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The Lien Handbook:

An A to Z Guide on All Things Property Liens

Introduction

Anyone who buys, sells or owns real property will likely deal with property liens at some point and in some fashion. Some property liens, such as mortgages, can be welcome and helpful tools.

Of course, many other liens are less welcome, but they still serve an important purpose.

What is a Property Lien?

A property lien is a legal claim to another person's property. It is a record filed in a courthouse against the (title) deed to a piece of property.

Liens are created when a property owner uses property as security for a debt, in order to secure payment of said debt. A lien requires the debtor to pay off their debt to the creditor (or "lien holder") before the property can be sold to another party. In some states, an unsecured creditor may attach a lien to real property. In some cases, the lien holder can take possession of the property, with or without the borrower's consent, and sell it to pay off the debt.

> "The creditor hath a better memory than the debtor."
>
> James Howell

Types of Property Liens

There are multiple types of property liens, but they can all be divided into two broad categories:

- Contractual Liens
- Statutory Liens

> "Home ownership is the cornerstone of a strong community." Rick Renzi

Contractual Liens

A contractual lien is one that is set up in a contract between the creditor and the debtor. Because both parties voluntarily agree to the arrangement, such liens are often referred to as "voluntary" or "consensual" liens.

Contractual liens are used to designate a borrower's property as collateral for a loan. The collateral can be either property that the borrower already owns, or new property that is being bought with the loan itself.

Purchase-Money Security Liens

If the funds from the loan are being used to buy property, and that same property is named as the collateral for the loan, the arrangement is known as a purchase-money security lien.

In real estate, purchase-money security liens can take the form of either mortgages or deeds of trust. The distinction between the two types of lien depends on the number of parties involved and the method that would be used to foreclose on the property.

- **Mortgages** involve two parties: a borrower and a lender. If the borrower defaults on the loan, the lender must file suit and go through the judicial system in order to foreclose on the property.
- **Deeds of trust** involve three parties: a borrower, a lender and a trustee. The trustee holds the lien in trust for the lender, and is responsible for handling the foreclosure process. Foreclosures for deeds of trust do not have to go through the judicial system, and bypassing the courts makes such foreclosures simpler and cheaper to execute.

Because of differences in state laws, deeds of trust are more common in some states than others.

> According to a study by Zillow, only 1/3 of Americans own their homes without any mortgage.

Types of Property Liens

Non-Purchase-Money Security Liens

When the borrower already owns a piece of property, and uses that property as collateral to get a loan, it is known as a non-purchase-money security lien. The funds from the loan could still be used to purchase other property, but the property being purchased is not subject to the lien.

Non-purchase-money security liens include:

- Home equity liens, also known as second mortgages. With a second mortgage, the lien is placed against the borrower's available home equity. Second mortgages are "junior liens"; if the home is sold to pay off the debts, the first mortgage takes priority and must be paid off fully before the second mortgage lender is reimbursed.
- Tax transfer liens. If a homeowner is unable pay the property taxes owed, they can arrange with an outside lender to finance the tax debt. The lending company pays the tax collector, who then transfers the tax lien rights to the lending company. Unlike a second mortgage, tax liens are superior to first mortgages, and would be the first to receive payment in a foreclosure.
- UCC liens are contractual liens which are established under the Uniform Commercial Code. To set up a UCC lien, the creditor must file a UCC-1 financing statement in the state where the property is located.

Statutory Liens

Statutory liens are created by the operation of statutes, or laws. Since they do not require the consent of either party, statutory liens are also called "involuntary" or "non-consensual" liens.

Statutory liens can be divided into several categories:

- Judgment liens
- Landlord's liens
- Tax liens
- Lien claim affidavits
- Liens against mineral property
- Other miscellaneous liens

Judgment Liens

A judgment lien (or judicial lien) is a lien that arises as a result of a lawsuit. If a monetary judgment is awarded, a lien can be imposed on the defendant's property.

