

Commission on the Unauthorized Practice of Law

Title Companies and Child Support Judgment Liens

Advisory Opinion 2013-001

The Commission on Unauthorized Practice of Law (UPL Commission) received a request for an advisory opinion from an attorney on behalf of a Nebraska title company. This opinion is issued pursuant to Neb. Ct. R. 3-1012(D).

Does the preparation of the following forms constitute the unauthorized practice of law (UPL)?

- 1- Release of Child Support Judgment
- 2- Subordination of Child Support Judgment

The sample documents provided for analysis with this opinion are almost identical, with differences in language that distinguish the purpose as a “release” or “subordination”. They are formatted for filing with a heading, caption, and designated space for notarization. There is a blank space for the description of the property. Additionally, there is text regarding the payment status of the lien and a disclaimer regarding the judgment lien holder’s rights “under Nebraska Law regarding the terms and conditions of the Decree other than as provided therein”. There is a statement at the bottom of the form regarding the inability of the title company to “legally” give advice “regarding the signing of this document”. (See Exhibits A & B)

Yes, the completion of the “Release of Child Support Judgment” and “Subordination of Child Support Judgment” constitute UPL. Neb. Ct. R. 3-1004(A) provides exceptions and exclusions to activities by title companies and other nonlawyers that are not prohibited under certain conditions. This opinion will explain why the conditions are not met here.

§ 3-1004. Exceptions and exclusions.

Whether or not they constitute the practice of law, the following are not prohibited:

(A) Title insurance companies authorized to do business in the State of Nebraska and their licensed agents, real estate rental agencies, licensed real estate brokers and their affiliated licensees, and employees of such entities, preparing certain documents that would normally involve the practice of law subject to the following:

- (1) The transaction involved is merely incidental to their lawful business as a title insurance company or licensed agent thereof, rental agency, real estate broker, or affiliated licensees of a real estate broker.
- (2) The transaction arises in the usual course of business for the title insurance company issuing title insurance, the rental agency as agent for the lessor or the lessee, the broker who is the listing or selling broker, or the real estate licensee affiliated with the broker.
- (5) In closing a real estate sale, licensed real estate brokers and title insurance companies and their licensed agents may prepare deeds, releases which do not affect judgment liens, deeds of reconveyance, title affidavits, closing statements, and related documents.
- (6) The documents referred to in §3-1004 (A)(3), (4) and (5) to be prepared by nonlawyers shall be on standardized forms which may contain various blanks to be filled in, the completion or selection of which does not require the knowledge, judgment, or skill of one trained as a lawyer.
- (7) No counsel or advice shall be given with respect to the meaning, validity, or legal effect of the document or regarding the rights and obligations of the parties.

The process for obtaining the release of a child support judgment lien and for subordination of a child support judgment lien is governed by Neb. Rev. Stat. 42-371 which provides in part:

Under the Uniform Interstate Family support Act and sections 41-347 to 42-381, 43-290, 43-512 to 43-512.10, 43-1401 to 43-1418:

- (1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;
- (2) The judgment creditor may execute a partial or total release of the judgment or a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property.

Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support may, if all such payments are current and not delinquent or in arrears, be released or subordinated by a release or subordination document executed by the judgment creditor, and such document shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document explicitly reciting that all child support payments or spousal support payments are current is prima facie evidence that such payments are in fact current.

- (3) If a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in subdivision (2) of this section or the support payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no later than ten days before the date of payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the

judgment lien or issue an order subordinating the judgment lien . . . (F) or purposes of this section, a current certified copy of support order payment history from the title IV-D Division of the Department of Health and Human Services setting forth evidence that all support payments are current is prima facie evidence that such payments are in fact current and is valid for thirty days after the date of certification.

