

Title Talk

PennAttorneys
TITLE INSURANCE CO.

Important New Information Regarding Department of Revenue Liens

(The following is a reprint of a recent Bulletin we sent to you by mail.)

On December 12, 1994, legislation was signed by the Governor (and took effect immediately upon signing) amending various provisions of the Taxation and Fiscal Affairs statutes (Act 1994-138). As part of this legislation, a new Section 1404.1 was added to Title 72.

Section 1404.1 eliminates the requirement that Department of Revenue Liens be

revived every 5 years. Said liens continue indefinitely, unless and until they are satisfied or discharged by law.

In examining and certifying title, you should disclose all filed Department of Revenue Tax Liens from December 12, 1989 through the date of the search.

In a related matter, Section 7345 (b) of Title 72, pertaining to Pennsylvania income and employer withholding taxes, was amended August 4, 1991. Language in section 7345 (b), referring to said liens

as continuing for five years from date of entry in the Prothonotary's Office, was removed by the amendment. Apparently, the Department of Revenue now considers liens under this section as having indefinite lien status and priority with no need for revival (consistent with new section 1401.1)

Thus, in examining title, you must disclose any Department of Revenue personal income or employer withholding tax liens entered after August 4, 1986. ■

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Limited Liability Companies and Restricted Professional Companies Under New PA Law

15 Pa. C.S.A. § 8901 et seq. went into effect in Pennsylvania on February 6, 1995, creating two new legal entities; the Limited Liability Company (LLC) and the Restricted Professional Company (RPC). These types of companies provide tax advantages for members while limiting members' exposure to liability.

An LLC may engage in any lawful business that a partnership may engage in, with the exception of banking and insurance activities. It follows that an LLC may purchase, sell, mortgage and lease real property. It holds title to real estate in its own name; title does not vest in its members or managers.

An RPC is a type of LLC which "renders one or more restricted professional services." An RPC is taxed by Pennsylvania as a limited partnership, whereas an LLC is taxed as a corporation.

An annual registration fee applies to all RPC's. This fee is lienable against all RPC property, including after-acquired property. The lien takes precedence over all other liens except taxes due the Commonwealth.

WHAT TO DO:

Whenever an LLC or RPC is involved in a real estate transaction, requirements will appear requesting you to furnish the following:

- a) A certificate of organization filed with the Department of State;
- b) An Operating Agreement which gives the members and/or managers specific authority to execute documents to effectuate the transaction; and
- c) A corporate tax clearance certificate and a bulk clearance certificate (in the case of an LLC ONLY). ■

All-Inclusive Rate Increase Effective March 1, 1995

A 9% increase in the "All-Inclusive Rate" was implemented by the Title Insurance Rating Bureau, effective March 1, 1995.

The vast majority of title insurance underwriters operating in Pennsylvania belong to the Rating Bureau. Along with the increase in All-Inclusive Rates, the rate for approved attorneys was increased from \$3.00 per thousand to \$3.25 per thousand. This means that approved attorneys from other title

companies are paying higher rates for their title insurance.

Please note that Penn Attorneys is not a member of the Rating Bureau. Our rates are the same as they always have been since the inception of the Company in 1980. Furthermore, you may continue to charge your client whatever you choose; an option which is unavailable with other title companies. ■

More on Changes Implemented by the Title Insurance Rating Bureau

Along with the increase in rates discussed above, the Rating Bureau has changed the numbers assigned to some Endorsements. PLEASE NOTE THAT PENN ATTORNEYS IS NOT A MEMBER OF THE RATING BUREAU. All of our Endorsement Numbers will stay the same. The following translation guide should be of assistance in clearing up some of the confusion the Rating Bureau changes create:

<u>Penn Attorneys</u> <u>Endorsement</u>	=	<u>Rating Bureau</u> <u>Endorsement</u>
100 (Restrictions)		100
300 (Survey-Lender)		300
8.1 (Environmental-Lien)		900
301 (Survey-Owner)		301
500 (Inflation)		500
710 (Adjustable Rate Mortgage Rider)		710
800 (Condo)		810
801 (PUD)		820

Please feel free to contact us if you have any questions regarding these changes. ■

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SHERIFF'S SALES AND LIEN DIVESTITURE

Generally speaking, a Sheriff's Sale divests all liens against the subject property except for those liens specifically protected from divestiture by statute.