Types of judgment liens include:

- Equitable liens. If a defendant has become unjustly enriched at the expense of the plaintiff—such as through embezzlement or fraud—the court can impose an equitable lien on the defendant's property to recompense the plaintiff.
- Child support liens. If a parent owes child support, the child's custodian can obtain a court-imposed lien on the delinquent parent's property.

Types of Property Liens

- Abstracts of judgment. An abstract of judgment spells out how much a defendant owes to the plaintiff, plus court costs and interest to be paid. It can create a lien against the defendant's property.
- Owelty liens. When co-owners divide up a piece of property, such as the ownership of a single house during a divorce, the party which keeps possession of the property must pay the co-owner to buy out their share. If they cannot afford to buy out the co-owner's stake, the co-owner can place an owelty lien on their former partner's share of the ownership.

Landlord's Liens

If a tenant owes overdue rent to a landlord, the landlord has the right to a statutory lien on the tenant's personal property to ensure payment. The property subjected to the lien depends on the type of real estate involved.

- Agricultural landlord's liens. For agricultural land leases, the landlord's lien applies to the crops growing on the land. It can sometimes also apply to any property, such as tools, located on the leased land.
- Building landlord's liens. For commercial building leases, the lien applies to all of the tenant's property located in the building.
- Residential landlord's liens. For residential leases, the lien applies only to the tenant's nonexempt property. Much personal property is exempt from such liens. Exemptions include clothing, toys, food, medicine, kitchen utensils, educational books, tools of the tenant's trade, certain furniture items, one automobile and one truck.

Tax Liens

If someone fails to pay taxes, the government has a legal right to the delinquent taxpayer's property until the tax debt is paid.

- Federal tax liens. If income taxes (or related penalties) are owed to the IRS, a federal tax lien can be placed on nearly all of the taxpayer's property: real and personal, tangible and intangible, current and future.
- Real property tax liens. If property taxes are owed, the local tax collector can place a lien on the real estate. This lien can be voluntarily transferred to a third party, as mentioned under "tax transfer liens."
- Corporate tax liens. If a company fails to remit its required payroll taxes to the government, or owes any other past-due taxes, a tax lien is placed on the company's assets.
- State tax liens. Failure to pay state taxes can result in a statutory tax lien held by the state. Depending on the state, this could include liens against individuals for personal income taxes or liens against businesses for corporate franchise taxes or income taxes.

Types of Property Liens

Mechanic's Liens

Mechanic's liens, also known as contractor's liens or construction liens, provide legal protection for contractors. When repairs, remodeling or other construction work is performed on an existing home, the contractor can file a mechanic's lien against the property if the homeowner does not pay for the services rendered.

Liens Against Mineral Property

Similar to mechanic's liens, mineral liens protect mineral contractors. For example, a mineral contractor could provide machinery or labor used to drill for oil. If the mineral contractor does not receive payment for the services rendered or materials supplied, they can place a lien against the mineral property and any machinery or buildings on the land itself.

Miscellaneous Liens

Various other statutory property liens can arise due to special circumstances. Examples include:

- Hospital liens. Imposed by a hospital to recover payment for medical services.
- Paving liens. A city may charge property owners for the cost of paving new streets or sidewalks. If the assessment goes unpaid, it can result in a lien against the property.
- Demolition liens. If a city demolishes a private building due to the owner's negligence, the demolition costs can be charged to the owner. This can result in a demolition lien on the property.
- Weed liens. Similarly, a city can assess a lien for the cost of removing weeds or cleaning up a piece of private property.

How Do Property Liens Work?

There are multiple ways in which property liens can be created, perfected and enforced.

Who Can Create or Claim Property Liens?

Liens are used to secure payment of a debt. Technically, both parties—the creditor and the debtor—can create a lien on the debtor's property.

- Property owners sometimes play a willing role in setting up a lien on their own property. This is the case in voluntary or contractual liens.
- Creditors are usually the ones who create a property lien, as they are the ones seeking to secure payment for the debt.

A lien makes the property title unclear, which can prevent the property from being sold. Lien holders may also be able to take possession of the property and sell it in order to pay off the debt. Because of this, a property lien makes it highly likely that the loan will be repaid in some form or fashion.

