

WFG NATIONAL TITLE INSURANCE COMPANY PRESENTS

Basically Title Webinar Series:

Title Ramifications of Divorce

January 16, 2019 | 1pm EST

# REMEMBER...

Divorce and how title to real property is treated as a result thereof differs state by state. This is a general overview and any specific questions about what is needed to insure a transaction in your state should be addressed to that particular state's underwriter.

# AGENDA

- The Anatomy of a Divorce
- Separation Agreement and the Divorce Decree
- Liens and Encumbrances
- Equitable Mortgages
- Support Orders
- Homesteads

# ANATOMY OF A DIVORCE

The ***judicial process*** by which a ***legally married*** couple ***dissolves*** their marriage and ***divides their marital assets***

- *Judicial Process*
- *Legally Married*
- *Dissolution*
- *Division of Marital Assets*

# Judicial Process

Starts with the filing of a complaint or petition with a Court and usually ends with the issuance of an Order or Judgment.

*What happens during the pendency of a divorce action?*

*Watch for Temporary Orders and automatic restraining orders.*

# Legally Married

Generally speaking, the couple has obtained a marriage license from the town or county clerk and participated in a marriage ceremony before an officiant, qualified to perform marriages in that state, in front of at least 2 witnesses, and a marriage certificate gets filed by the officiant with the town or county after the ceremony.

*Watch for same sex marriages (Obergefell v. Hodges, 135 S. Ct. 2584 (2015)) and common law marriages*

Legal marriages are given full faith and credit and recognized by all other states *but...*

# Dissolution

Order or Judgment entered or issued by the Court ends the marriage.

*But when is the divorce final or “absolute”?*

*Is there a post-judgment waiting period in your state?*

*Watch out for modifications or contempt proceedings!!*

# Division of Marital Assets

When was the property acquired? Is it...

**Community Property** (Only in Arizona, California, Louisiana, New Mexico, Texas, Washington and Wisconsin, opt-in in Alaska, South Dakota and Tennessee)

**Marital Property**

**Separate Property**



# Division of Marital Assets

*How is the property held? Are the spouses...*

Tenants in Common

Joint Tenants

Tenants by the Entirety – divorce severs the tenancy!

# Division of Marital Assets

*How is Property Divided?*

Community Property – absolute 50/50 split with each spouse  
keeping separate property

Equitable Division – Marital, and sometimes separate property,  
divided “equitably” depending upon certain factors

# SEPARATION AGREEMENT AND THE DIVORCE DECREE

Specifies the way in which the property and debts of the spouses will be divided or allocated and under what terms.

Does the Decree serve as a transfer of title?

Can the Agreement create a lien on title?

# LIENS AND ENCUMBRANCES

**Read the Separation Agreement and Divorce Decree!!!!**

If not addressed, lien or encumbrance travels with the property

Can the decree effect a transfer of a lien from one property to another?

# SUPPORT ORDERS

*Child Support* – Custodial parent, or state agency handling child support collection, may record an enforcement lien against any property belonging to the paying parent

*Spousal Support* - Contempt orders and executions

Watch for alimony and property settlement award judgments which may be considered liens on real property

# EQUITABLE MORTGAGES

A lien created by agreement or order of the court to effect an equitable division of property (as in divorce) when such a division in kind would be impossible, impracticable or prejudicial to one of the parties.

Sometimes referred to as an Oweity.

# HOMESTEADS

A statute exempting a principal residence from execution or judicial sale for payment of debt.

Who is living in the house?

Is it the primary residence of the debtor spouse?

**Have Questions?  
Send Lisa an email @:  
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