

Can I exempt my house in bankruptcy if I pay for it but it is in someone else's name?

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Answer: Maybe, if the facts are right and you are willing to accept some risk.

Recently in the case of *In re Sullivan* a debtor was successful in claiming the Massachusetts homestead for a condo that was in her family member's name. *In re Sullivan*, Case No. 15-30544, (Bankr. Mass. May 2, 2016). It was a case of first impression and is persuasive authority for the future.

The facts were that the debtor had an agreement with her family member that the family member would use her home equity line to finance the purchase of a condo that the debtor would live in. The debtor was to pay all the on-going expenses for the condo plus an amount towards the home equity line debt and when the home equity line was fully paid, the family member was to transfer ownership of the condo to the debtor. They followed the agreement and the debtor lived in the condo and paid for everything, including the payments towards the home equity line, associated with the condo. Other than having title to the condo in her name, the family member had no association with the condo.

The debtor filed for bankruptcy prior to paying off the equity line in full and argued that she did not have an ownership in the condo, thus no exemption was needed. Instead she had an "unenforceable oral rent to own contract for [the condo] . . . (zero value)." Alternatively, the debtor took the position that the debtor's interest was exempt under the Massachusetts homestead.

The trustee in bankruptcy objected and sought for the court to decide the debtor had an equitable interest in the condo and that the interest could not be exempted under the Massachusetts homestead law because the beneficiary of a resulting trust is not included in the definition of "owner" in the law. The debtor argued the opposite.

The court analyzed the facts and applied the law on resulting trusts in Massachusetts. It first noted that "[a] resulting trust is . . . a court-fashioned device, employed to give effect to the parties' intentions." The court observed that "when a person pays the purchase price of property and takes title in the name of another, the beneficial interest in the property inures to the person who paid the purchase price by way of resulting trust." The court continued to observe that a necessary element is that the parties intended to create a trust relationship and that to evaluate that it is necessary to review the circumstances as a whole.

After applying the facts to this legal backdrop, the court found that the debtor had an equitable interest in the condo by way of a resulting trust. The interesting part of the decision to the author was the court's finding that the debtor provided for the consideration when it was the family member that utilized her own credit line to fund the purchase price.

From there, the court answered the question of whether the Massachusetts homestead applied to the debtor's equitable interest. It observed that the law defines an owner as "a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder or holder of a beneficial interest in a trust" citing Mass. Gen. Laws. ch. 188, § 1. It found that the exemption did apply because the debtor was included in the definition of owner, specifically as a holder of a beneficial interest in a trust. The court reasoned that a holders of a beneficial interest by way of resulting trusts are included because "[the law] contains no word which specify or restrict particular types of trusts . . . [and it] should not, and will not, add words where the Massachusetts legislature chose not to."

Although this is quite a victory for this debtor, keep in mind that the facts may be different in your case, and that a different judge may interpret the law differently. However, it indicates that a debtor may want to take the risk when presented with a similar fact pattern.

In the event you are facing the possibility of filing a bankruptcy in Massachusetts and have concerns about maintaining your property feel free to give this office a call.

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