The procedure required for the creditor to claim a lien on the debtor's property varies depending on the type of lien and the state in which the property is located. Legal documents must be filed to claim the lien, usually at the county courthouse.

Perfected and Unperfected Liens

Liens can be "perfected" or "unperfected." A lien is considered "perfected" when it has been properly filed with the correct authorities. For example, a UCC lien is perfected when a UCC-1 financing statement is filed with county or state officials.

An "unperfected" lien is one that has not been properly filed. Unperfected liens are more difficult to enforce. If there are no other claims against the property, an unperfected lien will usually still be enforceable. If there are multiple liens against the property, the perfected liens will usually be given preference.

How Do Property Liens Work?

Enforcement of Property Liens

Multiple steps are required to enforce a property lien and receive payment for the debt.

1. Issuing notices. Proper notice must be given to the parties involved before a lien is filed, and in some cases before the need for a lien even arises. For example, a mechanic's lien requires that contractors provide notice of their right to lien before they begin working on the property (or soon after work begins). Lien notices must contain specific language and may need to be served via a particular delivery method, such as certified mail.

2. Identifying the jurisdiction. The creditor has to determine who has jurisdiction over the case, and therefore where the lien paperwork must be filed.

3. Recording the lien. This is necessary for the lien to be perfected.

4. Attempting settlement. It is preferable for both parties to reach a settlement on the debt without foreclosing on the property.

5. Lawsuits. If no settlement is reached, the creditor can file suit. If the creditor wins the lawsuit, they can execute the judgment lien by following a set procedure involving public notices and an eventual auction of the property. The debtor still has the right to "redeem" the property, or buy it back, within the first 12 months after the auction. Keep in mind that the creditor may not be able to enforce judgment on homestead property in Texas. The redemption period varies depending on the type of suit. There are different redemption periods set out by statute, dependent upon the nature of the lien claim. HOA foreclosure redemption periods vary dependent upon homestead and property use. Tax foreclosure redemption period in Texas is usually 12 months.

How to Resolve Property Liens

Some debtors may be tempted to ignore a property lien and just hope it goes away. And technically, that is a possibility in rare cases; liens do have an expiration date. However, that date is typically years or decades into the future, and creditors can often renew liens after the first term expires. Creditors also must issue a Certificate of Release that must be recorded before the lien is officially removed from the books. So, if the creditor is intent on collecting, or if the debtor wants to sell the property during the term of the lien, the lien will have to be resolved one way or another.

There are a few ways in which a debtor can resolve a property lien.

Pay Off Debt

The most obvious, straightforward way to remove a lien is to pay the creditor what is owed. That is the creditor's goal, and is the only reason for the lien's existence.

If the debtor is not able to pay the debt in full, the creditor may be willing to negotiate. They may set up a payment plan, or agree to release the lien in exchange for partial payment. Executing a lien can be costly and time-consuming, and the property may not bring in enough money at auction to fully satisfy all of the liens against it. The lien holder may therefore decide that accepting partial payment is the best available option.

Petition the Court for Removal of a Judicial Lien

A judicial lien created by a court judgment can be appealed. If the appeal is successful and the lien is found to be unjust or invalid, the court will remove the lien.

Federal tax liens can be appealed directly to the IRS appeals office. Taxpayers have the right to a Collection Due Process hearing, but the hearing must be requested within 30 days of being notified about the tax lien. They can also appeal to the IRS Collection Appeals Program.

Claim an Exemption

Some types of property are exempt from liens, at least up to a certain amount. The property that is exempt depends on the type of lien and the state in which the property is located.

The debtor usually must file a claim to exempt property that has been placed under lien. Exemptions include:

- Extent of impairment exemptions. If the total dollar amount of the liens plus the dollar amount of the exemption exceeds the value of the property itself, the liens are said to "impair" the exemption. If all of the liens were enforced, the debtor would not receive the exemption to which they are entitled. In these cases, the dollar amount of the liens must be reduced to allow the full exemption.

