

Judgments, Tax Liens and Statutory Liens

Prepared by:
Duane H. Wunsch
Fidelity National Title Group, Inc.



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Judgments, Tax Liens and Statutory Liens

A. Judgment Liens

1. Constructive notice

Purchasers of land are conclusively presumed to know of every conveyance properly recorded by which the title to the land may be affected and take subject to its legal effect. Perkinson v. Clarke, 135 Wis. 584, 116 N.W. 229 (1908).

Purchasers are similarly presumed to know of judgment liens where properly filed or entered in the public land records. In New Jersey, where a judgment becomes a lien upon real estate from the time of the actual entry of such judgment on the minutes or records of the court, the purpose of these recording provisions is to give constructive notice of judgment liens to subsequent purchasers, encumbrancers and others who may deal with the real estate. Jones v. Parker, 107 N.J. Super. 235, 258 A.2d 26 (App.Div.1969). Liens, defects and encumbrances affecting real property are discoverable from a search of the public land records, consisting of those maintained by the register of deeds and the offices that contain "other public records to discover rights which usually are not recorded in the office of the register of deeds, *i.e.*, judgments and liens." Bump v. Dahl, 26 Wis. 2d 607, 615; 133 N.W.2d 295 (1965). When a judgment lien is properly recorded, under Colorado law it becomes a lien on all real estate owned by the debtor and a subsequent purchaser of property owned by that debtor has record notice of the judgment lien. Franklin Bank, N.A. v. Bowling, 74 P.3d 308, 313 (Colo.2003).

2. Statutory requisites

Judgment liens did not exist at common law. Judgment liens in states where they exist are based on statute laws and therefore strict compliance with statutory requirements are filed in the office of the recorder in the county in which the real estate is located. Sec. 12-101 of the Illinois Code of Civil Procedure. 735 ILCS 5/12-101 et seq. In Arizona, only a final judgment can create a valid judgment lien, and recording an unsigned minute entry did not create a valid judgment lien. Sysco-Arizona, Inc. v. Hoskins, Court of Appeals of Arizona, Division 1, June 10, 2014--- P.3d ----2014 WL 2589212. Suffolk County Fed. Sav. & Loan Assn. v. Geiger, 57 Misc.2d 184, 185-186, 291 N.Y.S.2d (1982). In Ohio, when a certificate of judgment is filed with the office of the clerk of courts of common pleas, a lien is immediately created upon the land of the judgment debtor, and the fact that the

certificate of judgment was misindexed by the clerk does not affect the time of attachment or the validity of the lien. Tyler Refrigeration Equip. Co. v. Stonick, 3 Ohio App.3d 167, 3 OBR 192, 444 N.E.2d 43 (1981). In contrast, in Wisconsin, enforceability of the judgment lien depends upon proper indexing by the clerk of the court: Where the judgment after having been entered by the court was entered in the judgment docket, but the judgment was not entered in the clerk of circuit court index, and where the debtor subsequently granted a mortgage to a mortgagee which lacked actual notice of the judgment, the judgment lien did not attach until the index was corrected and upon correction of the index, the judgment lien attached but was subordinate to the lien of the mortgage. Wisconsin Mortgage & Sec. Co. v. Kriesel, 191 Wis. 602; 211 N.W. 795 (1927).

