

Unknown Dangers of Title

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"Unknown" Dangers

More aptly, should be described as "sometimes surprising"

Many of these are issues that come up in underwriting

Some will be discussed in more detail by other presenters

Liens in favor of USA

- Facts: Billy Bob and Suzie have a mortgage in favor of the U.S. Department of Housing and Urban Development. They do not pay their taxes and the property is sold at the tax sale to Premier Homes. The property is not redeemed and the tax sale matures. All notices were given in accordance with the statute and the sale was in all respects good. Does Premier Homes take free and clear of the HUD deed of trust?
- Probably not. See *Show Me State Premium Homes, LLC v. McDonnell*, 74 F.4th 911 (8th Cir. 2023).
- *In short, Federal Government will be cut off by foreclosure or tax sale only if there is a statute or applicable waiver of immunity.*
- *This issue has arisen over the years with SBA liens and foreclosure sales.*
- *Note that there is a special statute regarding Federal Tax Liens.*

Disclaimer of Interest and Federal Tax Lien

- Mississippi Disclaimer of Interest statute found in Section 89-1-22.
- With some exceptions, allows a person to disclaim an interest in property, including a future interest.
- In *Drye V. U.S.*, 528 U.S. 49 (1999), it was held that filing of a disclaimer under state law did not defeat a federal tax lien in place against the disclaiming party prior to filing of the disclaimer.

Liens against Grantor/Settlor of a Revocable Trust

- Section 91-8-504 of the Mississippi Code
- During lifetime of Grantor/settlor, property in revocable trust is subject to claims of creditors.
- After death of Grantor/Settlor, property in revocable trust is subject to claims of creditors in the estate.
- Often difficult to determine if trust is revocable.
- Titles can sometimes be misleading.

Tenancy Issues

Passing of the
Property

Effect on liens

Tenancy Issues – Joint Tenancy

- Generally controlled by Section 89-1-7 of the Mississippi Code
- Conveyance to two or more people creates a estate in common and not joint tenancy or entirety unless manifestly apparent.
- Joint tenancies are not favored. See e.g. *Wolfe v. Wolfe*, 42 So.2d 438 (Miss. 1949)
- Can be severed by actions of one tenant under the statute.
- Joint tenants must have unity of time, title, interest and possession.



Tenancy Issues – Joint Tenants

- Bubba and Rose convey their house on sunset lane to “Billy Bob Jones and wife, Suzie Jones, as joint tenants, with full rights of survivorship and not as tenants in common.”
- Billy Bob meets an untimely death while out riding his Harley.
- Who owns property
- Suzie – property passes to her automatically at Billy Bob’s death.

Tenancy Issues – Joint Tenancy

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Same set of facts, except that conveyance is to Billy Bob Jones and wife, Suzie Jones, as joint tenants"

No mention of survivorship.

Who owns property?

Arguably – Suzie owns $\frac{1}{2}$ and Billy Bob's heirs or devisees own the other $\frac{1}{2}$ interest.

See *Doran V. Beale*, 63 So. 647 (Miss. 1913)

Tenancy Issues – Joint Tenancy

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Who owns property?

Arguably – Suzie

See Bird v. Stein, 102 F.Supp 399 (S.D. Miss 1952), reversed as to other holdings in Bird v. Stein, 204 S.2d 122 (5th Cir. 1953).

Tenancy Issues – Joint Tenancy

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- Same set of facts, except that conveyance is to Billy Bob Jones and wife, Suzie Jones”
- No mention of joint tenancy or survivorship.
- Who owns property?
- Suzie owns $\frac{1}{2}$ and Billy Bob’s heirs or devisees own the other $\frac{1}{2}$ interest.
- Problems created in North Mississippi due to radical difference in Mississippi law.

Tenancy Issues – Estates by Entirety

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- In theory at least, the principles of the above cases should be applicable to estates by the entireties as well as joint tenancies.
- In addition to the unities required by a joint tenancy, must also include the unity of person.
- Note that tenancy by entirety may not be terminated by the action of one party. See *Ayers v. Petro*, 417 So.2d 912 (1982).
- Also note that divorce converts tenancy to joint tenancy. See *Ayers v. Petro*, *supra*.

Joint Tenants/Tenants by Entirety Lien Issues

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A lien against one spouse does not attach to property owned as Tenants by the Entirety.