Under R. 3-1004 (A) (5) title companies may not prepare documents effectuating releases or subordination of child support liens. The release or subordination of a child support judgment lien *does* “affect the judgment lien”. The word ‘affect’ is “(n)ot a legal term of art, but a word of ordinary English.” *Nebraska Power Co. v. Omaha Ice & Cold Storage, Inc.*, 147 Neb. 324 (Neb. 1946). “‘Affect’ means to ‘act upon; influence; change...often used in the sense of acting injuriously upon persons and things’.” 147 Neb. 324,328, *citing* Black’s Law Dictionary, 3d Ed., p. 72. A judgment lien attaches to real property “within the county where the judgment was rendered “ , “from the day on which such judgments are rendered”. Neb. Rev. Stat. § 25-1504. A child support judgment provides future protection for the judgment lien holder as “a lien not only for past due installments but also as security for installments to fall due in the future.” *McCook Nat. Bank v. Myers*, 243 Neb. 853 at 868 (1983) *Citing* *Action Realty Co., Inc. v. Miller*, 191 Neb. 381, 385-86. The release of a child support judgment lien extinguishes that lien, thereby disabling the judgment lien holder from using the property to enforce the judgment for any future payments. Neb. Rev. Stat. 42-371(2).

Subordination is “The act or process by which a person’s rights are ranked below the rights of others”. Black’s Law Dictionary, 5th Ed., p. 1279. Therefore, the subordination of a child support lien reduces its impact by placing the judgment lien holder’s rights in an inferior position to that of another. The effect on the judgment lien caused by either a release or subordination is potentially injurious to the lien holder if the judgment debtor ceases payments in the future. For R.3-1004(A)(5) to apply as an exception, releases prepared by title companies (and other specified nonlawyers) must not affect judgment liens. Therefore, the preparation of a release or subordination of a child support judgment lien by title companies is UPL.

For the foregoing reasons, the preparation of documents for the release or subordination of child support judgment liens constitutes the unauthorized practice of law by title companies.

EXHIBIT A

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

| | | |
|-------|---|--|
| _____ |) | |
| _____ |) | |
| -VS- |) | |
| |) | RELEASE OF CHILD SUPPORT JUDGMENT |
| _____ |) | |
| _____ |) | |

_____, the _____, hereby:

1. States and affirms that all payments for Child Support due from the Respondent pursuant to the terms of the Decree entered herein are current.
2. Releases the lien for Child Support judgment on the following described property:

_____ shall not be deemed to have waived any rights available to _____ under Nebraska Law regarding the terms and conditions of the Decree other than as provided herein.

Dated this _____ day of _____, 20__.

By: _____

| |
|-------|
| _____ |
| _____ |
| , |

| | |
|-----------------|---|
| State of _____ | § |
| County of _____ | |

Subscribed and sworn to before me, a Notary Public by _____ on this ____ day of _____, 20__.

| |
|----------------------------|
| By: _____ Notary Public |
|----------------------------|

The attached document is acceptable to Nebraska Title Company and will satisfy requirement No. ____ on Schedule B-I of Commitment No. _____. The staff of Nebraska Title Company cannot legally give you advice regarding the signing of this document. If you have any questions, please consult your attorney before signing and returning this document to us.

EXHIBIT B

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

| | | |
|--------|---|--|
| _____, |) | |
| _____ |) | |
| |) | |
| -vs- |) | SUBORDINATION OF CHILD SUPPORT JUDGMENT |
| _____, |) | |
| _____ |) | |

_____, the _____, hereby:

3. States and affirms that all payments for child support due from the Respondent pursuant to the terms of the Decree entered herein are current.
4. Subordinates the lien for child support judgment on the following described property:

To the Deed of Trust executed on the _____ day of _____, _____, in the stated amount of \$_____, in favor of _____, recorded _____ as Inst. No. ____ - _____; records of _____ County, Nebraska.

_____ shall not be deemed to have waived any rights available to _____ under Nebraska Law regarding the terms and conditions of the Decree other than as provided herein.

Dated this _____ day of _____, 20____.

By: _____

| |
|-------|
| _____ |
| _____ |
| _____ |

| | |
|-----------------|---|
| State of _____ | § |
| County of _____ | |

Subscribed and sworn to before me, a Notary Public by _____ on this ____ day of _____, 20____.

| |
|---------------|
| By: _____ |
| Notary Public |

The attached document is acceptable to Nebraska Title Company and will satisfy requirement No. ____ on Schedule B-I of Commitment No. _____. The staff of Nebraska Title Company cannot legally give you advice regarding the signing of this document. If you have any questions, please consult your attorney before signing and returning this document to us.