

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-217825

**DATE:** August 2, 1985

**MATTER OF:** Thomas A. Fournier - Real Estate Expenses  
Title Requirements

**DIGEST:**

In order for an employee to obtain full reimbursement for allowable real estate transaction expenses incident to the sale of a residence at a former duty station, (1) title to residence must be held exclusively by the employee and/or members of his immediate family at time of notice of transfer and (2) the employee and/or members of his immediate family must be liable for all such expenses. When at time of settlement employee holds title jointly with a person who is not a member of his immediate family, a rebuttable presumption arises that the employee's share of expenses is only proportional to his title interest. This is true even if the employee held sole title at the time of the transfer notice.

This decision results from the request of C. L. Winn, Regional Finance Officer, Mid-Pacific Regional Office, Bureau of Reclamation, U.S. Department of the Interior, for our opinion concerning the entitlement of Thomas A. Fournier to reimbursement of expenses associated with the sale of his residence at his former duty station. The Bureau of Reclamation reimbursed Mr. Fournier for only one-half of the expenses he claimed because on the date of settlement he held title to his former residence with an individual who was not a member of his immediate family. Mr. Fournier contends that the total expense of the sale was an actual and necessary expense incurred by him, and that he is entitled to full reimbursement. For the reasons set forth below, we hold that, based on the present record, Mr. Fournier is not entitled to additional reimbursement of expenses related to the sale of his former residence.

Mr. Fournier was employed with the Bureau of Reclamation in Gilroy, California, when, on September 2, 1983, he was notified of his selection for the position

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of Contract Specialist, grade GS-9, with the Bureau, in Sacramento, California. He signed an employment agreement on September 6, 1983, and his transfer was effective on October 2, 1983. At the time he was notified of his transfer, Mr. Fournier held sole title to his residence at his former duty station. However, in a deed dated September 30, 1983, Mr. Fournier conveyed his residence to Ms. Barbara A. Schlageter and himself as joint tenants. Mr. Fournier explains that he decided to procure an assumable loan to facilitate the sale of his residence and found it necessary to apply for the loan with another individual in order to have sufficient income to qualify. He states that as a condition of the loan, the lending institution required both names to appear on the deed. Mr. Fournier states that he received no consideration for the half interest in the residence and that the deed was changed merely to facilitate the refinancing.

Mr. Fournier explains that the individual whose name appears on the deed, Barbara A. Schlageter, also worked for the federal government and was transferred from Gilroy to Sacramento at the same time he was transferred. After Mr. Fournier's initial claim was denied, Ms. Schlageter sought reimbursement but was found to be ineligible because she had not acquired her interest in the residence prior to her transfer as required by the governing regulations.

One of the prerequisites for reimbursement of real estate expenses, found in the regulations implementing 5 U.S.C. § 5724a(a)(4) (1982) -- paragraph 2-6.1c of the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1983) (FTR), is that title to the residence must be in the name of the employee alone, or in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. That paragraph of the FTR also requires that an employee must have acquired his interest in the residence prior to the date he was first definitely notified of his transfer. It was this provision that prevented Ms. Schlageter from receiving reimbursement. Further, the proportional interest in the property held by an employee and/or a member of his immediate family on the date he is officially notified of his transfer is the maximum proportion of real estate expenses that may be reimbursed for the sale of that property.

We have consistently held that where the employee holds title to a residence with an individual who is not a member of his immediate family, the employee may be reimbursed only

to the extent of his interest in that residence. James C. Bowers, B-195652, April 1, 1980; James A. Woods, B-184478, May 13, 1976; B-167962, November 7, 1969. In the Woods decision we so held even though the employee, who held title to the residence with his brother, contended that his brother's name appeared on the title only to enable him to obtain financing. And in the Bowers case, where an employee sold a residence held in his, his wife's, and his parents' names and bought a residence which was similarly held, we allowed reimbursement of only 50 percent of the real estate expenses, even though the employee stated that the parents' names were on the respective titles so that he could obtain a mortgage. In both Woods and Bowers the employees alleged that they had paid all expenses associated with the residences and that the individuals with whom they held title had no financial interest in those residences.

Both 5 U.S.C. § 5724a(a)(4) and FTR paragraph 2-6.1 provide that an employee must be required to pay any real estate expenses for which reimbursement is sought. The decisions cited above are based on the presumption that where property is jointly owned, each owner is legally liable for payment of real estate expenses.

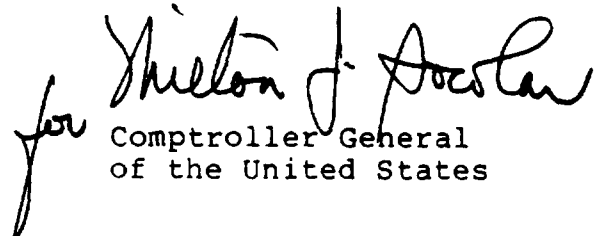
Turning to the present case, Mr. Fournier held sole title to the residence at the time of his transfer notice; thus, he met the threshold qualification for full reimbursement of real estate expenses set out in FTR paragraph 2-6.1c, above. However, we recently held that the status of title at the time of settlement must also be considered. Alan Wood, B-216205, February 22, 1985, 64 Comp. Gen. \_\_\_\_\_. This is because the expenses of a real estate transaction generally are paid at settlement and, as noted above, there is a presumption that when title is held jointly each owner is liable for payment of the expenses. In Wood, as in the present case, the claimant's title at the time of his transfer notice qualified him for full reimbursement -- Mr. Wood held title jointly with his spouse. Nevertheless, we denied his claim based on the changed status of title at the time of settlement:

"\* \* \* In this case, because Mr. Wood was divorced from his wife before the date of settlement he did not hold title with a member of his immediate family when the property was actually sold. We find no evidence in the record which would rebut the presumption that liability for expenses was

to be shared. In fact, that appears to have been the specific intention of the parties, since the IRS has informed us that the divorce agreement provided that the proceeds of the sale of the residence were to be split between Mr. and Mrs. Wood."

Under the Wood rationale, the Bureau of Reclamation properly looked to Mr. Fournier's title interest at the time of settlement to determine the extent of his reimbursement for real estate expenses. Further, based on the record before us, we conclude that the Bureau was justified in limiting reimbursement to Mr. Fournier's proportional interest by applying the presumption that this proportional interest reflected his actual share of the real estate expenses and, therefore, the maximum amount for which he could be reimbursed under 5 U.S.C. § 5724a. While Mr. Fournier states that Ms. Schlageter's name was added to the deed only to obtain financing, he does not specifically assert, or offer any evidence to establish, that in fact he paid all of the real estate expenses.

For the above reasons, we sustain the Bureau's action in reimbursing Mr. Fournier for only one-half of his claimed (and otherwise allowable) real estate expenses. At the same time, we would have no objection to additional reimbursement if Mr. Fournier can establish to the satisfaction of the Bureau that he actually paid a greater share of the expenses.

  
for Comptroller General  
of the United States