

PENN ATTORNEYS

TITLE ALERT

DATE: 06/15/10

RE: Title Alert 2010-07 Revisiting Domestic Relations Liens for Support

The purpose of this Title Alert is to remind you of the ongoing need to require payment of any overdue support obligations of buyers, sellers, and borrowers in an insured transaction, as those obligations constitute a valid lien on the real property to be insured. Domestic Relations Liens for Support are a lien against real property by operation of law without the need for the filing of a lien in the Prothonotary's Office, affect all property owned by the support debtor within the Commonwealth of Pennsylvania, and attach to the support debtor's after-acquired property.

In following our underwriting guidelines for addressing overdue support obligations:

1. All title commitments will include the following requirement on Schedule B, Section One:
Proof that there are no overdue support obligations of record with the Domestic Relations Section of the parties to this transaction, up through the date of recording of the instruments to be insured.
2. You are required to check the Commonwealth of Pennsylvania's statewide index at www.childsupport.state.pa.us to determine whether any party to your transaction is a support debtor with an overdue support obligation. This search should be updated immediately prior to closing to ensure that no support obligation became delinquent between the effective date of the title commitment and the date of closing.¹
3. If the search of the statewide index discloses an overdue support obligation for the support debtor, obtain a certificate showing the amount of the delinquent obligation from the County Domestic Relations Office. The amount shown to be delinquent will need to be paid to the County Domestic Relations Office in order to clear the lien of the overdue support obligation. Note that the entire delinquent amount must be paid regardless of whether the support debtor is current on any payment plan or payroll deduction. Only the County Domestic Relations Office can provide a payoff and is the only party that can enforce, modify, or release the lien. The support-debtor's spouse may offer to waive the payment, negotiate a lesser payment, or to modify or release the lien, but that party has no authority to do so.²

¹ Checking for liens on this website is a free service, and therefore you may not place a charge for it on the HUD.

² If the County Domestic Relations Office charges a fee to provide this certificate, you may pass through this exact charge on the HUD.

4. The only exceptions to the practices outlined in No. 3 above are:

- a. *Sale Transactions by Tenants by the Entireties.* In a sale transaction where the overdue support obligation is owed by only one spouse who owns the property being sold as a TENANTS by the entireties (and the buyer is a bona fide purchaser for value), the overdue support obligation need not be paid. Proof is required that the tenancy by the entireties has not been severed by death or the entry of a divorce decree.

This exception does not apply in the following two different situations, and therefore must be paid:

- i. **Where married persons hold real property as tenants by the entireties and one spouse has secured an Order of Court** against the other spouse for the support of the spouse and/or a child and copy of the Order has been certified to the Court of Common Pleas in the county in which the real property is situated. See 23 Pa.C.S. Section 4361. In this case, **the Order is entered in the court as a judgment and execution may be issued on the judgment against the real property held by the entireties.**
- ii. **In a refinance transaction**, the overdue support obligation of a borrower must be satisfied even if the property is owned as tenants by the entireties because a divorce or death of the non-debtor spouse would sever the tenancy by the entireties. **Severance of the tenancy by the entireties causes the lien to attach to the property with the lien priority dating back to the original date of delinquency.**
- b. *Sale Transactions Where the Support Debtor is the Purchaser.* In a sale transaction where the overdue support obligation belongs to the purchaser, we will issue the owner's policy without paying the debt but if Schedule B of the OWNERS' policy includes an exception for the overdue support obligation. The loan policy being issued in that same transaction will be issued showing the overdue support obligation on Schedule B, Section II as a subordinate item so long as the insured mortgage is a Purchase Money Mortgage pursuant to 42 Pa.C.S. Section 8141, i.e. the money is being used to acquire real estate and the mortgage instrument is recorded within ten days.

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