3. Duration of lien

What is the effect of a judgment lien that was perfected but that has expired or been time-barred by local law? In the event that the lien is time barred, unless state law provides for renewal or extension, or a tolling of the statute of limitation sufficient to extend the lien, the judgment lien is no longer enforceable and may be disregarded by the prospective purchaser. In North Carolina, where a sheriff's deed was consummated more than ten (10) years after rendition of the judgment, the sheriff authority to sell the property to enforce the judgment lien by a sale of the land ended the instant the judgment lien expired, and as a result the sheriff's deed was a nullity and passed no title to the grantee. McCullen v. Durham, 229 N.C. 418, 50 S.E.2d 511 (1948). In Arkansas, the mere fact that defendant creditor was made a party to lawsuit during the existence of its judgment lien did not in itself prevent subsequent expiration of that lien, and upon expiration of applicable statute of duration the judgment was not revived. Refco, Inc. v. Heinold Commodities, Inc., 295 Ark. 32, 34 746 S.W.2d 375, 376 (1988). In Florida, the re-recording of a certified copy of a judgment after the expiration of the original judgment lien imposes a new lien on real property held by the judgment debtor. Sun Glow Construction, Inc. v. Cypress Recovery Corp., 47 So.3d 371 (Fla. 5th DCA 2010).

The filing of a transcript of judgment requires the judgment creditor to follow the law of the state where the transcript was filed. Thus, where a transcript of an Arizona judgment was filed in Colorado where the debtor's land was located, one

year before the Colorado judgment lien was to expire, the judgment creditor filed a "Judgment Renewal Affidavit" in an Arizona court which under Arizona law renewed the Arizona judgment for another five years, and the creditor then recorded a certified copy of the affidavit with the Colorado county recorder, a choice of law question was presented, and the law of the state where the land was located required the creditor to follow Colorado law, which it having failed to do resulted in the expiration of the judgment lien. Wells Fargo Bank, Nat'l Assoc. v. Kopfman, 205 P.3d 437, 439 (Colo.Ct.App.2008).

4. Judgments entered after contract for sale of real estate but before the conveyance
Although there are regional variations in transaction practices, few real estate transactions, including those in which no financing is involved, are consummated at or contemporaneous with point of acceptance of offer. Thus, the seller's title is seldom transferred by conveyance until weeks after negotiations commenced. First, an offer is executed, followed by an acceptance, a due diligence period, a closing or settlement, and ultimately the recordation of a deed or other conveyance vesting a title or interest in the vendee. In other instances, the conveyance is an installment land contract. During the ensuing negotiations, it is possible that judgments or liens against the vendor will be filed that could conceivably impair the title. If after having entered into an executory contract or land contract a judgment against the vendor is entered, does the judgment lien attach to the interest of a vendor such that interest of the vendee is subject to the judgment lien? The cases are divided. In Heath v. Dodson, 7 Wash.2d 667, 110 P.2d 845, and First Security Bank v. Rogers, 91 Idaho 654, 429 P.2d 386 (1967), it was held that a judgment lien attaches to a vendor's interest. Other decisions have held that the judgment lien does not attach to the vendor's interest. Clarence M. Bull, Inc. v. Goldman, 30 Md. App. 665, 353 A.2d 661 (1976); ABN AMRO Mortg. Grp., Inc. v. Am. Residential Servs., LLC, 845 N.E.2d 881 (Ind. Ct. App. 2006); Mueller v. Novelty Dye Works, 273 Wis. 501, 78 N.W.2d 881 (1956).
5. Does a post-judgment increase in value of real property inure to benefit of judgment creditor?

Does an increase in value as the result of price appreciation or of improvements constructed by the judgment debtor after entry of the judgment accrue to the

benefit of the judgment debtor, or alternatively, to the benefit of the judgment creditor? Where after a judgment against the owner of a vacant lot was docketed and became a lien, the debtor conveyed the property to a purchaser whose search of the title failed to apprise the purchaser of the judgment lien, the purchaser built a new residence on the land, entry of the judgment imparted constructive notice to the purchaser, and though the purchaser improved the property without actual notice of the judgment, the purchaser did not have the requisite good faith to qualify as a good faith improver, and thus the purchaser's interest was subject to the judgment lien. Mooring v. Brown, 763 F.2d 386 (10th Cir. 1985). Award of property to wife in divorce does not deprive the creditor of a judgment lien that attached pre-award against husband from a post-award increase in value. Kinney v. Vallentyne, 15 Cal.3d 475, 478-479, 124 Cal.Rptr. 897, 541 P.2d 537(1975).

