

**IN THE COURT OF APPEALS OF IOWA**

No. 9-607 / 09-0170  
Filed December 17, 2009

**IN THE MATTER OF THE ESTATE OF  
GEORGE BATTLE JR., Deceased.**

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**BRUCE P. BICKEL, Administrator of the  
Estate of George Battle Jr., EMMETT A. BATTLE,  
and SHERRY A. BATTLE,**  
Petitioners-Appellants,

**vs.**

**U.S. BANK, NATIONAL ASSOCIATION,  
N.D., and its Unknown Assignees,  
Trustees and Successors in interest,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Story County, Michael J. Moon,  
Judge.

Appellants argue the district court incorrectly reinstated a previously-  
released mortgage after voiding a homestead mortgage not signed by a spouse.

**REVERSED.**

Bruce P. Bickel, Ames, for appellant Estate of Battle.

Robert A. Wright, Jr. of Wright and Wright, Des Moines, for appellant  
Sherry Battle.

Craig R. Hastings of Hastings & Gartin LLP, Ames, for appellant Emmett  
Battle.

Kara M. Sinnard of Whitfield & Eddy, P.L.C., Des Moines, for appellees.

Heard by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, P.J.**

Appellants argue the district court incorrectly reinstated a previously-released mortgage after voiding a homestead mortgage not signed by a spouse. We agree the post-marriage homestead mortgage is void, but reverse the reinstatement of the prior mortgage.

**I. Background Facts and Proceedings.**

On March 1, 1990, George Battle Jr., the owner/operator of a restaurant, purchased a house in Nevada, Iowa, which he occupied as his homestead. As of 1999, Battle utilized a personal banker at U.S. Bank who was involved in the transactions described below, in other loan transactions with Battle involving his business, and in conversations/transactions with Battle three or four times per week.

On July 1, 2003, Battle signed a U.S. Bank credit application requesting a loan for refinancing. While the form listed Battle's employment and gross monthly income, many sections on the form were left blank—marital status, prior bankruptcy, nearest relative, other income, life insurance, outstanding obligations, and the entire "Financial Statement" section. On July 25, 2003, Battle executed a promissory note for \$89,759.15 with U.S. Bank. Battle secured the 2003 Note by executing a mortgage. The information on the 2003 mortgage is typewritten, with the exception of a handwritten date change to "25" and a handwritten designation accurately stating Battle was "single." The 2003 mortgage was recorded and became a lien on Battle's homestead.

Battle married Sherry Battle on October 31, 2003. Sherry moved into the homestead property and occupied it as her homestead.

In September 2004, Battle obtained a new loan from U.S. Bank. While it is standard U.S. Bank procedure to have a written loan application in each loan file and it would be unusual not to have one, U.S. Bank does not have a written loan application for this loan. Marital status is a standard question on U.S. Bank's loan application.

To generate Battle's loan documents (i.e., note, borrower agreement), the U.S. Bank loan officer physically keyed information into the bank's computer program called Wizard. Wizard data input is "the application, either from paper or in person." Battle's personal banker does not remember whether she asked Battle if he was married during the loan process.

Next, Battle's information was sent electronically to U.S. Bank's underwriting department for loan approval. The underwriting personnel determined the information needed for verification and required the local U.S. Bank office to fax to underwriting: (1) Battle's property valuation (\$139,000); and (2) Battle's 2002 and 2003 income tax returns. The 2003 tax return's first page listed Sherry as George's spouse and indicated George and Sherry were "married filing jointly." Further, the 2003 return included "George and Sherry A. Battle" at the top of every page. Generally, Battle's personal banker did not "review these documents past their title to make sure that I'm meeting the underwriter's requirement."

Battle's personal banker does not recall the underwriting department contacting her and asking for clarification regarding the Wizard data indicating Battle was single while his 2003 tax return indicated he was married. U.S. Bank's underwriting department electronically provided the 2004 note and the borrower agreement to Battle's local U.S. Bank office for printing.

The 2004 note does not indicate marital status, but the borrower agreement stated Battle is the current owner of the property and he will execute a mortgage to U.S. Bank. Further, a box was checked which indicated Battle held title to the property as an "unmarried individual."

Battle's mortgage document is likewise generated from the U.S. Bank's data entry into Wizard. A third party title company, First American Equity Loan Services, drafted the mortgage and filled in Battle's name and marital status. First American's office in Cleveland, Ohio, prepared the 2004 mortgage which states the mortgagor is "George Battle Unmarried." After Battle's mortgage document was created, First American transmitted it electronically to U.S. Bank. Before printing the 2004 mortgage, the local U. S. Bank office filled in the local information—bank name, bank address, bank telephone, execution date, and dollar amount.

U.S. Bank obtained title insurance for Battle's loan. As a part of this process, U.S. Bank received an online title report from First American stating the title search "returns no ownership information for the address entered." U.S. Bank was then instructed by First American to take the following steps to close

the loan: "Prepare the mortgage/deed of trust using the ownership information supplied by the borrower from the loan application or Borrower's Affidavit." As discussed above, U.S. Bank has no loan application. Neither does it have a "Borrower's Affidavit."

On September 13, 2004, Battle signed the refinancing documents prepared by U.S. Bank, including the 2004 note for \$104,700 and the 2004 mortgage on his homestead. Sherry Battle was not a party to the loan and did not sign any of the documents.

