



Title Topics



November

2000

Child Support Judgments- An Important Update

The enforcement of child support orders has been the subject of more legislation on both the state and national level than insuring payment of other liens of any kind. Kids have to eat.

"Dead beat" child support obligors can run, but they can't hide. If someone owes child support, our laws are designed to insure that the obligation is met and that current payments are made. If not, dead beat dad faces serious consequences. The kids have to eat.

From a title insurance perspective, we are involved in the enforcement process. We must search for any obligor that seeks to sell real property to insure that no arrearages exist. Arrearages against child support payments are enforceable as a judgment lien against the premises. So too, arrearages constitute a priority lien at the time of the recording of a mortgage. In order to insure priority, we must confirm that no child support arrearages exist.

New Jersey laws governing enforcement of child support judgments

are constantly being strengthened. A new section has now been added to the law with an effective date of August 14, 2000. N.J.S.A. 2A:17-56.23b provides that child support judgments docketed with the Superior Court Clerk shall be a lien upon the net proceeds of civil judgments, inheritances, monetary settlements of law suits, and cer-

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tain other categories of payments. That is the new wrinkle. Under certain circumstances, you can no longer disburse civil judgment payoff sums without running the payee for child support judgments.

Here is the scenario: The judg-

Have a Question?

Do you have a question that you would like to see answered in a future edition of Vested Title's "Title Topics?"

If so, submit it by fax to Stephen Flatow at 201-656-4506 or by e-mail to: sflatow@vested.com

ment against the seller in favor of an individual judgment creditor. Before August 14, our requirement would have been the payoff of the judgment and the filing of a warrant to satisfy judgment. Now, under specific circumstances, the civil judgment creditor must be run for child support judgments before that judgment creditor is paid. The new law establishes a lien on the civil judgment payoff proceeds for any child support sums that may be due.

Since the lien does not affect real property, and only attaches to the judgment payoff proceeds, we will not be changing any commitment requirements or add any exceptions. Our concern, here, is not title implications.

The question has to do with a settlement agent's function of disbursing money. You can not disburse to someone who owes child support. If you do, you could be held liable for the amount disbursed.

So what are the rules? Here they are:

- The new law only applies to judgments in excess of \$2,000. You can disburse a judgment payoff to an individual without running a child support search, for judgments of less than \$2000.

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Child Support continued.....

- The burden to search for child support judgments is imposed upon the party that actually disburses to the individual civil judgment creditor. If an attorney for the creditor docketed the judgment, you can disburse to the attorney without searching the creditor for child support. The child support search obligation will pass to the creditor's attorney, before he or she disburses to his or her client.

- If a civil judgment creditor on a judgment of over \$2000 is not represented by an attorney who shall be clearing the payoff funds through a trust account, and you will be disbursing directly to the creditor, you must get a certification from him or her setting forth current address, date of birth and social security number. This information is to be used in running the child support search. If a child support return pops up, the payoff proceeds must be applied to any arrears using the same procedures, through probation, as if the creditor were a seller or mortgagor with a child support obligation.

While this article has focused on dealing with the new issue of child support judgments against a judgment creditor, the new law also applies to an estate disbursing funds to an estate beneficiary, devisee, or heir at law. There too, the disbursing party must conduct a child support search.

Usually, estate proceeds are paid out by the personal representative of the estate, be it executor, administrator, or an attorney for the estate. Again, the search

obligation is imposed upon the party disbursing the money to the estate beneficiary.

It would be unusual if the proceeds of a sale of realty by an Estate were disbursed directly to an estate beneficiary, devisee, or heir by the settlement agent at a closing table. The accepted practice would be to disburse to the estate or the personal representative who would then be responsible under the statute. If, however, you ever find that a direct disbursement to an estate beneficiary is contemplated, you must get the certification and run the beneficiary for child support returns.

Compliance with the new law, where required, is as easy as a telephone call. Child support searches may be obtained through Charles Jones, L.L.C., telephone 800-792-8888, or fax 800-883-0677.

Since our main concern is clearing title, the new child support enforcement law could have some impact a la Catch- 22. We need a warrant to satisfy judgment from the judgment creditor. We used to be able to exchange money for a warrant to satisfy, without a second thought. Now, we may not be able to give the money without getting date of birth and social security disclosures and then running a child support search. If you get a hit, and must pay the funds into probation, that civil judgment creditor will likely not be overly inclined to cooperate in satisfying the judgment.

While the above scenario may affect your blood pressure, it should not really affect title. Ample protection exists. A judi-

cial discharge of the judgment is readily obtainable, with costs and legal fees being paid by that reluctant judgment creditor whose proceeds were applied to the payment of child support arrears.

Anyone encountering any difficulty in getting a warrant to satisfy when payoff proceeds must be directed toward child support arrears should please call Vested Title for assistance.

Copies of N.J.S.A. 2A:17-56.23b are available. Call us at 201-656-9220 and ask for Maureen Kelly, if you would like a copy faxed.

Thanks to Old Republic National Title Insurance Company for providing information on this topic.

Are You Looking For a Mortgagee?

Have you ever tried to clear an old mortgage only to find out that the bank is out of business? We have.

Help is available, though. Over the years we have developed an extensive list of successors to banks in the state of New Jersey that includes addresses, telephone and fax numbers.

In addition, there are various web sites on the Internet that have been created by the Federal government which will point you in the right direction.

Vested Title is here to help you when you have to find that lender and get that discharge. Give us a call at 201-656-9220, ask for Maureen Kelly, and we will get the information to you as soon as possible.