6. Owner name variations

Judgments in large numbers are rendered by courts in populous counties. The practical capacity of a person searching and examining the public records to discover the extent to which judgments were filed against a party to a real estate transaction will depend upon whether the records are in searchable condition and the names of the parties to the transaction are commonplace names. For example, there could be numerous individuals, all having the name Robert Smith, in the same populous urban area. When a party to the transaction in a populace locale has a common name, a multitude of judgments will be revealed with the result that the purchaser, their counsel and the title insurer will, at least initially, not be able to ascertain for a certainty whether the judgments are in fact against the other party to the transaction, or alternatively against entirely different persons having the same name as the seller or purchaser.

In some states courts have adopted the rule of idem sonans: The judgment lien is valid if the debtor's name sounds the same as that spelled in the court judgment docket. "The doctrine of idem sonans is that though a person's name has been inaccurately written, the identity of such person will be presumed from the similarity of sounds between the correct pronunciation and the pronunciation as written. Therefore, absolute accuracy in spelling names is not required in legal proceedings, and if the pronunciations are practically alike, the rule of idem sonans

is applicable.” 46 Cal. Jur.3d, Names §4, at p. 110 (footnote omitted). Thus, a judgment against “E. G. Seibert” was a lien against the real property of “Eleanor G. Sibert.” Green v. Meyers, 98 Mo. App. 438, 72 S.W. 128 (1903). Judgments against “Ed. J. Borstad” were liens against the real estate of “Edward J. Borstad.” Stephenson v. Cone, 124 N.W. 439, 440 (S.D. 1910). In contrast, a judgment against “W. Czerionak” was not a lien against the real property of “Walenty Cierniak”, even though the names were idem sonans. Tomczak v. Bergman, 269 Ill. 330, 109 N.E. 1003 (1915). A judgment against “William Duane Elliot” and “William Duane Eliot” was not a lien against the real estate of “William Elliott.” Orr v. Byers, 198 Cal. App. 3d 666, 244 Cal. Rptr. 13 (1988). A judgment against “Edward Davis” was not constructive notice to a bona fide purchaser of a judgment against E.A. Davis or Edward A. Davis. Davis v. Steeps, 87 Wis. 472, 58 N.W. 769 (1894). The practical effect of idem sonans in states where it is followed upon real estate titles is to widen the scope of the search for judgments when a search of the title is made immediately prior to the closing.

7. Community property states

Occasionally, only one of two individuals who are married to each other will be designated as the grantee in a conveyance, and thus will be the owner of record or “titled spouse.” In community property states, a question arises whether the entry of a judgment solely against the name of the title holder’s non-titled spouse constitutes a lien against the real property.

Example:

- April 3, 2012: Mary, who is married to John, purchases real estate and a deed to Mary, grantee, is duly recorded. The property is community property.
- June 25, 2017: A civil judgment in favor of Majesty Bank against John in the amount of \$12,600 is entered.
- March 2, 2018: Mary and John enter into a contract to sell the real estate to Corinne.

Does the judgment against John, the non-titled spouse, constitute a lien against the real estate? The answer depends upon the law of the state where the land is located.

Where after abstract of judgment against husband was recorded but title was held in name of wife only, divorce decree awarded title to wife and ordered husband to convey property to wife, property was subject to liabilities of husband and judgment lien attached; it is no defense that debt was not wife's and that wife was not named party defendant. Drake Interiors LLC v. Thomas, No. 14-13-00349-CV, 2014 WL 2445221 (Tex. App. - Houston May 29, 2014) (not designated for publication). Where after spouses entered into an enforceable marital settlement agreement ("MSA"), husband's judgment creditor obtained a charging order charging property she obtained pursuant to the MSA, though the MSA was not incorporated into the divorce judgment, the judgment could not reach the wife's property because the MSA, which was independently valid, had transmuted the property from community property to her separate property. Litke O'Farrell, LLC v. Tipton, 204 Cal.App.4th 1178, 139 Cal.Rptr.3d 548, 550 (Cal.Ct.App.2012). In Wisconsin, the only state to have adopted the Uniform Marital Property Law, a judgment against the non-titled spouse does not constitute a lien against the marital property if the title thereto is vested of record in the name of the other spouse. §806.15(4), Wis. Stats.

