

PROBATE CORNER

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ARTICLE: Constructive Trust: Remedy, Cause Of Action, Or Both?

A constructive trust is an equitable device with dual objectives: to restore property to the rightful owner and to prevent unjust enrichment. A constructive trust applies where there is a wrongful taking of the property of another or when a confidential relationship has been abused. The trust is 'constructed' by equity to prevent an unjust enrichment of one person at the expense of another as the result of fraud, undue influence, abuse of confidence or mistake in the transaction that originates the problem. *See Joseph v. Chanin*, 940 So. 2d 483 (Fla. 4th DCA 2006).

Florida cases conflict as to whether a constructive trust is a separate cause of action or a remedy. The First and Second Districts have held that a constructive trust is merely an equitable remedy which may only be imposed based upon an established cause of action. *See Collinson v. Miller*, 903 So. 2d 221 (Fla. 2d DCA 2005) and *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696 (Fla. 1st DCA 2008). *Accord Wadlington v. Edwards*, 92 So. 2d 629 (Fla. 1957) (A constructive trust is a remedy for unjust enrichment).

In contrast, the Fourth District and the Southern District of Florida appear to hold that a constructive trust is a separate cause of action. *See Abele v. Sawyer*, 750 So. 2d 70 (Fla. 4th DCA 1999); *Arral Industries, Inc. v. Touch Entertainment, Inc.*, 2000 U.S. Dist. LEXIS 2306 (S.D. Fla. 2000); and *Hugo Bernardele & Gelway SA v. Bonorino*, 608 F. Supp. 2d 1313 (S. D. Fla. 2009). *Cf. Palm Beach County Administrative Order 6.102-9/08* (Action seeking relief in the nature of a constructive and resulting trust shall be filed in the Civil Division). *But See Joseph v. Chanin*, *supra* (A constructive trust is an equitable remedy subject to the discretion of the court and traditional equitable defenses).

The elements of a constructive trust are: (1) a promise; (2) transfer of the property and reliance thereon; (3) a confidential relationship; and (4) unjust enrichment. *See Bergmann v. Slater*, 922 So. 2d 1110 (Fla. 4th DCA 2006), *Abele*, *supra*, *Arral Industries, Inc.*, *supra*, and *Hugo Bernardele*, *supra*. However, the Florida Supreme Court in *In re Estate of Tolin*, 622 So. 2d 988 (Fla. 1993) held that a confidential relationship is not a prerequisite to imposing a constructive trust on the assets of an estate that were intended to be conveyed by a defective codicil. Additionally, in *The Foundation For The Developmentally Disabled, Inc. v. Step by Step etc.*, 29 So. 3d 1221 (Fla. 2nd DCA 2010), the court held that as a prerequisite to imposition of a constructive trust, there must be evidence of fraud, undue influence, abuse of confidence or mistake in the transaction.

Litigants seeking the remedy of a constructive trust are subject to the defenses of statute of limitations, laches, and estoppel. *See Provence v. Palm Beach Taverns, Inc.* 676 So. 2d 1022 (Fla. 4th DCA 1996), *Palmland Villas I Condominium v. Taylor*, 390 So. 2d 123 (Fla. 4th DCA 1980), and *Wadlington*, *supra*.