42 Pa. C.S.A. § 8152 specifically protects a mortgage which is prior to all other non-mortgage liens from divestiture by Sheriff's Sale against any of those subordinate liens.

THE EXCEPTION

However, a mortgage which is prior to all other liens may still be divested at a Sheriff's sale by: "(1) other mortgages, ground rents and purchase money due the Commonwealth; (2) taxes, municipal claims and assessments, not at the date of the mortgage duly entered as a lien in the office of the clerk of the court of common pleas; and (3) taxes, municipal claims and assessments whose lien though afterwards accruing has by law priority given to it."

A cautionary note is warranted here. A paid but unsatisfied lien counts as an active lien in determining priority.

Hopefully, the following illustrations will help clarify the rules outlined above.

EXAMPLE ONE: (In order of priority) Lien 1 (paid but not satisfied), Mortgage, Lien 2. In a Sheriff's sale on Lien 2, both Lien 1 and Lien 2 are divested under the general rule that a Sheriff's Sale divests all liens against the subject property; since a paid but unsatisfied lien is still an "active" lien for priority purposes, the fact that Lien 1 has actually been paid is immaterial. Lastly, the mortgage is also divested because it is not prior to all other liens (ie., Lien 1, even though paid, divests the mortgage because it is not satisfied of record).

EXAMPLE TWO: (In order of priority) Mortgage 1, Mortgage 2, Lien 1, Lien 2. In a Sheriff's Sale on Lien 2, both liens are divested under the general rule that a Sheriff's sale divests all liens against the subject property, but both mortgages survive because Mortgage 1 is prior to all liens (affording it § 8152 protection) and Mortgage 2 is prior to all liens except Mortgage 1 (also affording mortgage 2 § 8152 protection).

EXAMPLE THREE: (In order of priority) Mortgage 1, Lien 1, Mortgage 2, Lien 2. In a Sheriff's Sale on Lien 2, only Mortgage 1 survives because it is the only mortgage which is prior to all other liens under § 8152. Mortgage 2 is divested because it follows Lien 1 in priority, and is therefore not afforded § 8152 protection. ■

Bulk Sale Clearance Certificate

72 P.S. Section 1403

You may have noticed that anytime a real estate transaction involves a corporate seller, a requirement will appear on your Penn Attorneys Commitment requesting proof that the transfer does not involve 51% or more of the corporate seller's Pennsylvania assets by value.

This requirement is necessary in order to assure compliance with 72 P.S. § 1403.

In most cases, where the transfer does not involve 51% or more of the corporate seller's assets, all that is needed is an affidavit stating so, signed by the appropriate representative of the corporate seller.

In those cases where the act applies, 72 P.S. § 1403 requires any corporation planning to sell 51% or more, by value, of its Pennsylvania stock, merchandise, fixtures, machinery, equipment and/or real estate to file a notice with the Department of Revenue at least 10 days before completion of the transfer.

It is important to understand that simply filing the 10 day notice offers absolutely no protection from liability. In response to the notice, the Department will merely send a detailed "Application for Corporate Clearance Certificate" form which must be completed by the seller and returned.

If all taxes are paid, in approximately 8 to 10 months the Department of Revenue will respond by issuing a Bulk Sale Clearance Certificate which: a) identifies the subject corporation; and b) states that said corporation has paid all taxes due to the Department of Revenue through the date of closing.

Failure of the purchaser to require a clearance certificate from a corporate seller results in **JOINT AND SEVERAL LIABILITY OF THE PURCHASER** and seller for all corporate taxes through the date of the transfer. Obviously, all corporate taxes must be paid through the date of the closing, or the certificate will not be issued.

WHAT DOES THIS MEAN TO YOU?

The Department of Revenue is currently cracking down on violations of 72 P.S. Section 1403. Since liability is joint and sev-

eral, the Department of Revenue is, in essence, forcing the purchaser from a corporation to audit the seller's books to assure that all taxes due the Department of Revenue have been paid in full through the date of the closing.

WHAT YOU SHOULD DO.

First, of course, investigate whether an affidavit will be signed by a representative of the seller-corporation stating that the transfer does not convey 51% or more of the seller's Pennsylvania assets by value.

