

Sham Documents: Attempts to Avoid Foreclosure, Taxes, Vehicle Registration, Driver's License, and the like

A number of documents have been filed with Registers of Deeds and Clerks of Court in recent years attempting to "reclaim" the filer's status as a "Natural Citizen;" to deny the jurisdiction of state or Federal courts; to deny any liability or obligation to pay taxes, obtain or present a driver's license, obtain or show state-issued vehicle registration or tags; and to threaten public officials with prosecution for failing to file and comply with the demands therein.

In and of themselves these documents have no legal effect. However, the proponents may react negatively when public officials continue to apply the law despite being confronted with them, Proponents may also present documents purporting to charge public officials with obstruction of justice, breach of contract, or liability for civil and criminal penalties for refusing to record documents or for continuing to enforce the law. While impressive on the surface, these documents likewise have no legal effect.

A sampling of documents reported by various county offices shows two such documents in Anderson County; nine in Greenville; two in Kershaw; one in Laurens; four in Marlboro; three in Richland; one in Saluda; and two in Spartanburg. It is difficult to draw any conclusions about the distribution of these documents. The survey response was not comprehensive and undoubtedly more such documents have been presented to other Registers.

Many of them appear to have been downloaded from various websites and personalized to a greater or lesser extent by the proponent. Many of the individuals submitting such documents appear to be sincere but mistaken in their belief of the documents' efficacy. However, anecdotal reports indicate that some individuals may be providing formal or informal seminars on the subject. Such promotional activities may be subject to prosecution. There is a substantial body of law rejecting the various theories embedded in these documents and in many cases, issuing injunctions barring the defendants from further dissemination of their rejected legal theories; see http://www.irs.gov/pub/irs-utl/friv_tax.pdf, for example. Individuals who have paid for assistance in making these claims may be willing to identify the persons receiving payment.

These documents share various combinations of common elements depending on the original source documents; some individuals include all of them.

- Creation of a trust, UCC filing, or "Statute Staple Securities Agreement" listing the same individual as trustee and beneficiary or debtor and creditor; these documents always use different capitalization and punctuation to differentiate the two ("John Q. Public" and "JOHN-Q:PUBLIC", for example).
- Appointment of a "Private Attorney in Fact" using the same distinction in capitalization and punctuation
- References to the individual as a "Strawman," "Natural Man or Woman," Sovereign, "Non 'United States' corporate citizen," "Transmitting Utility," "non-Fourteenth Amendment Citizen"
- References to the United States, the State of South Carolina, or various governmental agencies as Private Corporations
- References to "Common Law Courts" or "Common Law Juries"

- Attachment of apostilles [inclusion of an apostille with documents filed in state courts may always almost be a sign that the documents fall into this category]
- References to Admiralty law
- A notice of copyright of various forms of an individual's name
- Statements of intent to travel as a free citizen, travel not involving commerce; claims of diplomatic status derived from entities not recognized by the US Department of State ("Kingdom of Heaven," "Washita Nation," "Little Shell Pembina Band," etc)

Most of the documents reviewed to date are expressions of the proponents' desire to be left alone/avoid taxes/avoid obtaining ordinary government authorizations of various sorts. Bogus liens are more offensive: the proponents intend to create problems for their opponents.

Example:

Commercial Liens as a weapon.

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" THE POWER OF COMMERCIAL LIENS

* _Ease of Use_ *

"Although this lien strategy is explosive, it's more like nitro-glycerin than hydrogen bombs. You need to be knowledgeable and careful to use nitro-glycerin, but you don't need to be a nuclear physicist. However, nitro-glycerin can blow up in your face if you handle it carelessly!

"Likewise, "bombing" government officials with liens is a craft, not a science, that can be used as easily by knowledgeable /pro se's/ as it can by lawyers and legal scholars. The commercial lien is simple, inexpensive, and takes very little time. It requires no court action or judge's approval. And, it has proven to be very direct and effective, /if it is handled correctly/. However, a few careless /pro se's/ have had their liens "blow up" in their faces (see Chapter 5), so be meticulous when you use them.

