



ATG

TITLE TERROR

Horror Stories from the Closing Table

After the death of her husband, my client entered into a contract to sell her marital home. As her attorney, I ordered a title commitment in preparation for the sale. The commitment and supporting documentation showed that the vesting deed named her and her late husband as grantees holding title as tenants in common. This was a surprise to her.

The deed was neither joint tenancy nor tenants by the entirety (where she would own the property through the right of survivorship). That meant that her husband's half of the marital home was an asset that was subject to the probate laws of the State of Illinois. But, she thought she would still stand to inherit the marital home because her husband's will named her as his sole legatee.

The late husband had children from a prior marriage, and unfortunately they were neither generous nor understanding toward their stepmother. The stepchildren hired an attorney to represent them and filed a will contest alleging that when the late husband signed his will, it was not in the presence of witnesses.

My client was honest. She knew her husband had not signed his will in the presence of witnesses.

The client and her husband had used a free attorney to create their estate plan. The free attorney did not explain the technical requirements of signing and attestation of wills nor did he convene witnesses for the execution of the will. That meant that the will contest was valid and there was no legitimate will.

Because of these mistakes, the late husband's estate was governed by the intestacy laws of the State of Illinois. My client was entitled to only half of her husband's probate estate. *Continued* ►

"Hiring an attorney for routine legal transactions in one's life is a good return on investment."

Traci Nally, Attorney

ATG Senior Manager
Claims and Litigation

*Prior to her role at ATG, Traci was a lawyer in private practice.



The will contest was settled with the stepchildren and the house sold. But, the mistakes cost the client dearly.

She was entitled to only her half of the marital home plus an inherited half of the husband's half, i.e., $\frac{3}{4}$ of the proceeds from sale of the home.

The proceeds from the sale netted a mere \$25,000; when you subtract fees for closing and probate, the client was left with a much smaller inheritance.

It would have been wise for the client and her late husband to have invested in a competent, experienced local attorney who would have taken the proper steps to protect them and their investment:

- Represent them in the initial purchase of the home to ensure the vesting deed named them as tenants by the entirety.
- Draft their wills so they would be executed in accordance with the requirements of the law.

Had they taken these important steps, the client would have enjoyed the full value of the marital home and avoided the cost of the contested probate proceedings.

Learn how to make ATG a part of your real estate team by using our QR Code:



Attorneys' Title Guaranty Fund, Inc.

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