



# CHICAGO BULL

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## BUYER JUDGMENTS AND WHEN YOU NEED TO SEARCH

One question often asked is if a title search should include a Judgment Search of the Buyer in a purchase transaction. If so, when and why? The short answer is yes, for a variety of reasons that will be set forth below. Judgments against a Buyer will attach (with limited exceptions) to after acquired property. This has important implications for any secured financing and the priority of the lien. Knowledge of judgments against a Buyer may also be important to help advise the Buyer on how they may want to structure a particular purchase transaction, such as taking title as tenants by the entireties when a judgment is only against one spouse, or other structures which would avoid putting title solely in the name of the judgment debtor.

One exception to the general lien priority rule is purchase money financing. Most practitioners are familiar with the Doctrine of Instantaneous Seisin. Under the Doctrine of Instantaneous Seisin, a Purchase Money Deed of Trust (more on this below) would take priority over a previously docketed judgment against a Buyer. The Doctrine of Instantaneous Seisin is perhaps most eloquently laid out in the 1878 North Carolina Supreme Court decision *John N. Bunting v. Henry C. Jones* (78 N.C. 242) in which Justice Reade stated: "The title did *vest*, but did not *rest*, in Jones; but 'like the borealis race, that flits 'ere you can point its place.' And it was as if the title had passed directly from the vendor to the plaintiff."

What exactly does this mean? Generally, a Purchase Money Deed of Trust, which is a Deed of Trust securing a loan for the purchase of real property in an amount not to exceed the purchase price (except in certain limited circumstances), which loan is for the sole purpose of purchasing the subject property and for no other reason, would instantaneously attach to the subject property upon recording of the Deed and Deed of Trust, thereby taking priority over any prior docketed judgment against the Buyer. The argument is that the Deed and Purchase Money Deed of Trust are concurrent acts that are to be considered one act. Without the extension of the Purchase Money financing by the Lender, the Buyer would not be able to acquire the property, and thus the property would not be available for attachment by the Judgment Creditor. Permitting the attachment by the Judgment Creditor free from the encumbrance of the Purchase Money Deed of Trust would unfairly benefit the Judgment Creditor to the detriment of the Purchase Money Lender. One important note is that judgments in favor of the United States may trump the purchase money protection; and federal judgments, unlike ordinary judgments, are enforceable for a period of twenty (20) years.

So, the Doctrine of Instantaneous Seisin would protect a Purchase Money Lender from existing judgments against the Buyer, but this protection is limited to this particular scenario and does not extend to other forms of financing. Construction Loans, Equity Lines and other loans with future advance components would not be protected by the Doctrine of Instantaneous Seisin. Nor would loans whose purpose was not solely for the purchase of the subject property, or otherwise provided some kind of cash out component. Be cautious in residential purchase transactions where the closing involves both first and second lien Deeds of Trust. While the Doctrine of Instantaneous Seisin may

provide some lien priority protection for the first lien Deed of Trust, that would not be the case for the second lien Deed of Trust.

The best course of action is to make it a practice to check the Clerk's office for any judgments against the Buyer. Knowledge of any judgments will allow you to better advise your clients, and will save time and money in those instances where this step is skipped, and later determined it is needed. A little extra time up front will mean that you have the information in your file. Reliance on the Doctrine of Instantaneous Seisin is really a last resort and shouldn't be the default.

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