Although state courts often emphasize the primacy of state law in real property issues, federal law will be applied to determine whether liens created by federal law attached to real property of the debtor. Thus, notices of lien for fine and/or restitution imposed pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 constitute a lien against the land regardless the name in which spouse the title is vested. 18 USC §3613(c). As a result, in community property states, a search of the names of both the title spouse and the non-titled spouse is necessary in order to ascertain whether any federal liens exist against the property.

B. Federal Tax Liens

1. Formal requisites

Notices of United States Tax Lien ("federal tax liens") attach to all property *and rights to property* belonging to the taxpayer. 26 U.S.C. §6321. The lien attaches to any property or rights to property acquired while the lien is in effect. Treas. Reg. §301.6321-1. In community property states, in contrast to judgment liens, federal tax liens, because they attach to rights to property, constitute liens against

community property titled solely in the taxpayer's spouse. United States v. Mitchell, 403 U.S. 190, (1971). As a result, the prospective purchaser will strive to determine whether the seller is married, and if so, to ascertain the name of the spouse so that a proper search for federal tax liens against the spouse were filed.

2. Idem sonans

State law is used to determine whether the taxpayer possessed rights in a particular property at the time the tax lien arose. Federal law will determine issues involving whether liens are sufficiently "choate," and how first-in-time, first-in-right principles apply to lienors will be settled. David A. Schmudde, Federal Tax Liens §1.06(c)(2) at 21 (4th ed. 2001). Consequently, idem sonans applies to searches for federal tax liens, as distinguished from searches for docketed judgments. William Plumb, Federal Tax Liens at 62 (1967).

3. Actual knowledge of purchaser

It is possible for any number of reasons that the name of the individual or entity in which title is vested of record is different from the true name of the individual or entity. For example, the corporation identified as a grantee in the conveyance may have since changed its name. In the event that the prospective purchaser or lender is aware of the name change, the purchaser should immediately take steps to cause, or if title insurance was issued notify the title company to cause, a search of the public records for tax liens against both names. On October 17, 2003, Clontz-Garrison Mechanical Contractors, Inc. ("Clontz-Garrison") officially changed its name to CGI Mechanical, Inc. ("CGI"). In March, 2006, the United States filed two notices of United States tax liens against "Clontz-Garrison." In October, 2006, judgment creditor took judgment against "CGI." Although a search in October, 2006 of the name CGI in federal lien index would not have revealed the federal tax liens, because the judgment creditor had actual knowledge that CGI's former name was Clontz-Garrison (the creditor addressed correspondence to "Clontz-Garrison" on several occasions), it should have searched Clontz-Garrison for federal tax liens, and therefore, its judgment was subordinate to the federal tax liens. The Trane Company v. CGI Mechanical, Inc., 2010-2 U.S. Tax Cas. (CCH) ¶150535, 106 A.F.T.R.2d 2010-5463, 2010 WL 2998516 (D.S.C. 2010).

4. Duration of lien

The federal tax lien is valid for a period of ten (10) years from date of assessment. A federal tax lien may be subsequently “re-filed” any number of times. A re-filing, if timely made, will extend for another 10 year period the life of the lien. For federal tax liens filed after October 1, 1984, a re-filing in order to extend the lien period, shall have occurred within a one-year period ending 10 years and 30 days after the date of the tax assessment. 26 U.S.C. §6502(a). A 1984 amendment to §6502(a) extended the limitations period from 6 to 10 years.

