

Tax Claims and Liens

By Yahne Miorini, LL.M.

1.) Limitation of the sale of real estate property

Va. Code Ann. §64.1-183 provides that any transfer of the real estate property of the decedent made within one year of the decedent's death is not valid against the decedent's creditors.

In addition, Va. Code Ann. §64.1-96 provides another one year rule. A newly discovered will within one year of the decedent's death could cancel the sale of the real estate property made to a bon fide purchaser.

However, the sale is valid if made pursuant to a court order. The net proceeds are held by a special commissioner appointed the court until the expiration of one year from the death of death¹.

2.) Tax Claims

IRC §6324(a) provides that a federal estate tax lien is automatically attached to the property of the decedent for 10 years. This lien need not be recorded to be effective and enforceable and no record need be kept of an estate tax lien's release². Therefore, any person receiving property from an estate by sale, distribution or other transfer may not be aware of the existence of the tax lien. However, this lien really attaches when the taxpayer neglects or refuses to pay tax after demand. In addition, liens attached before the decedent's death have priority over the IRS estate tax lien.

There are some exceptions to the lien when the purchaser had no actual notice or knowledge of the lien at the time of the purchase:

- Purchase of stock, bonds or other security

- Purchase of a motor vehicle
- Purchase of tangible personal property sold at retail
- For a business owned by the decedent as a sole proprietor
- Purchase of household goods, personal effects, or certain other tangible personal property at a "casual sale" for less than \$1,000

This estate tax lien will automatically terminate upon the payment of estate tax in full. However, this lien can be extended if the IRS sues for payment of taxes.

In the case of a real estate sale, the seller cannot give clear title to property until the lien is discharge or released. A taxpayer may request that certain property be discharged from the lien by filing IRS form 4422 with the IRS if:

1. The remaining property in the estate has a value that is double the amount owed to the IRS

¹ Va. Code Ann. §64.1-184

² Internal Revenue Manual §5.5.8

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2. The IRS receives a payment equal in amount to the value of the property requested to be discharged,
3. The IRS does not have a valuable interest in the specific property, or
4. The sale proceeds are to be substituted for the discharged property

In addition, the lien must be released when the liability assessed has been fully satisfied, or the liability has become legally unenforceable, or a bond has been furnished by the payee guaranteeing payment. Then, the entire estate is freed from the lien.

However, sometimes the estate tax has not been paid. If that situation, an agreement with the settlement company shall be made to release a portion of the sale proceeds to pay estate tax. Once the payment is made, the personal representative shall complete IRS form 4422 in order to have the estate tax lien release and therefore to have the

remaining sale proceeds released. Additional discharges from the decedent's income tax and gift tax liabilities should also be sought under IRC §6905 by filing IRS Form 4810. See Exhibits B and C for sample forms attached.

It is recommended that the personal representative wait until receiving the IRS closing letter before distributing the estate.