



TOP 10 PITFALLS
FOR
THE REAL ESTATE LAWYER & PARALEGAL

1. Tax Liens

a. Federal vs. State

- (i) State – 10 years
- (ii) Federal – 10 years and 6 months
- (ii) Defeat of Tenancy-by-the-Entireties
 - (a) US v. Craft
 - (b) Applies to Federal Tax Liens only

b. Application to ***After-Acquired Property***

2. Federal Judgments

a. Distinguished from ***Federal Tax Liens***

- (i) Federal tax Liens – 10 years and 6 months
- (ii) Federal Judgments – 20 years

3. Bond Forfeitures

a. Scenario: Johnny Rotten is arrested and posts bond. Rather than show up for court, Johnny flees jurisdiction. The Bond is forfeited and a judgment is entered against Johnny for the amount of the bond.

b. The Judgment attaches to any real property owned by Johnny in the County where the Judgment is entered.

c. The Judgment applies to any ***after-acquired property***.

4. Expiration of Un-cancelled Deeds of Trust

-May be disregarded fifteen years ***after maturity*** reflected on face of the Deed of Trust

Ways to “Clear” an Uncancelled Lien

- (1) Prior Settlement Statement
- (2) Cancelled or Cleared check reflecting payment in full
- (3) Letter or Affidavit from a prior attorney in chain-of-title
- (4) Letter from Mortgage Company indicating final payment was received
- (5) Call prior Mortgage Company and ask them if there is a balance
- (6) Use the internet
- (7) Affidavit from Seller/Borrower that Debt has been paid
- (8) Due to unreliability, a Credit Report alone is not very helpful

ONCE YOU OBTAIN SOME OR ALL OF THESE THINGS SEND IT TO THE TITLE INSURER AND ASK THEM TO INSURE OVER THE DEED OF TRUST

5. Claims of Lien

a. Scenario: Owner hires Contractor to perform work on property. Owner fails to pay contractor. Contractor files claim of lien against the property

b. Claim of Lien must be filed within 120 days from the date

6. Suspended Articles

a. Scenario: ABC Company deeds property to XYZ company. At the time of the transfer, ABC's Articles of Incorporation were suspended due to a failure to file Annual Reports for the prior five years.

b. The transfer is invalid as the suspension of the Articles effectively makes all acts of the company null and void.

c. Exception: Company is permitted to act if done for the purpose of “Winding Up” or dissolving the Company (Shutting Down)

d. Distinguish from Suspension of Articles due to a non-payment of State Income Taxes.

7. “Super Priority” Municipal Liens

a. “Super Priority” means that it ***survives foreclosure***

b. Applies to any and all municipal liens

- i. Property Taxes
- ii. Grass Cutting Liens
- iii. Sewer Assessments
- iv. Street Assessments

8. Estates & Claims of Creditors

- a. Date of Death is critical
- b. If property is to be sold prior to the expiration of 2 years from the date of death, then a Notice to Creditors must be filed prior to conveyance
- c. If death occurred more than two years prior, there is no other requirements

9. Statute of Limitations for Set-Back Violations

- a. Scenario: Survey reveals that front of house is over front set-back by 2 feet. House was built in 1998.
- b. Insurable after 6 years due to Statute of Limitations

10. HOA Dues

- a. Unpaid HOA dues that result in a claim of lien
- b. Claim of Lien must be perfected within 3 years or is extinguished
- c. Wiped out by Foreclosure of pre-existing Deed of Trust