properties. Neither Sarah nor Joshua ever paid any money to Sharon.

In October of 2013, Som petitioned for divorce from Joshua. One week before, she recorded the two deeds conveying the fourplex from Sharon to Joshua and the residence from Sarah to Joshua. The deeds had been kept in Som's safe deposit box since they had been given to Joshua. Som recorded these deeds without Sharon's knowledge or permission.

Sharon sued Som in a variety of causes of action to cancel the deeds. After weighing the credibility of Sharon, Som, Joshua, and Sarah, the trial court found that Joshua had been holding record title to properties in constructive trust for Sharon—meaning that the court treated Joshua as having been trustee of the properties on Sharon’s behalf and not actually having any real ownership of them—and that Som, Joshua, Som's company, and Sarah had no right, title, or equitable interest in either property.

Som appealed the trial court’s order. On appeal, the Second District Court of Appeal reversed the trial court decision on a number of grounds.

The most profound part of the published opinion is in relation to the validity of the deeds executed by Sharon and Sarah to Josh despite the parties’ understanding that Sharon still owned the properties. The trial court treated these facts as meaning the deeds were subject to a condition. The court of appeal disagreed and reversed.

The Court of Appeal discussed well-established tenets of real property law to preface its decision. Firstly, a deed is only effective to transfer title to property when it is delivered. This means that a

property owner can sign a deed and keep it in a drawer and never tell anyone about it and the property would never be conveyed. The signed deed needs to be given to the transferee. And, the transferor needs to have a present intent to actually transfer title to the property. California law does not allow for a deed to be delivered subject to conditions. In fact, if there are conditions on the deed—and not written on the deed itself—then the law says that the deed is effective on delivery and the conditions are essentially ignored. The McMillin court described this aspect of the law more fully, citing treatises of the law and essentially concluded that a deed with conditions, even if understood between the parties, does not actually have those conditions under the law.

Following this illustrative description of the law, the McMillin court addressed the two properties in turn. With regards to the fourplex, the court discussed Sharon's testimony that she executed the grant deed with the intention of selling the property to him if he obtained financing to purchase it. The deed itself stated, "For a full valuable consideration, receipt of which is hereby acknowledged, Sharon J. McMillin, an unmarried woman, hereby grants to Joshua McMillin, a married man, the [property]." Joshua further testified that there was an oral agreement to not record the deed until he got the financing. The court of appeal did not question any of the evidence presented but did determine that the trial court's application of that evidence to the law was incorrect. The condition on delivery of the deed was oral only and not expressed in writing on the instrument itself. Therefore, pursuant to Civil Code section 1056, the oral condition was ineffective and the title transferred upon delivery of the executed deed from Sharon to Josh, and the trial court order quieting title in Sharon's name was reversed.

For the residence, the conveyances and the purported conditions thereon were more complicated. After taking into account testimony from Sharon, Joshua, and Sarah, the court found that Sharon's conveyance to Sarah for the purposes of getting financing was an effective transfer of ownership. Sarah's deed to Joshua was another effective transfer of ownership. The conditions Sharon placed on the conveyances were, again, oral only. Because no such conditions were written into the deeds themselves, they were ineffective.

It is all too common to simply add a family member's name to title in order to get better financing or for other purposes of convenience. But McMillin reminds us that oral understandings between family members regarding transfers of title to real property are not effective in creating either a condition on a deed or a loophole to property ownership. A deed transferring title to property, no matter what the relationship is behind the scenes, is an effective transfer of that property according to the face of the deed.

About the Author

Ariel G. Siner drafts complex estate plans and trusts and works with clients to achieve their charitable, business succession, and wealth management goals. She also assists in trust litigation matters. Additionally, she works with the firm’s Corporate Group in entity formation and dissolution, and mergers and acquisitions.

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