

DOCTRINE OF RATIFICATION IN THE MORTGAGE CONTEXT

Florida's doctrine of ratification allows for enforcement of a contract against an individual who did not actually sign the contract so long as the individual intended to affirm the contract and possessed full knowledge of the material facts surrounding transaction. In the mortgage context, the doctrine provides banks an avenue to enforce a mortgage where the property owner did not personally execute the loan documents. Nevertheless, as demonstrated by a decision rendered by Florida's Third District Court of Appeal, courts are loathe to adopt an expansive application of the doctrine.

In *Wells Fargo Bank v. Clavero*, two parents conveyed their home to their adult son and his wife, Maria, while also naming themselves as the grantee, so that all four individuals held an ownership interest in the property, with each couple holding title as joint tenants with rights of survivorship. The parents conveyed the home to allow Maria to collateralize a loan for a different property she owned that operated as a daycare business. After recording the deed placing title in the name of the four family members, Maria signed a mortgage loan in favor of Washington Mutual Bank, Wells Fargo's predecessor in interest. None of the other three owners executed this document. After Maria defaulted on the loan, Wells Fargo instituted a foreclosure action. By this time, Maria and her husband had divorced and re-conveyed their interests in the property back to the parents.

Two-Prong Approach to the Doctrine of Ratification

The bank's foreclosure action hinged on its ability to persuade the Third DCA that the parents had ratified the mortgage through their conduct. The court acknowledged that the parents conveyed the property to their son and Maria for the purpose of allowing Maria to collateralize a loan for the benefit of her daycare business. The court held, however, that the fact the parents intended that Maria use the property as collateral for a mortgage loan was not sufficient by itself to establish their ratification of the bank's mortgage. Rather, the court ruled that **to prevail against non-signatory property owners on a theory of ratification in the mortgage context, a mortgagee must establish one of two conditions:**

- **The non-signatory property owners received the benefit of the mortgage loan proceeds; or**
- **The non-signatory property owners authorized an attorney-in-fact to execute the mortgage on their behalf.**

Addressing the two prongs in turn, the court in *Clavero* determined that the parents did not receive any direct benefit from the loan; they held no interest in Maria's daycare business and received no financial benefits from its operation. The court rejected the bank's argument that the indirect benefit the parents received in the form of help extended to a family member was sufficient to bind them to the mortgage. Turning to the second prong, the court found no evidence the parents had appointed Maria as their attorney-in-fact. The court acknowledged that ratification may apply where a previously unauthorized agent executes a document and the party against which the document is enforced has full knowledge of all the material facts surrounding the execution. In the case at hand, however, the bank failed to establish that the parents possessed sufficient knowledge of all of the material facts of the bank's loan and mortgage to apply the doctrine of ratification. Determining that the bank's argument failed on both prongs, the court held that the parents' home was not subject to the lien of the mortgage.

The *Clavero* decision highlights the Third DCA's narrow application of the doctrine of ratification. Although the decision does not provide detail on what additional knowledge possessed by the parents' would result in ratification, it is clear the Third DCA requires more than just a general understanding that a mortgage will encumber the party's property.