U.S. Courts on the Internet

PACER is a system allowing public access to U.S. Courts around the country.

At Vested Title, we have been using PACER for several years, to check the status of Bankruptcy cases pending in New Jersey, New York, Pennsylvania and Delaware. Case information in the District Courts is also accessible through PACER.

PACER can be accessed via your computer modem and, now, through the Internet. Modem access costs \$.60 per minute, Internet access is \$.07 per page.

For more information about PACER, go to its website at pacer.psc.uscourts.gov

Letters of Indemnity An Introduction

From time to time, we run into a problem with an open mortgage that neither you, seller's counsel or we cannot clear in time for closing. When that happens, we tell you "have the seller's title insurance company send us an "indemnity letter." Once received, we omit the offending mortgage and your title closes. The purpose of this article is to better acquaint you with letters of indemnity.

Plainly speaking, a letter of indemnity is a device by which one title insurer discharges *an obligation to its insured arising under a policy* through delivery of a letter to another title insurer. Title agents may accept letters *on the underwriter's behalf* but are not empowered to issue them.

Acceptance of a letter from another company may be an appropriate alternative to obtaining a cash escrow deposit. Since a title insurer presumably has more assets than most individual or corporate indemnifiers, it is often a preferable solution.

However, one must remember that *most indemnity letters (by custom) are limited to the amount of the prior insurer's policy*. It is only appropriate to request an indemnity letter in circumstances where one's underwriter would feel obligated (by custom) to issue one. It is important to remember that the issuance of indemnity letters is governed by *custom*, and *not* by statute or rule of law. Although many in the industry seem to regard a request for issuance of a letter as an implied criticism of one's underwriting skills, this should not be the case.

Letters of indemnity are a very convenient and economical way to resolve potential claims. If no such device existed, almost every objection to title raised by another insurer would result in the formal opening of a claim, and the consequent expenditure of funds to resolve same by commencing suit in Superior Court, etc.

The texts of most forms of letter of indemnity in common use contain wording such as "...in consideration of your issuing your policy free and clear of said objection..." Thus, it is generally understood by the insurer giving the letter that the insurer receiving it will omit (and not merely provide affirmative insurance)

regarding the item in question

In cases where the item will not be omitted, the text may be varied accordingly, based on the mutual agreement of the parties. Once the letter has been accepted and the policy has been issued without exception, the risk arising from the continued existence of the item in question on the record has, in effect, been transferred from one insurer to the other.

Thus, for example, if Company A delivers a letter to Vested Title concerning an old mortgage which has been paid but never canceled of record, A understands that Vested Title will issue its policy without exception for same. If Vested Title does not intend to omit the item, it should ask A to vary the text of the letter to state, e.g., "...in consideration of your providing affirmative insurance with regard to said objection..."

Letters of indemnity are a very convenient and economical way to resolve potential claims.

Assuming that Vested Title issues a policy without exception, if Company C later raises the same objection, it is customary for Vested Title to indemnify Company C, because if we do not indemnify C, it will, most likely, trigger a claim against us. It is usually inappropriate to ask A to indemnify C, because its insured no longer has an interest in the land, and its liability is limited to Vested Title under the indemnification.

To be continued

Affidavit of Title

Continued from last issue

Para. "6." "Marital history."

The All-State Legal Supply Co. Form 1630 of affidavit offers a smorgasbord of choices for the marital history section of the affidavit. Let's run through some of the scenarios.

"We are not married." Simple enough. However, living separate and a part from one's spouse does not render the seller "not married."

"We are married to each other. Etc." This is fine for sellers who are husband and wife. If the sellers are not married to each other, leave this blank.

"This property has never been occupied as the principal matrimonial residence..." The operating date for the change in the law of dower and curtesy is May 28, 1980. N.J.S.A. 3B:28-1, et seq.

If the property was acquired before that date, the spouse must join in the deed even if the property is not now or has never been the principal matrimonial residence. If you think dower and curtesy are dead, see, GLADSTONE V. BERK (Super.Ct. App. Div. 1989)233 N.J. Super. 228, 558 A.2d 512.

"Our complete marital history is listed as above." If so, don't worry, be happy. If not, read on.

"Our complete marital history is listed below..."

Whatever does not fit into the pigeon holes of the marital history section should be set forth in the

space provided in paragraph 6. Copies of any divorce decrees, death certificates for a deceased spouse, or anything else that will clarify the marital history of the parties should be attached to the affidavit. These should be reviewed by the purchaser's attorney to determine if there are any potential pitfalls, such as, ex parte divorces obtained in foreign countries that may not be recognized in New Jersey.

Para. "7." "Exceptions and additions." There is a variety of opinions as to what items of information should be inserted in the space provided. Essentially, everything that clarifies or qualifies an earlier representation should be set forth. This is the place to insert "all liens or mort-

Taking another look at the Affidavit of Title.

gages which are not being paid off as a result of this sale." The same proposition holds true for leases.

Blanket exceptions to coverage of the affidavit, such as "Those matters set forth in Commitment

No. 54445 issued by Vested Title Inc." should be avoided. At best, mention of specific exceptions is allowable unless you did not contractually agree to accept them.

A cautionary note is in order. With the advent of word processing, many lawyers are now generating their own form of affidavit of title. You must be alert for errors of omission in such cases.

Tax-Deferred Exchanges

Have a client who needs to save money on taxes? Our underwriters provide advice and assistance in connection with Section 1031 Like Kind Exchange transactions nationwide.

So, the next time you need an expert in a 1031 exchange, think of Vested Title and call Stephen Flatow at 201-656-9220.

*Happy
Thanksgiving*

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