

11, 125 PPM

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-194897

DATE: August 13, 1979

MATTER OF: Paul Waliga - [Request for Release of Judgment Lien  
on Real Property]

DIGEST: Notwithstanding doubt that valid judgment lien exists, real property owner's request for release of lien under 28 U.S.C. § 2410(e) on basis that outstanding judgment against former owner creates a cloud on title is denied, since applicant holds title acquired in foreclosure sale and is not lien holder as required by statute.

*right to take or sell  
hold or property  
in lieu of  
debt*

Mr. Paul Waliga has requested a release of a lien on real property owned by him and located in Leon County, Florida, arising from a judgment entered in favor of the United States against Marvin V. Scott, the former owner of the property. Mr. Waliga states that, in the circumstances described below, the outstanding judgment against Scott is a cloud on the property title. However, instead of filing suit to quiet title, he asked the Department of Justice to issue a release of the lien, and Justice has forwarded the request to us for consideration under 28 U.S.C. § 2410(e) (1976). While it is doubtful that the United States has a valid lien on Mr. Waliga's property, for the reasons that follow, we are unable to honor Mr. Waliga's request.

The lien in question arose from a March 30, 1962, judgment in the District Court for the Middle District of Alabama against Mr. Marvin V. Scott in favor of the United States. Scott later moved to Florida, and the Justice Department registered the Alabama judgment in Florida on March 29, 1972. Under 28 U.S.C. §§ 1962 and 1963, a judgment obtained in the District Court of one State and registered in another State creates a lien on property in the second State to the same extent as a judgment in that State's own courts of general jurisdiction. Therefore, Florida law is controlling with respect to the Government's lien interest, if any, in the property in question.

In January, 1972, Mr. Scott and his wife purchased the property in question, taking title as tenants by the entirety. The Scotts subsequently defaulted on a second mortgage, and Mr. Waliga purchased the property at a foreclosure sale in 1978. The judgment against Marvin Scott remains outstanding.

Ordinarily, a judgment recorded in Florida creates a lien interest in all the real property owned by the debtor. Fla. Stat. Ann. § 55.10

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*Real property  
Debt  
Judicial procedure*

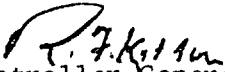
(West Supp. 1978). However, as noted, the property purchased by Mr. Waliga at the foreclosure sale was previously owned by Marvin Scott and his wife as tenants by the entirety. In Florida, property held by spouses under a tenancy by the entirety cannot be charged with the individual debts of either spouse, in the absence of fraud: E.g., Ohio Butterine Co. v. Hargrave, 79 Fla. 458, 84 So. 376 (1920). Therefore, a judgment lien cannot attach under Fla. Stat. § 55.10 to real property held by the entirety. United States v. Gurley, 415 F.2d 144, 149 (5th Cir. 1969). Accordingly, we think it doubtful that in this case, a lien arising from the judgment against Marvin Scott ever attached to the property presently owned by Mr. Waliga.

Because Mr. Waliga nevertheless feels that the judgment casts a cloud on his title, he has requested the Government to release the property from the lien. We can honor such a request only in accordance with the provisions of 28 U.S.C. § 2410(e), which constitute the Comptroller General's sole authority to issue a certificate releasing liens of the United States. The requirements expressly stipulated by the statute which must be met before the Comptroller General can discharge a Government lien are (1) that a senior lien-holder apply for the release in writing to the officer responsible for the administration of the laws giving rise to the Government's lien, (2) that the applicant's lien be duly recorded, (3) that the Government's lien be junior and that it not be a tax lien, and (4) that the officer to whom the application is made, find and report that the proceeds from the property's sale would be insufficient to wholly or partly satisfy the lien, or that the Government's claim has been satisfied or that it is no longer enforceable because of lapse of time or for some other reason. Compliance with these conditions is a prerequisite to the exercise of our authority under the statute. See, e.g., B-178601, June 4, 1973.

✓ Since we have not received the responsible officer's (Secretary of the Army) report of findings, the procedural requirements of the statute have not been met in the present case. Moreover, even if the procedural requirements were met, we would be unable to issue a certificate of release since Mr. Waliga presently holds title to the property. As its owner, he does not qualify as one that "has a lien" on the property as required by the statute. B-194391, July 16, 1979. Accordingly, we do not have the authority to issue a certificate of release in this case, even if it is found that the United States does have a lien on this particular property.

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In view of the doubts expressed above that the Government's lien attaches to property held by two persons as tenants by the entirety by reason of a debt owed to the Government by only one of the property owners, we suggest that Mr. Waliga seek legal advice as to the advantages of bringing an action to quiet title rather than continuing to seek a release of a lien on the property.

  
Acting Comptroller General  
of the United States