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## ATTORNEY'S FEES CAN I RECOVER THEM?

By: Roger H. Miller III

Most clients believe at the outset of representation that they can recover their attorney's fees from the opposing party in the event of a lawsuit. This may or may not be true. In Florida, a party to a lawsuit is generally only entitled to recover attorney's fees if the contract or statute, under which the suit is brought, provides for the recovery of attorney's fees. It comes as a surprise to many clients that there is no universal rule that entitles them to recover their attorney's fees if they prevail in litigation.

In the context of a real estate transaction, the contract itself must provide for the recovery of attorney's fees in the event a party defaults under the contract; otherwise, attorney's fees will likely not be recoverable. Florida Statute § 713.29, for example, is a statute that provides for the recovery of attorney's fees in the enforcement of a construction lien under Chapter 713 of the Florida Statutes. If the lienor is successful, it will be awarded its attorney's fees. Conversely, the homeowner will be awarded fees if the homeowner prevails.

Attorney's fees in litigation can sometimes exceed the amount that is in dispute; therefore, whether or not fees are recoverable is one of the threshold questions that must be answered before deciding on a course of action. The contract and any statutes that may apply to the dispute must be analyzed to determine if attorney's fees may be recoverable. If a contract and/or statute provides for the recovery of attorney's fees, the complaint or counter-claim must request that the court award attorney's fees.

While the vast majority of civil cases settle before a trial or final hearing is ever held, if judgment is entered in favor of a party, the party requesting attorney's fees will need to prove entitlement to those fees under a contract or statute. In cases with multiple legal theories and counter-claims, a party may prevail on some theories, but not on others. The court will need to determine which party was the prevailing party on the "significant issue" of the case.



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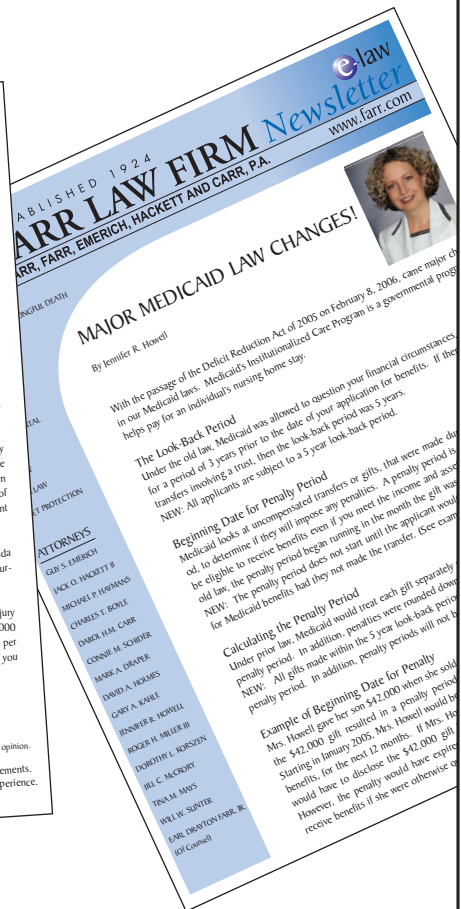
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**PROPERTY OWNERSHIP**

When you own real property, you must decide how to "hold title," or take ownership of the property. There are four main ways a "natural person" (as opposed to a partnership or other entity), can own property. These are:

- Joint Tenancy with Right of Survivorship** - This allows property to be held between two or more individuals, is often used with children, siblings, or sometimes business partners. Upon the death of the first joint tenant, the remaining joint tenants receive equal portions of the deceased tenant's share of the property, and the property does not pass to his or her heirs. Therefore, joint tenancy limits control of the property after death. A joint tenancy may become a tenancy in common if one owner conveys his or her interest to another person.
- Tenancy in Common** - Each owner controls an individual interest in the property. The amount of each individual's interest can vary but is usually proportionate to the number of owners. Each owner may sell, give away or dispose of their share any way they want. This is limited because most buyers do not want to buy a portion of a property. Tenancy in common allows for control after death, because the owners can pass their share of the property to heirs.
- Tenancy by the Entirety** - The entirety shares many of the characteristics of joint tenancy; however, only a husband and wife can hold property as tenants by the entirety, and ownership of property can be transferred only with the consent of both spouses. For married persons, this is the preferable way to hold title as this offers some protection from creditors' claims.

There are many issues to consider when deciding how to hold title, such as, transfer at death, homestead issues and estate planning. Your attorney can advise you on the best way to hold title to real property, based on your situation.

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