



Coming Up for Air: A Deep Dive into the World of Title Insurance Litigation

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Can Foreclosure Judgments Encumber Other Property?



Can Foreclosure Judgments Encumber Other Property?

- Overview of Judicial Foreclosure Process
- Final Judgment grants all relief sought
 - Complaint includes counts on note and/or guaranty
 - Lender records certified copy
 - Does this create a money judgment that constitutes a lien on other property owned by the borrower in that county?



Can Foreclosure Judgments Encumber Other Property?

- Simultaneous pursuit of remedies under note and mortgage permitted, but simultaneous collection prohibited
- Collection method is dictated by final judgment
 - Note First Approach – no foreclosure sale until efforts exhausted and money judgment unsatisfied
 - Mortgage First Approach – no money judgment until foreclosure sale held and amount of deficiency determined
- Until we have answer, carefully review foreclosure judgments!



Enforceability of Lady Bird Deeds



Definition, History and Purpose

- Traditional life estates and their drawbacks
- Advantages of enhanced life estates
- Retention of rights by life tenants
- Rights to occupy, mortgage and convey the Property
- Enhanced life estate is revocable by the life tenant during her life



Legal Challenges

- Rules of construction employed by Courts
- Intent of grantor is the guiding principle



Best Practices

- Dangers of using statutory form of Quit Claim Deed, combined with language reserving an enhanced life estate
- Does the title matter?
- Is there a form for Lady Bird Deed?



**Filing a Complaint for
a Pure Bill of Discovery:
An Archaic Yet Enforceable Tool
to Seek Pre-Suit Information**



Wire Diversion Hypothetical Cases

- Residential and Commercial Real Estate Transactions
- Leasing



Filing an Equitable Claim for Pure Bill of Discovery

Pure bill of discovery is used to “obtain the disclosure of facts within the defendant’s knowledge, or deeds or writings or other things in his custody, in aid of the prosecution or defense of an action pending or about to be commenced in some other court.” *Carr v. Bombardier Aerospace Corp.*, 2010 WL 2220336, at *1 (S.D. Fla. June 3, 2010) (quoting *Mesia v. Fla. Agric. & Mech. Univ. Sch. of Law*, 605 F. Supp. 2d 1230, 1232 (M.D. Fla. 2009) (quoting *First Nat’l Bank of Miami v. Dade-Broward Co.*, 171 So. 510, 510–11 (Fla. 1936))).



Pleading a Cause of Action for Pure Bill of Discovery in the Complaint

A plaintiff must allege all of the elements required for a pure bill of discovery: “(1) the nature and contents of documents or other matters in the defendant’s possession or control, as to which discovery is prayed; (2) the matter or controversy to which the requested discovery relates; (3) the interest of each party in the subject of the inquiry; (4) the complainant’s right to have the requested relief; (5) the complainant’s title and interest, as well as the complainant’s relationship to the discovery claimed; and (6) that the requested discovery is material and necessary to maintain the complainant’s claims in the prospective litigation. *Payne v. Beverly*, 958 So. 2d 1112, 1114 (Fla. 5th DCA 2007); see also *First Nat. Bank of Miami v. Dade-Broward Co.*, 171 So. 510, 511 (Fla. 1936).



Conclusion

- Always orally verify wiring instructions received with contacts that you are familiar.
- Never send wiring instructions that are not password protected.
- Contact your insurance agent to quote a cyber liability policy.
- Immediately file a pure bill of discovery to obtain information to try to learn information pre-suit to possibly: 1) identify the fraudsters; 2) pursue civil remedies against the fraudsters who perpetrated the fraud; and 3) learn where the diverted funds were sent.
- Pure bills of discovery are “like a box of chocolates. You never know what you're gonna get.” FORREST GUMP (Paramount Pictures 1994)





Thank You!
for attending