

When the House Is Not a Home: A Study on the Family Home and Its Foreclosure

Delilah Grace V. Magtolis

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In this Article, the Author sets out to resolve the issues regarding the family home and the differences with regard to its constitution under the Civil Code and the Family Code, the exemption it enjoys with regard to execution, forced sale, and attachment, and the requirements in order to avail of such exemption.

With the aid of jurisprudence, the definition of the family home is established and the family home is further characterized. Then, the procedure with regard to the constitution of a family home is discussed in light of the changes brought about by the effectivity of the Family Code in 3 August 1988. Also, the different requisites for the constitution of the family home under the Family Code are enumerated. Issues regarding the exemption of the family home from execution, forced sale, or attachment, proof of its existence, and mortgage validity and redemption are also elaborated in light of jurisprudential and statutory developments. With regard to mortgage validity and redemption, the Author focuses on the changes brought about by amendments to Act No. 3135, pursuant to the enactment of Act No. 4118, the General Banking Act, and The General Banking Law of 2000.

In conclusion, the Author observes that the constitution of the family home under the Family Code is much simpler than previously provided for by the Civil Code, in light of an intention to make it easier for Filipinos to avail of the benefits that are granted to a legally constituted family home. Furthermore, it is also noted that the many rules in favor of the protection of the family home are in line with preserving the family as the basic social unit.