

In My Judgment

Lawyers frequently notify agents that a judgment has shown up in the title search and will impede or prevent closing. Why is that?

A judgment is a judicial declaration – an order if you will -- that someone owes money to someone else. That order (judgment) may be docketed (recorded) in the Circuit Court Clerk's Office (the same place where deeds are recorded), upon which recordation it becomes a lien on any property then or later owned by the judgment debtor(s). This forms the essence of the title problem: the seller is unable to deliver clear and marketable title because the judgment is a lien unless it is satisfied by payment. There are a number of points agent should keep in mind is a deal with settlement agents in resolving judgment issues.

First, a judgment against one spouse does not attach to property owned by the other spouse alone or owned by them jointly provided they hold title as tenants by the entirety with right of survivorship as at common law. In order to obtain this protection it is critical that the couple actually be married, which is why settlement agents sometimes ask sellers for continuous marriage affidavits. Quite often one spouse will have judgments that do not attach during marriage to marital property held as indicated, but they do attach when the parties divorce because the act of the divorce legally severs the tenancy by the entirety and transforms their title by operation of law to a tenancy in common. The judgment will attach to the debtor's interest in the property and run with the land until paid. If the deadbeat ex-spouse cannot pay then the innocent spouse will have to pay in order to transfer clear title.

Second, I'm sure agents are often frustrated with settlement agents announcing they have a possible judgment only to later find out the judgment is not against the seller and the angst and work was not required. The reason this happens is because of a rule of law known as the Rule of *Idem Sonans*, which provides that misspellings are immaterial as long as the name sounds the same and the initial letters of the family names of the same. For example, Virginia case law says that Ed Bolen is the same as Edmund Bolden, that Any O'Klay is the same as Annie Oakley, and

© Brian D. Lytle, Esq., Lytle Law, P.C. www.lytlelaw.com Reprinted with permission of the author. This article was originally published in the *Realtor Update*, a publication of the Virginia Peninsula Association of Realtors® The law may have changed since this article was written and published so caution is advised.

Legal Corner

that W.D. Poyner is the same as W.D. Pointer. Likewise, initials and abbreviations of the names can be dissimilar yet still count for the purposes of constructive notice in the record: For example, Jake is the same as Jacob, Mike is the same as Michael, and Frank is the same as Francis. These are the reasons we call you to ask for Social Security numbers and further information.

Third, we frequently encounter a situation where we report a judgment lien only to be told that the sellers filed bankruptcy and discharged the lien. Hrrmph (and worse) the sellers (and the agents) say – you must be mistaken because that debt was listed and discharged! Unfortunately, however, while discharging the lien in bankruptcy does mean the judgment creditor cannot pursue collection of the debt with the sellers personally, it does not mean the debt automatically is discharged from any real estate to which it might have attached as a lien pre-bankruptcy. One is an action against the debtors, which is barred, while the other is an action against the property, which is not barred. There are bankruptcy mechanisms by which the lien can be released in bankruptcy, e.g. by avoiding it as a preference, and astute bankruptcy attorneys usually, but not always, take that action. Often we can persuade creditors to release it anyway.

Lastly, there are statutes of limitation regarding the enforcement of judgment liens. The basic rule is that no suit can be brought to enforce the lien of any judgment after twenty years have elapsed. This period may be extended by application but that is a fairly rare occurrence. There is another statute of limitations rule that provides that the judgment may not be enforced if the property was transferred from the judgment debtor to a grantee for value more than ten years ago. Remember, once a judgment attaches it attaches forever unless paid, discharged or barred.