



REAL ESTATE LAW

Assignees Beware – Equitable Conversion & the Assignment of Purchase Agreements

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In 1927, John D. Rockefeller established the Snake River Land Company to covertly buy up 35,000 acres of land in Wyoming surrounding what is now known as Grand Teton National Park. Rockefeller used the Snake River Land Company as a front to hide his identity from the land records. He didn't want to arouse attention and drive land prices up before he pieced together all of the land he sought to donate for National Park designation. Similarly, developers today often use acquisition entities or straw buyers to tie up real estate when piecing a development together to avoid a spike in land prices on key parcels. Often, these acquisition entities assign the purchase agreement to a freshly minted single asset entity that will close the transaction and take title to the land. Although these transactions are not of record, the assignees ought to be wary of the assignor's balance sheet.

It is well established in Minnesota that when a contract for the sale of land is signed and part of the purchase price is paid, equitable title vests in the vendee with the bare legal title remaining in the vendor as security and held in trust for the vendee pending performance of the remaining elements of the purchase agreement. *Petition of S. R. A., Inc.*, 219 Minn. 493, 507, 18 N.W.2d 442, 450 (1945) *aff'd sub nom. S. R. A., Inc. v. State of Minn.*, 327 U.S. 558, 66 S. Ct. 749, 90 L. Ed. 851 (1946). Upon part payment of the purchase price, the vendor's interest is said to equitably convert from a real property interest to a personal property interest. *See Frederick v. Peoples State Bank of Madison Lake*, 385 N.W.2d 11, 13 (Minn. App. 1986).

Significantly, the conversion occurs as soon as there is a binding purchase agreement in place. Once the conversion occurs, the vendee's creditors have a claim against the vendee's interest in the underlying real estate because a standard judgment docketed with the court administrator creates a valid judgment lien on the purchaser's equitable title, at least on abstract property. *See Minn. Stat. § 548.09.*

After the vendee assigns the purchase agreement to the single asset entity, the assignee completes the purchase and takes title (both equitable and legal) subject to the judgment creditor's judgment lien. If the assignor and assignee figure out the problem before closing and attempt to reconfigure the transaction, they may trip the provisions of Minnesota's Uniform Fraudulent Transfer Act and poison not only the underlying real estate but also anyone else who actively participates in the scheme to avoid the judgment lien. Typically a seller would not be exposed to fraudulent transfer liability by an insolvent buyer because the seller is presumably receiving market value for its interest in the real estate. *See Minn. Stat. § 513.48(a).*

To make matters worse for the assignee and better for the judgment creditor, it is not standard practice to search the judgment history of the assignor of a purchase agreement. Thus, unwary title underwriters may unknowingly deliver a huge gift to the judgment creditor. If the closing agent is aware of the purchase agreement and assignment, then the agent's knowledge is imputed to any lender financing the sale of the property despite the fact that the assignor's title is never of record. With knowledge of the assignor's interest comes constructive notice of the judgment creditor's judgment lien, removing the bona fide purchase or mortgagee defense. Thus, parties are well advised to learn their assignor's financial condition before accepting an assignment of a purchase agreement.