



HENSON EFRON

Marital Liens: The Importance of Clarity

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In cases where the homestead is the only asset with equity and it is not going to be sold immediately, effecting an equitable division of property can be difficult. Refinancing may be next to impossible and a marital lien in favor of the party moving out may be the only option. Careful



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consideration must be given when drafting the decree to ensure that the parties' intentions are fulfilled. A fundamental question which must be addressed is this: if the homestead equity is inadequate to fully satisfy the lien when it becomes payable, is the lienholder entitled to receive payment for the deficiency? Language in a decree which merely awards the homestead to one party "subject to a lien" in favor of the other is ambiguous, as illustrated by two decisions from the Court of Appeals affirming district court decisions with opposite interpretations of such language.

In *Nelson v. Nelson*, 806 N.W.2d 870 (Minn. Ct. App. 2011), the stipulated 2001 marital dissolution decree awarded the homestead to wife subject to a lien in favor of husband in the amount of \$67,725 plus interest.

The lien was to be paid upon the sale of the homestead, wife's remarriage, or the youngest child turning 18, whichever occurred first. When the youngest child turned 18 in 2008, husband demanded payment. Wife refused to pay, asserting that all the equity had been lost due to the decline in real estate values. Husband acknowledged that the homestead had no equity but sued wife anyway and obtained a money judgment for the amount of his lien plus interest. The district court reasoned that the decree awarded title to the homestead to wife, awarded husband a lien for a sum certain, and did not limit the source of payment to the homestead.

On appeal, wife argued that at the time of the dissolution, the homestead was the only asset, that the \$67,725 represented one-half of the equity, and that husband's lien was intended merely to serve as a security interest which did not create a separate obligation for her to pay husband. Under wife's analysis, husband's remedy was limited to foreclosing on his lien and that "entry of a personal judgment dramatically altered her substantive rights by creating a recourse—as opposed to a nonrecourse—obligation." *Id.* at 873.

Husband argued that the \$67,725 was the amount he was entitled to receive from the division of property and that the entry of the money judgment against wife did not alter her substantive rights because it did not

change the division of property according to the decree.

The Court of Appeals concluded that the language in the decree was ambiguous and held the district court had not abused its discretion by construing it as creating a separate obligation for wife to pay husband the \$67,725.

In *Goodyear v. PeKarna*, A12-0939, at *2 (Minn. Ct. App. Apr. 1, 2013), the 2005 decree (issued following trial) awarded the homestead to husband and awarded wife "an interest free lien against [the home] in the amount of [\$223,260]—which constitutes [her] marital and non-marital interest in said property." The non-marital portion of wife's lien was payable upon demand within six months and the marital portion of wife's lien "was to be 'satisfied by a standard lien against the property,' which was to be satisfied on the happening of any of six occurrences, including the parties' youngest child's graduation from high school or the mortgage payments on the marital home becoming 60-days past due." *Id.*

The homestead was refinanced after trial and the non-marital portion of wife's lien was satisfied. Wife was ordered to pay child support to husband but deliberately failed to do so. Husband warned wife that he was unable to pay the mortgage without her payment of child support. When husband lost his job and could not pay the mortgage, the lender foreclosed.

Under the decree, wife was entitled to redeem the property, which she did not do, and the property was sold at a sheriff's sale for less than the outstanding mortgage balance.

In 2011, wife brought a motion seeking entry of judgment against husband for the marital portion of her lien. The district court construed the decree as awarding wife a non-recourse lien which imposed no separate obligation on husband to pay her. Wife appealed the denial of her motion and the Court of Appeals affirmed. Citing *Nelson* for the proposition that "[w]hether to grant a personal judgment following the extinguishment of a lien is discretionary," the Court of Appeals concluded that the decree was ambiguous and that the district court had not abused its discretion, especially considering wife's decision not to redeem the property and her refusal to pay child support. *Id.* at *4-5.

Although the district courts in *Nelson* and *Goodyear* reached opposite conclusions, the lien language in both cases was ambiguous for the same reason: it was unclear whether the party awarded the homestead had a separate obligation to pay the property award apart from the lien. So what do you do to avoid this ambiguity? To start with, follow the guidance given by the Court of Appeals in *Bakken v. Helgeson*, 785 N.W.2d 791, 795 (Minn. Ct. App. 2010):

"[W]e suggest that courts using marital liens include in their orders: (1) the value of the debt to be secured by the lien, in terms of either an absolute dollar amount or a percentage of the equity or ultimate sale price of the property; (2) the applicable interest rate, if any...(3) an ascertainable date of maturity; (4) a specific mechanism for enforcement; and (5) an explanation of whether the lien is in

the nature of child support or purely a division of property...."

Thus, if the lien is intended to secure a property award for a sum certain that is to be paid from any source, the decree should include findings of fact detailing the property award and explaining the lien, a conclusion of law imposing the obligation to pay the property award, and a separate conclusion of law awarding the homestead "subject to a lien." Conversely, if the property award is to be paid exclusively from the equity in the homestead (a non-recourse lien ala the position of wife in *Nelson*), the findings of fact should explain that and the conclusion of law should state that foreclosure is the lienholder's sole remedy.

Taking these steps when drafting the decree to implement elements one and four of the guidance from *Bakken*, which was missing from the decrees in *Nelson* and *Goodyear*, will help to avoid the ambiguity which resulted in post-decree litigation in those cases.

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