* _Long Range_ *

"You can file a commercial lien on property in another state or on property you've never seen. With a commercial lien, you can attack the personal property of your adversary at long range rather than merely fighting to defend your own property in your own back yard. This offensive capability makes the commercial lien a powerful legal weapon. With the commercial lien, you can literally take the fight to their back yards.

The Helplessness of Judges

"The commercial lien, which is authorized both by the common law and by Title 15 of the United States Code (USC), is reportedly the same lien the IRS uses to take Americans' homes and cars. However, some /pro se/ litigants do not depend upon Title 15, but upon the common law of negotiable instruments (a.k.a. Commercial Law).

"As such, it's almost impossible to remove a commercial lien without the approval of the individual claimant who filed the lien. Although a commercial lien can be challenged by a common law court or by a 7th Amendment jury trial, it does not require a court process or a court judgment for its establishment, validity, or execution. Therefore, it appears that the courts may not be able to simply extinguish this lien on their own discretion (or on motion from the lien debtors) without the voluntary approval of the person who filed the lien.

"Traditionally, these liens can only be removed by the voluntary decision of the person who filed the lien, by the decision of a constitutional common-law jury trial, or by waiting 99 or 100 years. Since the common law has been smothered in the U.S.A., all judges are essentially powerless to overcome the liens."

Source: Source: <http://www.mind-trek.com/practicl/comliens.htm>

Although no such sham liens were submitted for review during this assessment, anecdotal reports indicate that they have been filed in other jurisdictions and have caused considerable inconvenience to the affected individuals. It should be noted that under South Carolina law, if a clerk of court or register of deeds reasonably believes a file mortgage, judgment lien, and other document is materially false, fraudulent, or a sham legal process, he or she may refuse to file it, SC Code Ann. §30-9-30(B)(1), or remove it from the records after notice to the filer, SC Code Ann. §30-9-30(B)(2). The proponent can commence an action in circuit court to contest the clerk/register's action but the clerk or register is immune from damages for a mistaken action under this section, SC Code Ann. §30-9-30(B)(3).

Recommendations:

- Officials confronted with such documents should continue to insist on compliance with applicable state and Federal law. Although responding to such spurious documents is time-consuming and a busy official might conclude that it is easier to file a document "revoking" an individual's birth certificate or to waive prosecution of a traffic ticket, proponents of these theories take such responses as acceptance of their theories and cite

them to others, thereby inviting imitation.

- Clerks of court and Registers of Deeds should provide explicit instructions for front desk staff to assist them in dealing with individuals attempting to file such documents. One Clerk of Court suggests instructing front desk and intake staff not to confront the individual but to bring such documents to a supervisor's attention for possible referral to a judge or master in equity. If the judge or master in equity agrees that the document may be refused pursuant to Code Section 30-9-30, the Clerk's Office should so notify the individual in writing; the documents in question should be kept separately from the recorded documents files.
- Documents filed in litigation. Some direction regarding the applicability of Code Section 15-36-10* and Rule 12, SC Rules of Civil Procedure** to these documents would undoubtedly be helpful to magistrates, masters and judges inundated with these documents.

* "(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for: (a) filing a frivolous pleading, motion, or document if: (i) the person has not read the frivolous pleading, motion, or document; (ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; (iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or (iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based; (b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or (c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law." SC Code Section 15-36-10 (1976)

**"(b)(1) lack of jurisdiction over the subject matter; (b)(2) lack of jurisdiction over the person; (b)(6) failure to state facts sufficient to constitute a cause of action; (e) motion for more definite statement; (f) motion to strike ... insufficient defense, or any redundant, immaterial, impertinent or scandalous matter; (h)(2) failure to state a cause of action upon which relief can be granted ... and ... failure to state a legal defense to a claim" SC Rules of Civil Procedure, Rule 12

For legal questions, consult your agency counsel.