



CHICAGO BULL

(6-4-2019)

MAIL BAG

It's that time of the year again when we go through (various interesting) questions that I have received via email. These are common, and if you think that it was one of your emails, it was probably from five other people as well.

Dear Bull: I have a client that owns numerous rental properties in a city, some of which have liens filed against them via NCGS 160A-443. If they aren't against the land she is selling now, I don't need to worry about them, right?

Dear Reader: Wrong. Nuisance/demolition/weed-wacker liens (or whatever you want to call them, as long as they are liens under NCGS 160-443) can be a thorn in the side of any closing. The statute gives them near super priority status against the land they directly affect (the land with the issues that the lien is filed against), with such priority as described in Article 10 of 160A. However, they also constitute a money judgment against other land in most situations. NCGS 160A-443(6)(b) says "If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a **money judgment**." If you close without paying them, these liens will be ahead of your buyer-client's ownership interest, and your lender's deed of trust.

Dear Bull: My client (wife) got divorced in another state and the order directs that the North Carolina land be conveyed to the wife by the husband. Can I just record this order in the clerk's office or register of deeds so that she then would be the sole owner?

Dear Reader: The answer depends on the court and the wording of the order, but generally no. There are a couple of cases that discuss the jurisdictional aspect in detail, but *Buchanan v. Weber*, 567 S.E.2d 413, covers it well enough with the headnote saying this: "Although a Kansas divorce judgment attempted to determine the title to real property in North Carolina and it is accepted law in North Carolina that **courts of one state cannot determine title to real property located in another state**, that part of the judgment is severable and our courts are required to give full faith and credit to the remainder of the Kansas divorce judgment absent the sentence attempting to determine title to North Carolina property." While the argument of Article IV,

Section 1 of the constitution (Full Faith and Credit clause) was made, the court said “when the court rendering the judgment has no jurisdiction over the property, the Full Faith and Credit Clause is not applicable.”

What if the order was from a North Carolina court, and the jurisdictional matters were not at issue? Well then we get down to the wording of the divorce/equitable distribution order. Very rarely do I come across an order that strips the land from one party and places it vested solely in the other. More likely is a scenario where the order says something like "Husband shall deed to the wife the marital residence..." This language is not an order vesting title, it is an order for a third party to do an act (here, the husband deeding the land to the wife). If the husband fails to deed the land, the recording of that order is going to gain no ground in the wife getting title. The correct next step is to file the appropriate motion(s) with the court (usually a motion to compel the husband to comply with the order). If the court then orders that the land is divested of the husband's rights and interest, and is vested solely in the wife, that order may be filed in the register of deeds and acts in lieu of a deed.

Dear Bull: My client has a Federal Tax Lien filed in the county where he owns land. He is married and holds title as tenancy by the entireties. Can you please insure over that?

Dear Reader: Unfortunately, no we can't. The federal government disregards the TBE as it is a state created vehicle for holding title. This was made abundantly clear in *United States v. Craft*, 535 U.S. 274 (2002), where the Court found that the federal government is not bound by state court interpretations of the attachment of the Federal Tax Lien. While this case was about Federal Tax Liens, there is no reason to think that the reasoning wouldn't apply to any other federal judgment. Good news for any tax liens from the NCDOR, though, as they *wouldn't* attach in this situation.

Dear Bull: I'm working on a closing for a home that was constructed last year. There is an MLA filing from eighteen months ago and there are five potential lien claimants who have filed notices on LiensNC.com. The seller says that work was completed over 6 months ago and there is no way for him to get waivers from any of those claimants. How do I convince the potential lien claimants to sign Form 6's (NCLTA - Waiver and Release of Liens)?

Dear Reader: The appropriate lien affidavit for this situation is the NCLTA Form 1 (no work in the last 120 days). The Mechanics Lien Agent statutes did not change the fact that the filing of a Claim of Lien on Real Property under NCGS 44A-12 has to be done with 120 days of the last day of furnishing of labor or materials in order for it to attach. If work was completed over 120 days ago, the NCLTA Form 1 is the correct document.

View this and more articles on our website at <https://www.northcarolina.ctic.com>