Caution must be exercised before it is assumed that the federal tax lien is time barred by the 10-year statute of limitation. In the event that the United States obtains a judgment against the taxpayer within ten years of the assessment, the United States may enforce the tax lien that arose upon the assessment though more than ten years from the date of filing the tax lien has elapsed. United States v. Overman, 424 F.2d 1142 (9th Cir. 1970). When the United States has initiated a proceeding, the statute of limitations contained in §6502(a) is stopped, and the judgment can thereafter be enforced at any time. United States v. Ettelson, 159 F.2d 193 (7th Cir. 1947).

5. Post-attachment disclaimer ineffective

State probate law in many states makes it possible for persons who receive title to real estate by deed from a decedent to disclaim any ownership interest in the real estate. See e.g. §854.13(7)(a), Wis. Stats. However, a disclaimer of an interest in real estate by a grantee against whom a federal tax lien was filed was ineffective in avoiding the federal tax lien, and the federal tax liens remained attached to real estate even after a disclaimer. Drye v. United States, 526 U.S. 1063, 120 S. Ct. 474 (1999).

C. Federal Estate Tax Liens

1. General federal estate tax liens

A lien for federal estate tax is created on the land of a decedent based on the amount of the decedent’s gross estate. From the vantage of a prospective purchaser of the decedent’s estate or heirs, the lien is a secret lien: The federal government need not file or record a lien, and the lien remains valid for ten (10) years from date of death. 26 U.S.C. §6324(a)(1). The lien does not encumber nonprobate property, which although vested in the decedent, was transferred on

death by operation of law, such as property held in joint tenancy or as survivorship marital property. §6324(a)(2).

2. Special federal estate tax liens

In addition to the general federal estate tax lien, the Code provides for two types of special estate tax liens, each of which has a different, variable lifespan. To be valid as against a purchaser or mortgagee, special federal estate tax liens must be filed in the public land records. §6324A(d)(1), §6324B(c)(1). Upon filing in the public land records, the special estate tax liens are in lieu of the general federal estate tax lien, which ceases to attach. §6324A(d)(4), §6324B(c)(1).

a. Special federal estate tax liens under §6324A.

A special estate tax lien may arise under §6166 when payment of tax attributable an interest in a closely held business is deferred pursuant to agreement by the executor to the granting of a lien on designated real estate of the decedent. The lien arises when a notice of lien is filed or the fiduciary is discharged from liability. In contrast to the general estate tax lien that expires ten years after the decedent's death, the special estate tax lien under §6324A may extend beyond ten years, and remains a lien until the tax is paid, hence the lien's variable lifespan. §6166.

b. Special federal estate tax liens under §6324B

A special federal estate tax lien may also attach in the event that the executor elects to value the decedent's farm or other real estate used in a trade or business based on actual use value, in which case the special lien secures the additional estate tax that will become due should the property cease within ten years to be used for the qualified use. §6324B(a). As is the case for special estate tax lien under §6324A, the special estate tax lien under §6324B may extend beyond ten years; moreover, the tax remains a lien until the additional estate tax liability is satisfied or becomes unenforceable by lapse of time, or the IRS is satisfied that no further tax liability may arise, hence the lien's variable lifespan. §6324B(b), (c).

D. Other Federal Liens

1. Judgments of United States district court and United States bankruptcy court

Sec. 28 U.S.C. §1962 provides that if state law requires that a state court judgment be recorded in order to create a lien and authorizes a federal court judgment to be recorded, then the state procedure must be followed to create a federal court judgment lien.

Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.

28 U.S.C. §1962

However, judgments entered in favor of the United States are excluded from this section and are governed by the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. §§3001-3308, effective May 29, 1991.

