

Jacqueline S. Miller, Esq.  
(561) 366-8771

Jacqueline.miller@nelsonmullins.com

360 S Rosemary Ave, Suite 1410  
West Palm Beach, FL 33401  
T 561.832.3300 F 561.655.1109  
nelsonmullins.com

**By Hand Delivery**

To: Members of Town Council

CC: The Honorable Danielle Moore, Mayor

***Re: 287 Pendleton Ave.  
Code Enforcement Case No.: CE 10-2706***

Dear Council Members:

This firm represents Susan Gibson, the owner of the property referenced above. At its meeting on May 19, 2002, the Town's Code Enforcement Board rendered a decision to recommend that Town Council proceed with foreclosure on Ms. Gibson's home.

Below for your consideration is a memorandum of law in opposition to foreclosure. Also enclosed herewith is a copy of a supporting affidavit executed by Ms. Gibson.

Memorandum of Law Regarding 287 Pendleton Ave.

I. Code Enforcement Liens on Homestead Property

Florida's constitutional homestead exemption provides:

There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, ..., the following property owned by a natural person:

(1) a homestead....

Fla. Const. Art. X, § 4(a)(1). Section 4 further expressly provides for only three exceptions to the homestead protection from creditor claims: (1) payment of taxes and assessments; (2) obligations contracted for the purchase, improvement or repair of the homestead; or (3) obligations contracted for labor performed on the realty.

Florida courts emphasize the liberal application of the homestead exemption in the interest of protecting the family home. *E.g., Yost-Rudge v. A to Z Properties, Inc.*, 263 So. 3d 95, 97 (Fla.

4th DCA 2019). Florida law demands that exceptions to homestead protection be read narrowly, strictly construed, and interpreted in favor of the homeowner. *See Pelecanos v. City of Hallandale Beach*, 914 So. 2d 1044, 1046 (Fla. 4th DCA 2005). A municipal lien for code violations is NOT one of the specified exceptions. *Id.*

Additionally, if there were any doubt on this point, Florida Statute § 162.09(3) expressly provides that any lien created pursuant to code enforcement administrative fine (i.e., precisely the lien at issue here) may not be foreclosed on homestead real property. In fact, the protection afforded to homestead property by the Florida Constitution “goes much farther [than Florida statute 162.09(3)]: No such lien *exists* as to such homestead property.” *See Demura v. County of Volusia* 618 So.2d 754, 756 (Fla. 5th DCA 1993) (emphasis in original); *see also Miskin v. City of Fort Lauderdale*, 661 So.2d 415, 416 (Fla. 4th DCA 1995). Thus, the Florida Constitution, Florida Statute § 162.09(3), and case law established by Florida appellate courts bar the foreclosure of a code enforcement lien on homestead property. Fla. Const. Art. X, § 4(a); Fla. Stat. § 162.09(3); *see Demura* 618 So.2d at 756; *see also Miskin*, 661 So.2d at 416.

Accordingly, as a matter of law, the Town of Palm Beach cannot foreclose the code enforcement lien (order no. 10-2706) filed April 15, 2010, on 287 Pendleton Avenue. *Id.* The decedent, Susan Lee, intended to permanently reside and did in fact reside at 287 Pendleton Avenue from the late 1990’s until her death on October 15, 2021<sup>1</sup>. *See In re Prestwood*, 322 B.R.

---

<sup>1</sup> As soon as the Palm Beach Probate Court local rules permitted, Ms. Gibson submitted a proposed court order, granting Ms. Gibson’s pending petition that the Probate Court confirm the homestead status of her late mother’s home at 287 Pendleton. A true and correct copy of Ms. Gibson’s petition filed in her mother’s pending probate proceedings is attached to this memorandum. According to Susan Byrne, Probate Case Manager, parties before the probate court are now warned not to expect a ruling on homestead petitions until at least 25 days after submission of the proposed order. As a result, in this instance we do not expect the probate court to enter its order until on or after June 30, 2022. When inquiring whether Ms. Gibson could expedite this process, the court’s judicial assistant politely responded that the undersigned need not “waste her breath” because the petition presented no emergency in the eyes of the probate court. To date, Ms. Gibson’s petition is unopposed.

463, 469 (Bankr. S.D. Fla. 2005). Unlike the real estate homestead tax exemption, Florida's constitutional homestead creditor protection is self-executing. *See Baldwin v. Henriquez*, 279 So. 3d 328, 332 (Fla. 2d DCA 2019) (tax exemption for homestead property in Article VII of the Florida Constitution requires homeowner to file for tax exemption). Ms. Lee satisfied the requirements to establish 287 Pendleton Ave. as her constitutional homestead under Article X, section 4 of the Florida Constitution for creditor protection purposes. Because Ms. Lee maintained 287 Pendleton Ave. as her constitutional homestead for creditor protection purposes, the Town cannot foreclose any code enforcement lien on the property.

