Judgments and Trusts

Description

Trusts governed by the Virginia Uniform Trust Code (Va. Code Â§ 64.2-700 et seq) are the most common form of trust arrangement found in the land records. Such a trust may be created when real property is transferred *to another person as trustee*, either by deed during the settlorâ??s lifetime or pursuant to a will probated after the settlorâ??s death.[1]

Judgments, deeds of trust, or other liens attached to the real property before the property is conveyed to the trustee remain attached after the conveyance.[2]

To determine whether a judgment that arises after the conveyance to the trustee attaches to property held in trust, consider not only the name of the judgment debtor, but also the role that the judgment debtor occupies under the trust. Different rules apply if the judgment debtor is a *beneficiary*, a *trustee*, or the *trust settlor*.

Judgments against a Uniform Trust Code trust beneficiary

Review the trust agreement and relevant court orders to determine if a judgment obtained against a beneficiary attaches to property held in trust. *[A] creditor of a beneficiary may not compel a distribution that is subject to the trusteeâ??s discretion*.[3] But, in appropriate circumstances, *the court may authorize a creditor or assignee of the beneficiary to reach the beneficiaryâ??s interest[.]*[4]

If a judgment is recorded against a beneficiary, but the judgment does not attach to trust assets, then it may be important to pay out proceeds from the sale of real property to the trustee and not the trust beneficiary.

Paying proceeds to the trustee preserves the trusteeâ??s discretion to make a distribution to a beneficiary.

Disbursing proceeds directly to a beneficiary, but not satisfying the judgment, may suggest that the trust could be, or is being used as, a vehicle to delay, hinder, or defraud creditors.[5]

In contrast, [*a] person . . . who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trusteeâ??s powers, is protected from liability as if the trustee properly exercised the power.*[6] Further, Va. Code Â§ 64.2-796(D) excepts *a bona fide purchaser* from liability for fraud perpetrated in connection with a proceeding filed under the Uniform Trust Code.

Judgments against a Uniform Trust Code trustee

Because trustee(s) only hold property in trust, not personally, judgments against a trustee, personally, do not attach to trust property.[7] But a judgment obtained against the trustee, as fiduciary, may attach to property held in trust. Under Va. Code Â§ 64.2-801(C):

A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

Except as the terms of the trust provide otherwise, the trustee (as trustee) may exercise *[a]ll powers over the trust property that an unmarried competent owner has over individually owned property*.[8] Thus, judgments obtained against the trustee in the trusteeâ??s fiduciary capacity would be enforceable against trust property on the same basis as a judgment obtained against an individual would be enforceable against individually owned property.

Judgments against Uniform Trust Code settlor(s)

A settlor is *a person, including a testator, who creates or contributes property to a trust*.[9]

While claims against beneficiaries generally will not attach to trust property, claims against settlors generally will. Virginia Code Â§ 64.2-747(A)(1) provides: *During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlorâ??s creditors*. Subsection (A)(2) further provides: *With respect to an irrevocable trust . . . a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlorâ??s benefit.* In practical terms, this means that title searches need to include judgment searches against trust settlors and, for title insurance purposes, judgments against trust settlors should usually be satisfied or released if property held in trust is being refinanced or sold.

Note that, under Virginia Code Â§ 55.1-136(C), property previously held as tenants by the entirety remains protected against most liens or judgments enforceable against only one spouse even after such property is conveyed in trust. Note also that Virginia Code Â§Â§ 64.2-745.1 and 64.2-745.2 limit creditorsâ?? rights against the settlor of a qualified self-settled spendthrift trust as set forth in those sections.