When U.S. Bank disbursed the 2004 note proceeds, \$79,601.03 was used to pay off the 2003 note and Battle received \$24,798.97. In October 2004, U.S. Bank filed a satisfaction of the 2003 mortgage with the Story County Recorder.

Battle died intestate in January 2006, while still married to Sherry and still living in their homestead. In December 2007, Battle's estate filed a petition to quiet title to the homestead arguing the 2004 mortgage is void as an encumbrance of the homestead without the signature of both spouses. Battle's son, Emmett, and Sherry joined as interveners.

In December 2008, the district court ruled the 2004 mortgage is void under Iowa Code section 561.13 (2003), and the "homestead laws do not allow this court to reform the mortgage to the detriment of Sherry." The court also refused to recognize an equitable mortgage because "if this court were to grant an equitable mortgage to [U.S. Bank], it would be contrary to the purpose of the homestead statute." However, the court determined equitable principles allowed it to reinstate the 2003 mortgage for U.S. Bank. This appeal followed. We

review this equity action to quiet title de novo. *Krotz v. Sattler*, 586 N.W.2d 336, 338 (Iowa 1998).

## **II. Reinstating the 2003 Mortgage.**

No one disputes the 2004 mortgage is void under the homestead protections contained in Iowa Code section 561.13: “A[n] . . . encumbrance of . . . the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument.” The issue on appeal is whether the district court correctly awarded equitable relief to U.S. Bank by reinstating the previously-released 2003 mortgage. Appellants argue the professional negligence of U.S. Bank in the 2004 mortgage transaction, when balanced against the injury to the innocent spouse, does not support reinstatement of the 2003 mortgage to the detriment of Sherry.

Section 561.13 provides special procedures to protect homestead rights and defines this protection in a comprehensive manner. *Martin v. Martin*, 720 N.W.2d 732, 737-38 (Iowa 2006). Consequently, courts construe the homestead laws broadly and liberally in favor of the beneficiaries of the legislation. *Id.* at 738. The statute prevents “the destruction of homestead rights of married persons, *except* in the manner prescribed by the statute.” *Wright v. Flatterich*, 225 Iowa 750, 756, 281 N.W. 221, 224 (1938) (emphasis added). Because the homestead right is peculiarly favored, “there can be no operative conveyance or an effectual release of the exemption unless the mode pointed out by [section 561.13] is pursued with reasonable strictness.” *Pagel v. Tietje*, 193 Iowa 467, 469, 186 N.W. 938, 939 (1922). “While it may be tempting for trial judges to

fashion remedies viewed to be fair . . . it is not for courts to overlook the language of a statute to reach a particular result.” *Martin*, 720 N.W.2d at 738. Applying these principles in the context of the facts detailed below, we conclude U.S. Bank’s negligently-conducted 2004 loan process cannot equitably overcome the “peculiarly-favored” homestead rights of Sherry Battle.

We note the 2003 mortgage was not contemporaneously cancelled by the filing of the 2004 mortgage. Rather, U.S. Bank recorded satisfaction of the 2003 mortgage as if it had been paid off by a third-party creditor in a separate transaction and without regard to whether or not a new mortgage had been recorded. Satisfaction of the 2003 mortgage occurred on October 18, 2004, a week before the 2004 mortgage was recorded on October 25, 2004.

As a business engaged in the process of making loans secured by residential mortgages, U.S. Bank has total and complete control over the entire loan process. We conclude U.S. Bank negligently conducted the 2004 loan process. First, U.S. Bank failed to follow its standard operating procedure of obtaining a written loan application from Battle for the 2004 loan. Further, even when it followed the standard procedure for the 2003 loan and obtained a loan application, Battle’s application contained no information in the marital status section and in numerous other sections. Battle’s personal banker has no recollection of asking him if he was married. Clearly, this local branch did not make competent efforts to obtain the information necessary to fully complete loan application forms for either the 2003 or the 2004 loan.

Second, U.S. Bank required Battle to provide two years of tax returns and then failed to review the returns. A cursory review of only the first page of the 2003 return (filed in June 2004) reveals Battle was married.

Third, despite these errors on its part, U.S. Bank had another opportunity to correctly follow the requirements of the homestead statute and failed—it failed to follow the instructions from First American, its title insurance company, of preparing the mortgage using the information from the loan application or borrower’s affidavit. U.S. Bank has neither a loan application nor a borrower’s affidavit.

“Homestead rights are jealously guarded by the law.” *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 101 (Iowa 2004). U.S. Bank’s flawed business processes resulted in it presenting Battle at closing with a mortgage stating Battle was unmarried. The record contains no evidence Battle misrepresented his marital status to U.S. Bank—there was no fraud or mistake. Rather, Battle simply signed the numerous loan documents presented to him by his personal banker. U.S. Bank failed to comply with the statute, its 2004 mortgage is void, and courts of equity cannot expand jurisdiction to completely override statutes or ignore established doctrines. *See Martin*, 720 N.W.2d at 738. Our conclusion “preserves the integrity of the legislature’s judgment that certain transactions will be given effect only if they comply with the requirements set out in the statute.” *Michel*, 683 N.W.2d at 107. Reinstating the 2003 mortgage would render section 516.13 “meaningless, and noncompliance with the statute of no moment.” *Id.*



**REVERSED.**