

FEDERAL TAX LIENS

A DOZEN FUN FACTS

– By Wade Thunhorst, TRGC Associate General Counsel –

In one of the first seminars I attended after joining the title industry, the speaker warned of the dangers and complications that federal tax liens against parties to transactions often create for title professionals. He was right. Below are some “fun” facts about federal tax liens.

-  Federal tax liens attach to all property and rights to property of the taxpayer. In addition to fee title to real estate, they attach to easements, liens and leasehold interests held by the taxpayer. They attach to community property interests of non-titled spouses.
-  The lien is effective against the taxpayer immediately upon assessment of the tax liability. It becomes effective against third parties upon recordation of a Notice of Federal Tax Lien.
-  A federal tax lien against a buyer is subordinate to a purchase money lien.
-  If a lien notice has been recorded, a superior lienholder must give the IRS at least 25 days advance notice of its intent to foreclose. If such notice is given, the IRS has 120 days from the date of foreclosure to redeem the property. If the notice is not given, the federal tax lien survives the foreclosure. It may not be eliminated by a “re-foreclosure”.
-  Different IRS offices take different positions as to whether or not a federal tax lien is superior to a refinance of a purchase money loan. Because of the uncertainty, Title Resources always requires a release or subordination of a federal tax lien against a refinancing borrower.
-  FTLs against heirs or devisees of a deceased person attach to the interests in the property the heirs/devisees obtain because of the death. They may not be avoided by a disclaimer of interest in the estate.
-  FTLs against a business entity sometimes also attach to property of the owner of the entity if the lien is for payroll taxes (noted as “940” or “941” on the notice).
-  Unless it has been refiled, the lien notice automatically expires on the “Last Day for Refiling” shown on the recorded notice.
-  A payoff statement for a federal tax lien is called a “Conditional Commitment to Discharge.”
-  The IRS may issue a “Certificate of Subordination” to elevate an otherwise junior lien over a federal tax lien. See IRS Publication 784.
-  The IRS may issue “Certificate of Discharge” to partially release property from its lien. See IRS Publication 783.
-  The IRS may issue a “Certificate of Non-Attachment” to clear a lien against someone with a similar name as the property owner. See IRS Publication 1024.

People who have not been in a hurry to pay their delinquent taxes should not expect to be in a hurry to close their sale or refinance.