

17th November 2015

## Marriage and Title

While much of this will seem fundamental to most, we still run across many situations where there are some misconceptions about the impact of marriage (and divorce) on titles to real property. Here are some general reminders:

1. Title to Property - When a married couple holds property as tenants by the entirety, the moment they get divorced the property is held by the two individuals as tenants in common. This becomes most problematic when there is a judgment against one of the spouses, as it immediately attaches to the one-half undivided interest upon divorce. If an individual owns property with their spouse, and wants to convey property to the non-debtor spouse, they should make the transfer prior to finalizing their divorce. Otherwise they may be stuck with the inability to convey the property (or at least get title insurance for it) without getting the judgment released.
2. Court Orders – Many (or most) divorces include an order for equitable distribution that allocates the real and personal property among the soon to be ex-spouses. Most of these orders require a further step by the spouses to effectuate the transfer (read: a deed). Usually you'll see a phrase in the order similar to "Spouse X shall convey the property to Spouse Y." The failure of Spouse X to do this, however, does not mean that the property has otherwise transferred. The order (in this form) alone does not accomplish the transfer. If Spouse X fails to comply with the order a separate action must be brought to enforce it.
3. Court Orders part 2 – What if there is an out of state divorce, with an out of state order that DOES comply with the needs for transferring the property once it's recorded? Well, that doesn't really work either. In *Buchanan v. Weber*, 152 N.C. App. 180 (2002), the North Carolina Court of Appeals confirmed that while the United States Constitution requires full faith and credit, "[w]hen the court rendering judgment has no jurisdiction over the property, the Full Faith and Credit Clause is not applicable." So any judgment that affects the rights of property outside the jurisdiction of a non-North Carolina court would not be effective for transferring property *IN* North Carolina.
4. Federal Tax Liens (see more on FTL's in a [previous blog \[http://titleblawg.blogspot.com/2015/11/federal-tax-liens-brief-refresher.html\]](http://titleblawg.blogspot.com/2015/11/federal-tax-liens-brief-refresher.html)) - A federal tax lien attaches to property that is owned as tenants by the entirety. This is true even though the tax lien is against one of the spouses. In *United States v. Craft*, 535 U.S. 274 (2002), the Court confirmed that the federal government is not bound by state court interpretations of how *state* law would interpret the attachment.

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