If the transfer does convey 51% or more of the corporate-seller's Pennsylvania assets by value, the notice discussed above must be filed with the Department of Revenue which will issue the Bulk Sale Clearance Certificate if all taxes are paid. However, since the Certificate will not be prepared and returned by the Department of Revenue in time for the closing, you will also have to do one or more of the following:

- a) Have the seller file a tax return through the date of closing; and/or
- b) Obtain a letter of assurance from a reputable and substantial CPA firm, in charge of auditing the Corporation, stating either:
 - i) That the seller-corporation owes no tax liability; or
 - ii) That the estimated amount of tax liability owed by the seller-corporation is being held in escrow; and/or;
- c) Escrow an amount equal to the entire sales price until the Bulk Sale Clearance Certificate is issued.

Finally, please note that the requirement for the Bulk Sales Clearance Certificate is in addition to the Corporation Tax Clearance Certificate requirement, which also must be obtained anytime the seller is a corporation. ■

NAIC Model Insurance Agent Act — Update

In Title Talk, First Quarter, 1995, Issue 1, we reported that the National Association of Insurance Commissioners (NAIC) is developing legislation which will NOT AFFECT YOU AS A

PENN ATTORNEYS APPROVED ATTORNEY, but will have an adverse impact upon title insurance Agents.

Since that article was written, the NAIC has met and a new draft of the Act has been issued. The new draft contains more proposed regulations which, if enacted, will prove to be even more troublesome to the title insurance Agent.

The latest version of the Model Act contains the following additions:

All "Subcontracting Searchers" must carry Errors and Omissions coverage, must comply with all Insurance Department Rules, and must make all files and accounts available to agents and their underwriters.

Where Owner's coverage is to be provided, the agent must make the title commitment available to the mortgagor prior to closing.

Supposedly, a final draft of the Model Act is to be ready sometime in June. We will keep you updated with respect to this topic in future issues of Title Talk. ■

DPW Estate Recovery Program Update

The purpose of this article is to update you with regard to an article which first appeared in Penn Attorneys' quarterly newsletter, "Title Talk" First Quarter, 1995 Issue One.

The article, entitled "DPW Estate Recovery Program" indicates that Act Number 1994-49 (62 P.S. 1412), which took effect on August 15, 1994, enables the Department of Public Welfare (DPW) to recover medical assistance payments received by persons at least 55 years of age at the time payment was received.

The Act provides that, when property subject to a claim under this Act is transferred, the executor or administrator of the estate and the recipient of the property are liable.

Under the Act the executor or administrator of an estate sub-

ject to a claim under the Act must notify the DPW and request the DPW to forward a claim statement.

The Act provides that, if the DPW fails to respond within 30 days of receipt of the request, the DPW forfeits its claim (experience tells us not to rely on the 30 days and 'OK' theory with the Commonwealth). The request should include the name of the decedent, date of death and social security number, and should be sent to:

Department of Public Welfare
TPL Casualty Unit
Estate Recovery Program
P.O. Box 8486
Willow Oak Building
Harrisburg, PA 17105-8486

Whenever you are involved in a real estate closing involving an estate as seller, you should make appropriate inquiries

to determine whether the estate may be subject to DPW claims for medical assistance payments under the Act. If so, you must indicate same on your Preliminary Certificate and Report on Title (form 80-2). In such a case, an excep-

tion will appear on the Commitment and subsequent Policies. The exception will be removed only upon receipt by us of a "no claim" letter issued by the DPW, or proof of payment of the claim by the decedent's estate. ■

Proof of Payment of Inheritance Taxes

From time to time, you may see a requirement which asks for:

Proof of payment of Inheritance Taxes Due the Commonwealth of PA and Estate Tax due the United States of America in the Estate of [decedent] — or — Approved Attorney's Certification guaranteeing payment.

In response to this requirement, we often receive the paid receipts as evidence of payment of inheritance tax.

Please be aware, that receipts alone do not constitute adequate proof. We must also receive the County's filed acceptance of the amount paid in order to assure that the full amount of the taxes was paid by the Estate to the County.

In the alternative, we will always accept your personal guarantee that the taxes will be paid. Please feel free to contact us if you need a sample Inheritance Tax Certification form. ■



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