Under Va. Code Â§ 64.2-747(A)(3):

After the death of a settlor . . . the property of a trust that was revocable at the settlorâ??s death is subject to claims of the settlorâ??s creditors, costs of administration of the settlorâ??s estate, the expenses of the settlorâ??s funeral and disposal of remains, and statutory allowances to a surviving spouse and children including the family allowance, the right to exempt property, and the homestead allowance to the extent the settlorâ??s probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

This language is very similar to the language set out in Va. Code Â§ 64.2-634, which establishes the familiar liability of a decedentâ??s estate for claims made less than one year after the decedentâ??s death. But, in contrast with the one-year limitations period for claims made against a decedentâ??s estate, claims may be enforced against property held in trust up to two years after the trust settlor dies.[10]

Other trust arrangements

While trusts governed by the Virginia Uniform Trust Code are the most common form of trust arrangement found in the land records, such trusts are not the only type of trust recognized by Virginia law. Other forms of trusts include business trusts governed by the Virginia Business Trust Act (Va. Code Â§ 13.1-1200 et seq.), and land trusts authorized under Va. Code Â§ 55.1-117. It is essential to recognize that the rules used to determine how judgments interact with revocable and irrevocable Uniform Trust Code trusts may not apply to the other trust arrangements recognized under Virginia law.

Judgments against business trusts

A business trust *is a separate legal entity* that *has the same powers as an individual or any other entity to do all things necessary or convenient to carry out its business and affairs*, including the power to buy, sell, mortgage or lease real property.[11] Real estate investment trusts are business trusts.[12]

Personal judgments or other claims against a beneficial owner or a trustee of a business trust do not attach to real property owned by a business trust.[13] However,

A business trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly authorized agents of such trustees, in the performance of their respective duties under the governing instrument of the business trust, and for any damages to persons or property resulting from the negligence of such trustees or agents acting in the performance of such respective duties.[14]

And *[t]he property of a business trust is subject to attachment and execution as if the business trust was a Virginia corporation[.]*[15]

To properly identify potential judgments, then, the title search must include a judgment search against the business trust and against the trustees. Judgments obtained against the business trust would attach to real property owned by the trust. Judgment obtained against the trustees (or other agents) of the business trust may attach if the judgment relates to the performance of the trustees duties to the business trust.

Judgments against land trust beneficiaries and trustees

Land trusts are authorized under Va. Code Â§ 55.1-117. While land trusts may certainly be used for business purposes, they are not business organizations. Land trusts do not register with the State Corporation Commission. Likewise, although land trusts may certainly be used for estate planning purposes, land trusts are also not Uniform Trust Code trusts.[16] Land trusts are also not partnerships.[17]

Judgments, deeds of trust, or other liens that attached to the real property before the property was conveyed to the Va. Code Â§ 55.1-117 trust, and are not released, remain attached after the conveyance.[18] But:

[W]here there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the county or city where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.[19]

On the other hand Va. Code Â§ 55.1-117 also provides: *Nothing in this section shall be construed to affect any right that a creditor may otherwise have against a trustee or beneficiary except as provided in this section.*[20]

As a practical matter, when looking for judgments that may relate to real property held pursuant to a land trust, search for judgments against all parties that can be determined to have an interest, either as trustee or as a beneficiary. Then carefully apply the statute to determine what judgments must be paid before any sale or refinance.

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[1] Va. Code Â§ 64.2-719(A)(1).

[2] See Va. Code Â§Â§ 8.01-458 and 55.1-407.

[3] Va. Code Â§ 64.2-746.

[4] Va. Code Â§ 64.2-742.

[5] See Va. Code Â§Â§ 55.1-400 through 55.1-404 for statutes regarding fraudulent transactions.

[6] Va. Code Â§ 64.2-803.

[7] Va. Code Â§ 64.2-749.

[8] Va. Code Â§ 64.2-777.

[9] Va. Code Â§ 64.2-701 (Definition of *settlor*).

[10] Va. Code Â§ 64.2-747(A)(3).

[11] Va. Code Â§Â§ 13.1-1208 and 13.1-1210.

[12] Va. Code Â§ 13.1-1201 (Definition of *business trust*).

[13] See Va. Code Â§Â§ 13.1-1226(B) and (C), 13.1-1228 and 13.1-1229

[14] Va. Code Â§ 13.1-1231(B).

[15] Va. Code Â§ 13.1-1231(C).

[16] See Va. Code Â§ 64.2-700(A)(1).

[17] See Curtis v. Lee Land Trust, 235 Va. 491 (1988), 495.

[18] See Va. Code Â§Â§ 8.01-458 and 55.1-407.

[19] Va. Code Â§ 55.1-117.

[20] Id.

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