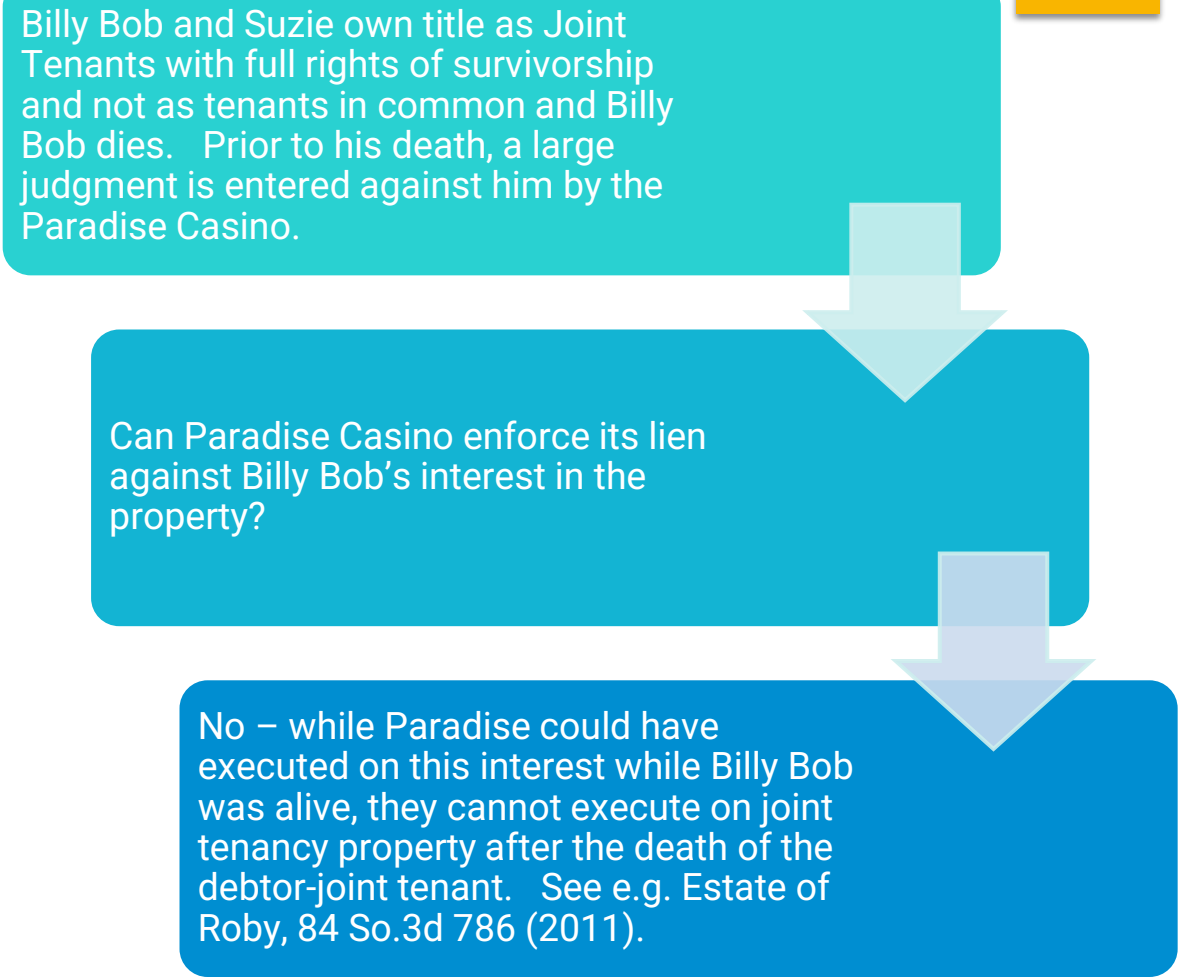


MAY apply in bankruptcy court.

Joint Tenants/Tenants by Entirety Lien Issues

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Billy Bob and Suzie own title as Joint Tenants with full rights of survivorship and not as tenants in common and Billy Bob dies. Prior to his death, a large judgment is entered against him by the Paradise Casino.



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graph TD; A[Billy Bob and Suzie own title as Joint Tenants with full rights of survivorship and not as tenants in common and Billy Bob dies. Prior to his death, a large judgment is entered against him by the Paradise Casino.] --> B[Can Paradise Casino enforce its lien against Billy Bob's interest in the property?]; B --> C[No – while Paradise could have executed on this interest while Billy Bob was alive, they cannot execute on joint tenancy property after the death of the debtor-joint tenant. See e.g. Estate of Roby, 84 So.3d 786 (2011).];
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Can Paradise Casino enforce its lien against Billy Bob's interest in the property?

No – while Paradise could have executed on this interest while Billy Bob was alive, they cannot execute on joint tenancy property after the death of the debtor-joint tenant. See e.g. Estate of Roby, 84 So.3d 786 (2011).

Heirship Issues and Title Examinations

- Reliance on Heirship Affidavits
- Make sure heirs/devisees names were run in lien books/chancery dockets.



Homestead Recitations in Deeds

PLEASE RECITE

Mortgage Payoff Traps



HUD Junior Lien – need
separate payoff
statement.



FmHA – beware of
recapture

THANK
YOU!

Have Questions?

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