



TITLE TALK

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The Nooks and Crannies of Mona v. Cranston

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In the course of title insurance underwriting one of the first steps is to determine the specific area of interest. The next step is to fit the facts into a so-called general rule. Oftentimes there will be exceptions to the general rule.

Let us begin by identifying the case of Mona v. Cranston, 273 VA 1 (2007) as an exception to the general rule relating to the life span of judgment liens. The general rule we have all learned and apply almost daily is that a judgment properly docketed in accordance with VA Code §8.01-457 has a life span of twenty years from the date the judgment was rendered (and not the date of docketing). Mona v. Cranston provides an exception to that rule when applied to judgments arising from general district courts during a limited time period.

The facts of the case are fairly simple and straightforward. On July 28, 1986, Cranston obtained a \$7,000.00 judgment against Mona in Fairfax General District Court. Cranston obtained a certified extract of the judgment and paid the fee in Fairfax County Circuit Court to docket the judgment as a lien on real estate owned by Mona. No satisfaction was made by Mona, and Cranston, on September 29, 2005 (within the general rule twenty year life span) filed a motion in Fairfax Circuit Court in the nature of a scire facias to renew and extend the judgment lien for an additional twenty year period as provided in VA Code §8.01-254. The Circuit Court granted the motion, and Mona appealed that judgment of the Circuit Court.

The opinion of the Court was that the Cranston judgment was subject to the provisions of VA Code §16.1-69.55 (in effect at the time but which has since been amended three times). The judgment was deemed to be unenforceable on July 29, 1996 (10 years and one day) because Cranston failed to file in Fairfax General District Court a motion to extend the judgment within ten years from the date it was rendered as required by that Code Section aforementioned. The Supreme Court deemed the extension of the judgment to be mandatory to extend the lien and thereby ruled in favor of Mona in dismissing the Fairfax County Circuit Court judgment.

Now, as Paul Harvey would put it, we get to “the rest of the story”. Let me interject a few personal comments. While I had no inkling about this case, I was aware of the Code Section and as counsel for another underwriter, opined on several occasions that general district court judgments, once docketed as liens, were good for twenty years. My rationale was based upon a distinction between (in personam) judgments and (in rem) liens. It did not bother me that the judgment was unenforceable if the lien had attached prior thereto. My theory was based on bankruptcy in cases where a judgment was docketed prior to bankruptcy and attached to real estate owned by the bankrupt prior to filing. The debt (judgment) is discharged in Chapter 7, but the lien (in rem) survives, and the Virginia Court of Virginia has so held and made that distinction in the case of Leasing Service Corp. v. Justice, 243 VA 441 (1992).

Putting aside my comments, there is more to be known about this situation and its relationship to this case. The Virginia General Assembly amended the aforementioned code section to provide that general district court judgments, once properly docketed, have the same statues and life span as circuit court judgments. As of July 1, 2005 ALL docketed judgment liens last for twenty years from the date of the judgment.

Now you ask – what about general district court judgments docketed prior to that date? First, we must state the rules. VA Code §16.1-69.55 specifically provides that judgments shall remain in force for a period of ten years. The Virginia Supreme Court applied that time limitation absolutely.

However, there is a saving clause for judgment creditors. It is very technical and time intensive. Within the ten year period from the date of the judgment, the plaintiff (judgment creditor) MUST file a motion in general district court to extend the period of

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“FOR A FEW DOLLARS MORE” The Mortgage Fraud¹ Pandemic

On July 7, 2009, the FBI released its 2008 Mortgage Fraud Report adding more joy to our ever cheerful economic outlook! According to the Report, mortgage fraud suspicious activity reports known as SARs (wait wasn't that a flu virus?) were up 36% to 63,713 during Fiscal Year 2008 compared to 46,717 SARs in Fiscal Year 2007. Total dollar loss attributed to mortgage fraud as reported by financial institutions was at least \$1.4 billion, an increase of 83.4% from Fiscal Year 2007.²

