

## LET THE PREPARER BEWARE



*A well respected Winter Park attorney, Frank Pohl practices in the area of real estate law. His column covers a wide range of topics that can help you better understand and avoid potential legal issues related to buying, selling, and owning a home.*

*If you have questions or topics pertaining to the legal aspects of residential real estate that you would like to see addressed in this column, send them to Frank c/o:*

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**This Article is not a substitute for hiring an independent attorney to prepare and review your real estate contract.**

Legal document forms that are widely available on line, at office supply stores, and other similar sources may seem like a great money-saving option, but they can create serious problems when improperly prepared or used incorrectly. When clients call asking if they can prepare a deed, contract, or other real estate document, using one or more of these legal forms, I always caution them regarding the pitfalls. While simply filling in the blanks of these documents may appear self-evident and easy to do, there is no guarantee that individuals will prepare them correctly, execute them properly, or select the appropriate document for their particular purpose.

Let's take a look at some of the problems that can result when deeds are prepared by individuals other than a qualified real property attorney. The do-it-yourself results often create situations in which significantly more money may need to be spent later to fix a problem that could have been avoided by initially retaining a qualified real estate attorney to prepare the document correctly the first time.

David Jones, for example, agreed to sell property to his friends, Pete and Bessy Smith. To avoid costs, the parties agreed that Mr. Jones would prepare the deed and coordinate the execution and recording of the deed. The deed was properly notarized, but there was only one witness on the deed. Ten months after the deed was recorded a \$50,000.00 federal tax lien was recorded in the public records against Mr. Jones. Two months later Mr. and Mrs. Smith decided they wanted to obtain a mortgage on the property, and were told by the title underwriter who would be insuring the mortgage that they (or Mr. Jones, who has left town) would first have to pay off this tax lien.

Mr. Smith called me for advice. I had to advise him that Florida law requires two witnesses for each grantor on a deed for it to be legally valid and enforceable. The federal tax lien against Mr. Jones, although recorded 10 months after the recording of the deed, does in fact attach to the Smith property. I further explained that, due to the lack of two witnesses on the deed, under Florida law this deed did not effectively transfer the property to the Smiths, which means Mr. Jones still retains an interest in the property. That property interest can be attached by federal tax liens and other judgment creditors of Mr. Jones. If the deed had been recorded for more than five (5) years, and no liens had been filed against Mr. Jones during that time period, the lack of sufficient witnesses would be resolved by a curative Florida statute. However, for the first five years, any defect in the deed caused by lack of sufficient witnesses would prevent the buyer from having clear title to the property.

Consider the case of John Johnson. John owns a home. He and his wife, Mary, reside on the property. John wants to avoid probating his home after his death, and also wants to provide for his wife and two of his four adult children. John, as sole owner and grantor, conveys the property to himself, his wife, and his two children, all as joint tenants with rights of survivorship. Mary dies first and John's death occurs later. The two children, as survivors under the joint tenancy provisions of the deed, sign a contract to sell the property. Under the terms of the contract, the Sellers obtain a title search of the property. The title commitment reflects that the property is now owned by the heirs of John Johnson – and not by the two children under the survivorship terms of the deed. The title commitment further provides that John's estate must be probated