## II. The Constitutional Homestead Exemption Inures to the Heirs of the Owner.

The death of Ms. Lee does not change this result. The death of an owner of a constitutionally protected homestead property does not invalidate the property's homestead protection against creditor liens. *See Pub. Health Tr. of Dade Cnty. v. Lopez*, 531 So. 2d 946, 950-51 (Fla. 1988). The Florida Constitution, Article X, § 4(b) expressly states that the homestead exemption "shall inure to the surviving spouse or heirs" of the owner. Fla. Const. art. X, § 4(1)(b) (emphasis added). Meaning, the constitutional homestead protection descends directly to the spouse or heirs free and clear of creditor's claims. *See also Lopez*, 531 So. 2d at 950-51. In *Lopez*, the Florida Supreme Court held that the deceased's homestead protection extends to a homesteader's nonresident adult children: "Property which creditors could not take from the head of the family when he was living, they cannot take from his heirs after his death." *Id.* The homestead exemption status remains in place despite the fact that decedent obviously no longer maintains the premises as her home and without regard to whether the heirs establish the inherited property as their own homestead. *See id.*

Ms. Lee's death in 2021 did not extinguish 287 Pendleton's constitutional homestead creditor protection. *See Lopez*, 531 So. 2d at 951. Upon her mother's death, Susan Gibson, Ms. Lee's sole heir, acquired title to 287 Pendleton "free and clear of creditors claims," including the 2010 code enforcement lien. *Id.* As stated in *Lopez*, nonresident adult children retain the deceased's homestead protection. *Id.*

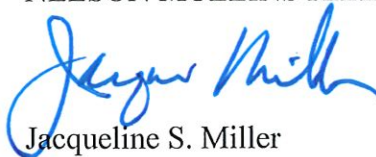
Ms. Gibson's own declared homestead at 226 Pendleton does not constitute a second homestead property, a distinction one learned member of the Code Enforcement Board did not grasp. Rather, 287 Pendleton retains Ms. Lee's homestead status, and the protection afforded to Ms. Lee descends directly to Ms. Gibson as Ms. Lee's heir. Ms. Lee's homestead protection, which bars the Town from foreclosing the code enforcement lien during her life, affords the same protection to Ms. Gibson, Ms. Lee's sole heir. Fla. Const., Art. X, § 4(b); *Lopez*, 531 So.2d at 950-951.

\*\*\*

On behalf of Ms. Gibson, individually and as the Personal Representative of her mother's estate, the undersigned respectfully submits that the Town should not proceed with an attempt to foreclose on 287 Pendleton Ave. to satisfy the code enforcement lien on the property. To do so would be contrary to well established Florida law.

Respectfully,

NELSON MULLINS RILEY & SCARBOROUGH LLP



Jacqueline S. Miller

Encls.

cc: John C. Randolph, Esq. (w/ encls.) (by email)

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF  
SUSAN CAMILLE LEE  
Deceased.

PROBATE DIVISION

File No. 502021CP006363XXXXNB  
Division IH

PETITION TO DETERMINE HOMESTEAD  
STATUS OF REAL PROPERTY  
(intestate – spouse and/or descendants)

Petitioner, Susan C. Gibson, alleges:

1. The decedent, Susan Camille Lee, died intestate on October 25, 2021, domiciled in Palm Beach County, Florida, and was survived by a lineal descendant.

2. At the time of decedent's death, the decedent owned and resided on the following described contiguous parcel of real property (the "Property"):

Real property situated at 287 Pendleton Avenue, Palm Beach, FL 33480; legal description Lots 20 & 21, Block 1, Reverie, a subdivision in the Town of Palm Beach, Florida, according to the Plat thereof, recorded in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, in Plat Book 7, Page 61; said land situate, lying and being in Palm Beach County, Florida. Parcel ID: 50-73-73-22-01-001-0200.

3. The name of the decedent's surviving spouse, if any, the names and years of birth of the decedent's minor children, if any, and the names of other lineal descendants having an interest in the decedent's estate, if any, and their respective relationships to the decedent are:

NAME	RELATIONSHIP	YEAR OF BIRTH
Susan C. Gibson	Daughter and Sole Beneficiary	Adult

4. The Property constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida, and petitioner believes that upon decedent's death,

title to the Property descended to and the constitutional exemption from claims of decedent's creditors inured to Susan C. Gibson.

5. There are no other persons, other than petitioner, having an interest in this proceeding.

Petitioner requests that an order be entered determining that the Property constituted the exempt homestead of the decedent, title to which, upon decedent's death, descended and the constitutional exemption from claims inured as set forth in paragraph 4; directing the personal representative to surrender possession of the Property; and directing that the personal representative shall have no further responsibility with respect to the Property.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.


Signed on this 28 day of April, 2022.

  
Susan C. Gibson, Petitioner



John J. Raymond, Jr., Esq.  
Attorney for Petitioner  
E-Mail Addresses:  
[john.raymond@nelsonmullins.com](mailto:john.raymond@nelsonmullins.com)  
[laura.doyle@nelsonmullins.com](mailto:laura.doyle@nelsonmullins.com)  
Florida Bar No. 194162  
Nelson Mullins Broad and Cassel  
251 Royal Palm Way, Suite 215  
Palm Beach, FL 33480  
Telephone: (561) 659-8661

I CERTIFY that a copy hereof has been furnished to Susan C. Gibson, 240 Pendleton Avenue Palm Beach, FL 33480 by U.S mail , on April 29, 2022.

  
John J. Raymond, Jr., Esq.