The 2008 Mortgage Fraud Report contained several lists compiled by various reporting agencies and law enforcement, regulatory and industry partners. The top 10 mortgage fraud states for 2008 were California, Illinois, Texas, Georgia, Ohio, Colorado, Maryland, Florida, Missouri and New York. Newly added to the list were Rhode Island, Massachusetts, Pennsylvania and the District of Columbia. In a breakdown of reporting agencies, Fannie Mae listed Virginia in the top ten Mortgage Fraud states based on significant misrepresentations discovered in the loan review process for loans originated in 2007 through 2008. Of equal note is Radian Guaranty, Inc. report listing Maryland as among one of the top 10 states for early payment defaults as of December 31, 2008. And of course Realty Trac, Inc., the foreclosure tracking firm, released statistics that during 2008 there were more than 3.1 million foreclosure filings on approximately 2.3 million properties nationwide. This was an 81% increase from 2007 and a 225% increase from 2006. One in 54 US housing units, or 1.84 percent, were in some state of foreclosure.

The FBI noted that fraud trends follow the decline in the economy, defaults and foreclosures dominating the housing market, decrease in housing sales and a wave of Alt-A and Option ARM loans that are due to reset this year. The FBI anticipates that the new economic stimulus packages adopted by Congress including HERA (Housing and Economic Recovery Act) and EESA (Emergency Economic Stabilization Act) may create new arenas for mortgage fraud. It appears that a perfect storm may be on the horizon as desperate times create desperate people and opportunity for predatory practices.

The common fraud schemes identified by the FBI included flipping, builder bailouts, short sales and foreclosure rescues. As a result of tighter lending practices, the following fraud schemes have been added to the list: reverse mortgage fraud, credit enhancements, condo conversions, loan modifications and pump and pay. Common techniques include straw buyers, identity theft, silent seconds, quit claim deeds, land trusts, shell companies, fraudulent loan documents, falsified settlement statements, leasebacks and inflated appraisals.

In addition to the FBI investigations, on July 15, 2009 the Federal Trade Commission Chairman, Jon Leibowitz, announced OPERATION LOAN LIES, a coordinated national law enforcement effort to crack down on mortgage fraud schemes. The FTC, in conjunction with various state and federal agencies, is cracking down on defendants who target distressed homeowners with a variety of schemes including mortgage foreclosure rescue and loan modification

services. Leibowitz warned people facing foreclosure to avoid any company or individual that requires a fee in advance, guarantees to stop a foreclosure or modify a loan or advises the homeowner to stop paying the mortgage company. The FTC also released “Real People. Real Stories,” a three and a half minute video about keeping your home. The video is available in Spanish and has been sent to over 5,000 housing counseling and consumer protection groups around the country and is posted at FTC.gov/yourhome and YouTube.com/FTCVideos.³

For news a little closer to home, a former Virginia Beach attorney, was sentenced to 66 months in prison and three years supervised release on August 18, 2009 for her role in a mortgage fraud scheme. The attorney was further ordered to pay \$708,339.60 in restitution. The fraud scheme involved the purchase of 3 properties from May to October 2005 in which the attorney falsified the loan applications using forged documents and funds that were moved into her account and then later withdrawn. She further admitted that the properties were under the control of a co-defendant who agreed to later sell the properties to a third party. The proceeds from the loans were used to cover the co-defendant's personal financial obligations.

On August 18, 2009 a Centreville man plead guilty to multiple fraud charges and could receive up to 30 years in prison. According to court records, the defendant ran a loan brokerage that used stolen identities to obtain fictitious loans and induced a private business person to loan funds on 4 forged promissory notes.

July 10, 2009 an Alexandria CPA was indicted for preparing false and fraudulent letters stating that individuals had earned income from self employment and that the CPA firm had prepared the tax returns. The fraudulent documents were used to obtain two loans from GreenPoint Mortgage.

May 22, 2009 a Newport News man was found guilty of all 24 counts in a property flipping scheme. Sentencing is scheduled for August 31, 2009.

April 29, 2009 five Virginia residents were indicted on identity theft and flipping scheme using mortgage proceeds for “home improvements” for personal use. The Indictment also included wire fraud allegations. The five could face up to 80 years in prison.

