



ASK FRED

QUESTION: I'm a real estate agent about to close and just found out that a mechanic's lien was filed against the property and the sellers, who are selling by owner, are saying that the mechanic's lien should not matter because the man that filed it wasn't a licensed contractor, so they never paid his bill. To make matters worse, we have also learned that a tax lien was filed against the property and the owners are getting divorced. The wife moved into a motel, but the husband says he can sign the documents without her because she abandoned her interest in the house. He also seems to believe that since the taxes owed are for a defunct business and he filed bankruptcy, they are no longer owed. That's not my understanding of the law. Can you clarify?

ANSWER: Interrupting the bundles of rights of property ownership occurs regularly. Filing a mechanic's lien against the real property does interfere with the owner's right to sell, transfer or otherwise encumber the property without acquiring a release of the Mechanic's Lien first, and so do the tax lien and pending divorce of the owners. The lender for your buyers will not lend money when outstanding liens exist. While those liens exist, the owners' bundle of rights, too, are restricted.

Marriage also has a restricting effect upon the bundle of rights because spouses are not free to alienate (sell, gift or transfer) their interest in the property without the other spouse's consent if the property is their homestead. Moving into a motel due to the separation of the owners is neither an abandonment of the wife's interest in the real property or consent to sell the property without her involvement. Unfortunately, the sellers are not represented by a real estate agent or broker who would be able to apprise them of the requirements for them to transfer clear title to the any potential buyer. If you, the lender or buyers are unable to convince the seller that no sale will occur until all liens are released, then this may not be the property for your buyers.

This article is meant for educational purposes only and not meant as a substitute for sound legal advice.

***Thanks for Asking,
Fred Gray***

[Click here to Ask Fred!](#)