

## MEMORANDUM

**TO:** DAOGTL  
**FROM:** Sheryl Howe  
**DATE:** October 7, 2016  
**RE:** October 2016 Report

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### **Supreme Court Finds Notice of Application for Tax Deed Satisfied Statutory Requirements and Due Process**

In *Klingsheim v. Cordell*, \_\_\_ P.3d \_\_\_ (2016), 2016 CO 18, the Colorado Supreme Court reversed the Colorado Court of Appeals and held that the treasurer had satisfied its duty of diligent inquiry in attempting to notify the taxpayer. The treasurer sent the notices regarding application for a tax deed to the address listed on the assessor's records for the parcel. The owner of the properties was Carl A. and Wanda M. Cordell. The notices were sent certified mail, return receipt requested, to 705 N. Vine, Farmington, New Mexico. The return receipts were signed by Cleo Cordell (she is Carl A. Cordell's mother) and show that she signed for the notices at 703 N. Vine.

The Supreme Court held that the treasurer was not required to take further action and that the treasurer's actions satisfied its duty of diligent inquiry. The court found that after the initial diligent inquiry is done to determine the address to send notices, further diligent inquiry is only required if the facts known to the treasurer show that the taxpayer could not have received notice of the pending tax sale. The court cited prior cases where a notice was returned to the treasurer as undeliverable or marked "Return to Sender, Forwarding Order Expired." The court held that a treasurer owes a duty of further diligent inquiry after an initial notice has been sent only when the facts known to the treasurer show that the taxpayer could not have received notice of the pending tax sale. *Id.*, ¶ 28. The court also found that the steps the treasurer had taken satisfied due process requirements.

### **Judgment Lien Against Individual Attaches to Property Titled in the Name of a Revocable Trust of the Judgment Debtor and His Wife**

In *Pandy v. Independent Bank*, 372 P.3d 1047 (2016), 2016 CO 49, the Colorado Supreme Court affirmed the Court of Appeals decision regarding a judgment lien against property held by a revocable trust. Two judgments were obtained in Michigan for a total amount just under a million dollars; the judgment debtor domesticated these judgments in Grand County,

Colorado and recorded transcripts of the domesticated judgments in that county. The judgments were against Joseph Pandy Jr. Title to the property in Grand County was held by Joseph Pandy Jr. & Elizabeth Pandy Living Trust, a/k/a The Joseph Pandy Jr. & Elizabeth A. Pandy Living Trust dated November 10, 2003.

The court noted that a revocable trust is a trust in which a settlor reserves the right to terminate the trust and recover the trust property and any undistributed income. *Id.*, ¶ 16. The court stated that it had not previously addressed this question, but that numerous other courts have concluded that the assets of a revocable trust are properly subject to the claims of the settlor's creditors. *Id.*, ¶ 18. The court cited previous Colorado precedent that a lien may attach to any interest that the judgment debtor has in land, whether legal or equitable. The court stated that C.R.S. § 38-30-108.5, which provides a trust may hold property in the name of the trust, was enacted for a narrow and specific purpose and did not alter the ownership interest held by the settlor of a revocable trust. *Id.*, ¶ 27.

### **Court of Appeals Rules that Putative Adverse Possessor has an Interest in the Property Enforceable Against Everyone Except the Rightful Owner**

In *Lensky v. DiDomenico*, \_\_\_ P.3d \_\_\_ (2016), 2016 COA 89, the Colorado Court of Appeals held that a person possessing property as an adverse possessor has an interest in the property enforceable against all other parties, except the true owner. The court also concluded that this possessory interest includes the right to exclude all others from the property except the true owner. *Id.*, ¶ 33.

The plaintiff Lensky had purchased a one-acre parcel but was unable to obtain title insurance due to "title problems." Lensky found out that the structures and improvements he had purchased were not on the lands covered by the deed but were on adjacent land totalling approximately 23 acres. That land had been referred to in Huerfano County as "no man's land" and had not been assessed because ownership could not be traced. Lensky attempted to claim ownership by adverse possession in an action in 2001, but that decree was eventually vacated because of improper notice, including not giving notice to parties who were known to be using parts of the land. Later, the same parties asserted the right to continue their uses of the land, but did not assert either adverse possession or a prescriptive easement. The parties had stipulated that Lensky was a putative adverse possessor. The court found that Lensky could exclude the others from this property, since the putative adverse possessor has an interest in the property enforceable against all other parties, except the true owner.