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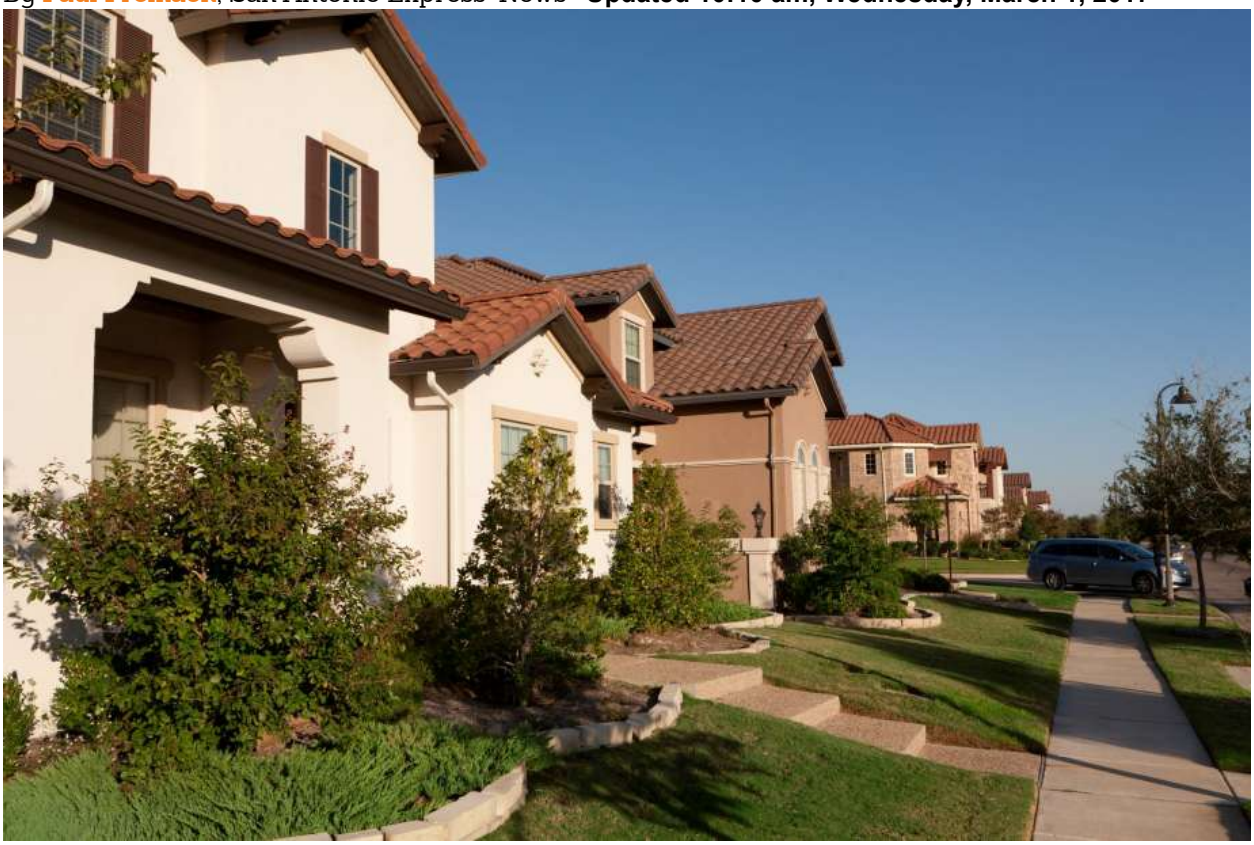
Stepmother refuses to relinquish house to deceased husband's heirs

Son and daughter-in-law struggle against Texas homestead rights

By **Paul Premack**, San Antonio Express-News **Updated 10:10 am, Wednesday, March 1, 2017**



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Texas law states that occupancy rights continue “for as long as (she) elects to use or occupy the property as a homestead”, and that it may be sold by the heirs if the surviving spouse “dies, sells his or her interest in the homestead, or elects to no longer use or occupy the property as a homestead[1]”.

Dear Mr. Premack: I read your article about "Can Second Spouse Remain in Homestead." Our situation is that my husband's father owned a house, leaving it to his three children when he died. His second wife (the stepmother) was not listed as an heir. She continues to live in the house but has not kept it in good repair. She said she did not want to fix it for his children. About a year ago, she moved out because she needed to care for her mother, and my husband and I

moved into the house. Stepmother refuses to relinquish the house and let the kids sell it. What can we do? – BWS

Your family acted properly by allowing stepmother to reside in the house. She had no ownership interest, but had legal homestead occupancy rights. Additionally, she had an obligation to keep the property in good repair. Her failure to do so may give you grounds to sue her, but that would be a long difficult process that may not yield any returns.

You say that she has moved out of the house in order to provide care for her own mother, but "refuses to relinquish the house." Texas law states that her occupancy right continues "for as long as (she) elects to use or occupy the property as a homestead," and that it may be sold by the heirs if the surviving spouse "dies, sells his or her interest in the homestead, or elects to no longer use or occupy the property as a homestead[1]".

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The key, then, is to determine whether the fact that she has moved out of the property equals an election to no longer use or occupy the property.

In the case Churchill v Mayo, the court recited that "Abandonment of a homestead occurs when the homestead claimant ceases to use the property and intends not to use it as a home again[2]." Thus, there are two factors: 1) leaving the home and 2) intending not to return. In the Churchill case, the surviving spouse left the home to care for her father in France. She left it for 14 years and rented it to various tenants. The owners (the decedent's children) sued to establish that she had abandoned the homestead and to allow its sale.

The court referred to various precedents that put the burden of proof onto the owners. They had to present evidence that Churchill abandoned the home with no intent to return. This is a difficult burden, as case law recites that moving out of the house and renting it temporarily to a tenant is not abandonment of the homestead. Further,

Churchill continued to pay the local property taxes and swore that she intended to return to the home, which are both factors that have weight in deciding such a case.

In your case, stepmother's departure from the house to care for her mother is not enough to allow the children to reclaim the house. But her refusal to maintain the property, and her acquiescence in allowing you and your husband to reside there rent free are factors that weight against her. Her refusal to give up the house, though, would be equated with having an intent to return to the home.

Your only recourse is to either 1) negotiate with her until everyone reaches a settlement that is agreeable, or 2) sue in court for Partition of the Real Property. The court will hear both sides' evidence and decide who has the best case.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Probate, Wills and Trusts, and Business Entity issues. View past legal columns or submit free questions on legal issues via **www.TexasEstateandProbate.com** *or* **www.Premack.com***.*