

170.0013

Memorandum

To: Mr. Bill Ragle
Special Procedures Section

Date: June 12, 1996

From: Thomas J. Cooke
Tax Counsel

Subject: REDACTED TEXT

Gary Jugum has requested that I respond to your memorandum to him dated June 5, 1996 concerning a request for approval of a nominee lien.

A nominee lien is an instrument that is recorded against certain property to allege that the property is being held by another, the "nominee," for the benefit and usage of the debtor taxpayer. The filing of the nominee lien is proper where title is held by a nominee third party as a result of a fraudulent conveyance by a delinquent tax debtor. Whether a conveyance is fraudulent involves a review of the following elements and factors: (1) the intent of the parties; (2) the financial conditions of the transfer; (3) the consideration or lack of considerations for transfer; and (4) the relationship of the parties. (Operations Memo No. 878, revised June 22, 1987.)

Operations Memo No. 878 cited former Civil Code sections 3439.04 and 3439.07 of the Uniform Fraudulent Conveyance Act as to what circumstances to look for in determining whether a fraudulent conveyance has been made. These code sections were subsequently amended by the revamped Uniform Fraudulent Transfer Act, and consolidated into Civil Code Section 3439.04. (Stats. 1986, Ch. 383 §2.) Civil Code Section 3439.04, as amended, provides that:

"A transfer made or obligation incurred by the debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

"(a) With actual intent to hinder, delay, or defraud any creditor of the debtor.

"(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, the debtor:

"(1) Was engaged or was about to engage in business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

"(2) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due."

REDACTED TEXT currently owes the Board \$16,737.00 as the result of a dual determination issued on September 11, 1995 for the period from January 1, 1993 to September 30, 1993.

On July 25, 1995, trustees of the REDACTED TEXT Trust deeded certain real property located in REDACTED TEXT County to REDACTED TEXT. On September 5, 1995, the deed was recorded in the REDACTED TEXT County Recorder's Office.

On September 12, 1995 (one day after the determination was issued), REDACTED TEXT granted an undivided one-half(1/2) interest in this property to Mr. REDACTED TEXT and Mrs. REDACTED TEXT, Husband and Wife, as joint tenants. This deed was recorded in REDACTED TEXT County on September 21, 1995. The deed indicates that no documentary transfer tax was paid on this transfer.

On March 29, 1996, REDACTED TEXT deeded all of his interest in this property to Mr. REDACTED TEXT and Mrs. REDACTED TEXT, Husband and Wife, as joint tenants. Apparently, this deed was conveyed to the REDACTED TEXT but has not yet been recorded in the REDACTED TEXT County Recorder's Office. The deed indicates that "no consideration" was paid for this transfer.

It is our opinion that the transfers of this property to the REDACTED TEXT for no consideration were made with the intent to hinder, delay, or defraud the Board in the collection of the liability due from REDACTED TEXT. A nominee lien should be recorded against this property.

TJC/cmm