On November 19, 2008 a Fairfax man plead guilty to one count of conspiracy to commit money laundering in connection with a mortgage fraud scheme involving his company, Financial Mortgage, Inc. The company originated and sold mortgages for residential properties to warehouse lenders to temporarily fund the mortgage before they were sold. The loans were not used to payoff existing mortgages and the funds were retained by the defendant. The long terms investors suffered an accumulated loss of approximately \$33 million. The scheme used fictitious loans, bogus loan closing, selling the same loan to multiple investors and pocketing the proceeds. For part of the scheme, the defendant conspired with a Fairfax title company. The defendant was sentenced to 84 months in prison and ordered to pay \$33 million in restitution.

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The list of Virginia cases is extensive and continues to grow. Perpetrators continue to find new targets including those that have been created to stem the foreclosure crisis including funds from various legislative acts. The increase of FHA loans may lead fraud in a new direction. Individuals looking to capitalize on the short sale and foreclosure market may easily become victims of fraud. As an industry, title companies are the gatekeepers that can actively assist in the prevention of fraud. Now more than ever it is imperative to implement strict practice standards for processing, closing and post closing residential and commercial real estate transactions.

¹Mortgage Fraud Defined: Mortgage fraud is a material misstatement, misrepresentation, or omissions relied upon by an underwriter or lender to fund, purchase, or insure a loan. Mortgage fraud is divided into two categories: fraud for property and fraud for profit. Fraud for Property usually involves a single loan where applicant may embellish their income. Fraud for profit involves multiple loans and elaborate schemes perpetrated to gain illicit proceeds from property sales.

²http://www.fbi.gov/pressrel/pressrel09/mortgage_070709.htm

³<http://www.ftc.gov/opa/2009/07/loanlies.shtm>

Everyone has questions about the upcoming RESPA changes! Check out a preview below. A complete Q&A can be found online at: http://www.hud.gov/offices/hsg/ramh/res/RESPA_hm.cfm under "From HUD's New RESPA Rule FAQs".

Q: If a GFE is issued on the old form prior to January 1, 2010, and the loan will close after January 1, 2010, which HUD-1 form is to be completed by the settlement agent?

A: If a GFE is issued on the old form prior to January 1, 2010, then the old HUD-1 form must be used even if closing will occur after January 1, 2010. For GFEs issued on the old form, the loan originator has the option to reissue the GFE (with the same terms and charges) on the new form, in which case the settlement agent must complete the new HUD-1 form.

Q: When do loan originators have to provide the borrower with a written list of identified providers?

A: When a loan originator permits a borrower to shop for third-party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Q: How are courier and overnight delivery fees shown on the HUD-1 Settlement Statement?

A: Courier and overnight delivery fees are considered to be fees for administrative or processing services. They are part of a primary service, such as the origination service or title service, and may not be separately itemized.

Q: Where should the settlement agent list the commitment fee, wire fee and other miscellaneous title fees on the HUD-1?

A: The commitment fee, wire fee, and other miscellaneous fees are included as processing and administrative fees that are part of the definition of "title services". All of these types of fees must be included in the charges shown on Line 1101 of the HUD-1, and are not to be itemized separately.

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limitations of enforcement of the judgment, which motion must be granted by the judge thereof.

All papers are sent to the circuit court for further handling after the motion is granted. The granting will occasion one of two situations as to the lien of the judgment.

First, if the judgment has NOT been theretofore docketed as a lien, it may then be docketed and IT WILL HAVE THE SAME STATUS AS A JUDGMENT OF THE CIRCUIT COURT, twenty years from the date the judgment was rendered.

Second, if the judgment has been docketed prior to the time the motion has been granted, the lien may be extended by renewal pursuant to the provisions of Virginia Code §8.01-251 which would require the judgment creditor to file a motion for scire facias in the Circuit Court, and the judgment thereafter would have the same status as a judgment of the Circuit Court.

The great bard of Avon, William Shakespeare, aptly titled one of his comedies, *Much Ado About Nothing*. The case of *Mona v. Cranston* does not totally fall into that category, but it does seemingly qualify as *Much Ado About Not Much*. It involves a fair amount of work, mostly out of the record room, to clear general district court judgments docketed as liens.

Finally, we address the last question which is how far back does one have to go in time with respect to the issues raised herein. The answer is twenty years back from September 1, 2009 since a ten year judgment rendered in September, 1989 could (not very likely but could) be still alive in September of 2009.

And if, by chance, we didn't cover every nook and cranny, it's not because we didn't try.



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