

# Judgment Liens: What They Are and How to Use them

By Cheryl D. Cook, O'Reilly Rancilio PC

In 2004, the Michigan legislature enacted a series of statutes, colloquially known as the Judgment Lien Act, allowing judgment creditors of courts of record to record a Notice of Judgment Lien that creates a lien in favor of the creditor against any interest in real property then owned or later acquired by the debtor located in the County where the notice was recorded.

Specifically, MCL 600.2803 provides,

“A judgment lien attaches to a judgment debtor's interest in real property if a notice of judgment lien is recorded in accordance with this chapter in the land title records of the register of deeds for the county where the property is located. The judgment lien attaches at the time the notice of judgment lien is recorded or, for after acquired property, at the time the judgment debtor acquires the interest in the property.”

The procedure for obtaining a judgment lien is to file the Notice of Judgment Lien (MC 94) with the court of record that granted the judgment. The clerk of that court “shall” certify Notices of Judgment Lien that include the following required information:

Case caption and docket number;

Current name and address of the judgment creditor;

The judgment creditor's attorney (if the creditor has one);

The name, last known address, and last four digits of the Social Security or tax identification number of the judgment debtor;

The balance due on the judgment when the Notice is filed;

The date the judgment was entered;

The expiration date of the judgment;

The expiration date of the judgment lien; and,

The signature of the judgment creditor or the judgment creditor's attorney.

Once the judgment lien has been certified by the clerk of the court, the creditor may then record it in the county



where the creditor believes the judgment debtor owns property. If the amount of the judgment is less than \$25,000, the creditor may serve the Notice of Judgment Lien on the judgment debtor by certified mail; if the amount of the judgment is greater than \$25,000, the judgment debtor must be personally served. Proof of service must then be filed with the court.

From a timing standpoint, this lien can be recorded immediately upon expiration of the appeal period following entry of the judgment. Unlike a Request and Order to Seize Property, there is no need to first exhaust any non-exempt personal property before filing and recording a Notice of Judgment Lien.

The lien created by recording under this statute is effective for five years from the date of recording, subject to the life of the judgment, and requires the debtor to pay the lien if the real property is sold, transferred or refinanced. A judgment lien may be re-recorded only once. If the judgment

expires before the judgment lien expires, the judgment lien expires on the date that the judgment expires, regardless of how long the lien was in place.

A judgment lien attaches to any real property owned or subsequently acquired by the debtor in that county; it does not require that the creditor know the address or provide any legal description to be recorded. However, judgment liens cannot be foreclosed on in the same manner as a mortgage.

Once the judgment lien is recorded, it has priority over any subsequently recorded liens, with certain specific exceptions such as purchase money mortgage debt and subsequent refinancing of purchase money mortgage debt. (For a complete list of the priority exceptions, see MCL 600.2807). However, a judgment lien creditor cannot require payment in full before releasing the lien; proceeds are limited to the amount of the judgment debtor's equity in the property after senior liens, property taxes and costs and fees necessary to close the sale are deducted.

### FAQs:

What if the judgment debtor owns property with his or her spouse as tenants by the entirety?

The statute specifically provides that if property is

owned as entirety property, the judgment lien does not attach, unless the underlying judgment was entered against both the husband and wife.

What if the judgment debtor obtains a discharge of his debts in bankruptcy?

MCL 600.2809(6) provides that a judgment lien is extinguished by recording a copy of the discharge in bankruptcy, plus a copy of the debtor's schedules showing that the judgment debt was listed. This can be done by the judgment debtor.

However, if an order declaring the debt to be non-dischargeable is recorded, the lien is not extinguished.

The judgment debtor paid some or all of the judgment. What is the judgment creditor's responsibility?

Within 28 days after payment in full, the judgment creditor must record a discharge of the judgment lien with the register of deeds where the notice was recorded.

If partial payment is made out of the judgment debtor's equity [See section 2807(3)], the judgment creditor is required to record a partial discharge for the amount paid.

A judgment creditor's failure to record the discharge of lien after payment in full subjects the judgment creditor to statutory liability in the amount of \$300 plus actual damages and costs sustained by the debtor.

If, after payment in full or in part, the judgment debtor has requested a discharge and is unable to locate the judgment creditor or the judgment creditor's attorney, the judgment debtor may record an affidavit stating that the request was made to the judgment creditor or attorney, and attaching a copy of both a written instrument evidencing payment and a copy of the receipt for the certified mailing requesting the discharge of the lien.

Used properly, the Judgment Lien Act benefits creditors without unduly penalizing debtors by allowing the collection of judgments in an efficient and economical manner. ■

*Cheryl D. Cook is an Associate with O'Reilly Rancilio P.C. As a member of the firm's creditors' rights and litigation practice groups, she concentrates her practice in the area of commercial litigation on behalf of creditors in state and federal courts.*

*MCL 600.2801(a)(i). MCL 600.2801(b) references MCL 600.6018 for the definition of interests in real property that are subject to the lien. Section 600.6018 provides, "All the real estate of any judgment debtor, including, but not limited to, interests acquired by parties to contracts for the sale of land, whether in possession, reversion or remainder, lands conveyed in fraud of creditors, equities and rights of redemption, leasehold interests including mining licenses, for mining ore or minerals, but*

*not including tenancies at will, and all undivided interests whatever, are subject to execution, levy and sale except as otherwise provided by law."*

*MCL 600.2801-2819.*

*The State Court Administrator's Office has created a Notice of Judgment Lien (Form MC 94) in recordable form for ease of use.*

*MCL 600.2809(4)*

*MCL 600.2809(3)*

*MCL 600.2807(1)*

*Since this article was written, the Michigan Court of Appeals issued an opinion for publication in the matter of Robert A. Thomas v Laverne Dutkavich, et al., \_ Mich App \_\_ (2010), docket No. 293229. That opinion interpreted the Judgment Lien Act, addressing issues of whether a judgment lien survives and can be foreclosed on after a judgment debtor's conveyance of the encumbered real property to a vendee who has record notice of the lien, but where no available closing proceeds are distributed to a judgment creditor in whole or partial satisfaction of the underlying judgment.*

*The Court of Appeals held that, while the Judgment Lien Act did not permit foreclosure of the judgment lien and did not require an obligation by the debtor to the creditors, it did require that the lien would remain attached to the property after the sale. However, the Court of Appeals also held that MCL 600.6018 may allow execution of the real property to satisfy the judgment, and it remanded the case to the lower court to address the levy issue.*