

When's A Property Settlement Agreement Not A Property Settlement Agreement? (Part One)

November 20, 2023
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Originally posted on 11/20/19, content updated on 11/20/23

In this first of a multi-part series ([read part two here](#)), I address some of the multiple potential “uses” to which one can put a property settlement agreement, or PSA, to use when other options aren’t available.

“How’s that?” you ask. For starters, to constitute a deed in Virginia at least, one thing not required of a document is that it be titled “deed” to be a deed. To be a valid Virginia deed, a document – regardless of its title — must reflect a “present intent to transfer” to an identifiable recipient and actually be signed by one transferring an interest insufficiently identified the real property.

In the course of assisting a judgment-creditor client pursue a multi-million dollar, post-judgment collection, we sought to reach some real property of a debtor in partial satisfaction of the judgment amount. The crafty debtor had successfully avoided finalizing his divorce from his estranged wife such that, according to the land records at least, the couple’s real property appeared to remain subject to “tenancy by the entirety” (TBE) protection from creditor claims. However, a little third-party discovery from the debtor’s estranged spouse confirmed that she claimed no interest in the property pursuant to a legally enforceable PSA entered into by the estranged spouses (despite not having finalized their divorce). The PSA terms included an expression of her present intent to transfer to the debtor-spouse all of her interest in the couple’s real property, which was sufficiently identified for Virginia deed purposes.

Our adversary sought pre-trial dismissal arguing (among other things) that a PSA could not be a deed and that even if one could, this PSA wasn’t one because it lacked any “present intention to transfer” language. Accepting the premise that the PSA itself could legally be a deed, the Circuit Court refused to dismiss the case, and instead, afforded the judgment-creditor the right to have a jury decide whether the PSA sufficiently expressed the non-debtor spouse’s “present intent to transfer” the real property.

Voila! When is a property settlement agreement not a property settlement agreement? When it’s a deed! In my example, a little creative lawyering (and a receptive, open-minded judge!) afforded the judgment-creditor client newfound negotiating leverage from a seemingly unassailable TBE property interest of a “married” judgment-debtor. At least on that occasion, called upon to serve the judgment-creditor’s need as “deed,” the estranged couple’s PSA unwittingly “doffed” its name, yet smelled every bit as sweet, indeed! (See what I deed there?)