How to Resolve Property Liens

- Homestead exemptions. A debtor's primary residence is usually exempt from most creditors, at least to a certain extent. The dollar amount allowed for a homestead exemption varies by state, and ranges from zero (no exemption) to infinity (no limit).
- Wildcard exemptions. Some states allow debtors to claim a certain dollar amount of exemptions, regardless of whether the property would normally be considered exempt. These "wildcard" exemptions can apply to any property the debtor chooses.

Declaring Bankruptcy

Though declaring bankruptcy can protect you from creditors, it does not protect you from liens that have already been filed by creditors. Some liens can be removed during bankruptcy, especially if they are unperfected. But others, including tax liens and mechanic's liens, are not removed by bankruptcy.

Whether some liens can be removed during bankruptcy depends on the debtor's situation.

- Properties in foreclosure cannot be foreclosed on during bankruptcy proceedings. However, the liens attached to the home will usually still be attached after bankruptcy.
- Properties with equity may be sold during bankruptcy, with the proceeds paying off liens. Any homestead exemption would still apply.
- Properties without equity, or with very little equity, will probably be lost during bankruptcy. The debtor can file and try to get liens removed, based on the fact that there is nothing to place a lien against.

Invalidation of Lien

Liens can sometimes be invalidated during bankruptcy if the court orders that the property be sold free and clear of the lien. It can also be invalidated if the bankrupt debtor makes a motion to discharge the lien, and the creditor does not enter a valid objection.

Liens can also be invalidated due to procedural errors committed during the closing of a transaction. For example, a home equity lien may be invalidated if the security instrument is not executed by all vested owners and by their respective spouses.

> "Home is a shelter from storms — all sorts of storms."
>
> William J. Bennett

How to Avoid Property Liens

The best way to avoid or prevent involuntary property liens is, again, to pay all debts and taxes on time and in full. But that is not always possible, and property owners can sometimes wind up saddled with someone else's lien. Therefore, there are some additional steps that can be helpful in keeping property liens at bay.

- As mentioned above, bankruptcy protection does provide some limits on liens and the property they can be attached to. This protection can be useful in avoiding some liens. For example, liens on exempt property can be avoidable if the creditor has a nonpossessory, non-purchase-money security interest in the property. "Non-possessory" means that the creditor does not have possession of the property. As defined earlier, a non-purchase-money security interest means the loaned funds were not used to buy the property in question.
- For federal tax liens, appeals can be made to the IRS Collection Appeals Program even before the lien is filed. A successful appeal could then prevent the lien.
- If you are self-employed, incorporating your business can prevent liens from being placed on personal property to cover the company's debts.
- When acquiring real estate through purchase or inheritance, it is important to verify that the property does not have any liens attached. The liens would then be transferred along with the property.
  To ensure you do not get far more than what you had bargained for, it is important to do a thorough search of the title and lien records.
- To be doubly sure that acquired property does not have liens attached, you can check local tax records to make sure all property taxes have been paid in full.
- Last but not least, insist upon an Owner's Policy of title insurance whenever you purchase real property. An Owner's Policy will protect you from any undiscovered liens filed against prior owners in the chain of title.

Searching for Property Liens

Searching property records for lien information can be a time-consuming and costly process. It can require traveling to the courthouse or records office for the area in which the property is located, and manually searching through years of property records filed under multiple different systems.

Using the modern power of the information age, the process is becoming much simpler. You can now search through the property records of more than 500 counties across the U.S. via online databases such as CourthouseDirect.com. Besides title deeds, the index includes asset searches, mortgage information, and property tax reports. For some counties, it includes an adverse lien search to quickly find out about involuntary liens. Professional research and document retrieval services are also available, along with training programs for real estate professionals.

Property liens might be considered a necessary part of doing business. But when they arise involuntarily or have to be executed, they are far from the ideal outcome for any of the parties involved. Knowing how to identify, avoid and resolve liens is an important skill for those who own or deal in real property.

Start Searching Property Liens >>