2. Federal Debt Collection Procedures Act

a. Abstract of judgment

Sec. 3201 of the FDCPA provides that a judgment in a civil action shall create a lien on all real property of the judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under 26 U.S.C. 6323(f). In states that have adopted the Uniform Federal Lien Registration Act, the notices of liens shall be filed in the office of the county as designated by state law in which the real property subject to the liens is situated. The designated office will vary with state law.

b. A Race statute, not a Race Notice statute

Various federal laws provide for entry of judgments in favor of the United States. For example, the effect of a criminal restitution judgment entered in United States district court upon the real property of the defendant is governed by the Anti-Terrorism and Effective Death Penalty Act of 1996, 18 U.S.C. 3613, which provides:

(c) Lien.--A fine imposed pursuant to the provisions of subchapter C of chapter 227 of this title, or an order of restitution made pursuant to sections¹ 2248, 2259, 2264, 2327, 3663, 3663A, or 3664 of this title, is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. The lien arises on the entry of judgment and continues for 20 years or until the liability is satisfied, remitted, set aside, or is terminated under subsection (b).

(d) Effect of filing notice of lien.--Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f)(1) and (2) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid... A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section...

A federal judgment lien has priority over all other liens recorded later in time. Sec. 3613(d) of the FDCPA is a Race statute: As between two contestants for paramount title status, the first person to record prevails, though she had actual knowledge that another person had acquired an interest. Thus, where the United States failed to record its restitution judgment against Chapter 7 debtor prepetition, under Virginia law, on the petition date a bona fide purchaser would have taken debtor's property free of the unperfected restitution lien, despite the

subsequent recording of the lien, and bankruptcy trustee, as hypothetical bona fide purchaser, occupied an identical position, and thus the trustee held good title to the real estate free and clear of the restitution judgment of the United States. Mayer v. United States (In re Reasonover), 236 B.R. 219, 227 (Bankr.E.D.Va.1999). However, most states are Race Notice recording states, not Race recording states. In states that have enacted a Race Notice recording statute, actual knowledge on the part of the first contestant to record that another person had acquired an interest deprives that contestant of paramount title status. Thus, the outcome of a contest between the government contestant under the FDCPA and the other contestant will differ from that which would result were both contestants non-government contestants. Kraettli Q. Eperson, Federal Money Judgment Liens Under the Federal Debt Collection Procedure Act: A 40-Year Super-Lien, 47 Consumer Fin. L. Q. Rep. 352 at 354 (Fall, 1993). Even if the contestant's mortgage was given in good faith at the date of delivery and is recorded before the federal lien, in a Race Notice state in the event that at the time of recording of the mortgage the mortgagee had actual knowledge of fraud of the mortgagor, the mortgagee will not be a good faith mortgagee and his interest will be subordinate to the government. SEC v. Haligiannis, 608 F.Supp.2d 444, 450 (S.D.N.Y.2009).

c. Innocent owner defense

Pursuant to 18 U.S.C. §983(3)(A), an "innocent owner" as to "a property interest acquired after the conduct giving rise to the forfeiture has taken place" is "a person who, at the time that person acquired the interest in the property— (i) was a bona fide purchaser or seller for value ... and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture." Where a co-owner who was the spouse of the defendant against whom the lien was filed did not testify at her husband's trial, there is no basis upon which the Court could ascertain whether or not she has a valid argument that she is an innocent owner for purposes of the statute's exemption, and thus ample evidence from underlying criminal trial that defendant purchased property exclusively with proceeds of his mail and wire fraud and money laundering activities warranted the forfeiture of the real estate. United States v. Real Property Identified As: Parcel 03179-005R, 287 F.Supp.2d 45, 54 (D.D.C.2003).

d. Purchase money mortgages

Under state law, purchase money mortgages are typically accorded priority as against state court judgments that were entered prior to the mortgage recordation. However, under 18 U.S.C. §3613(d) of the FDCPA, judgments in favor of the United States are given priority as against “any purchaser, holder of a security interest, mechanic’s lienor or judgment lien creditor.” Thus, §3613(d) does not except purchase money mortgages from the priority of liens in favor of the United States, and purchase money mortgages are subordinate to such liens in favor of the United States.

e. Federal liens and federal judgments distinguished

It is possible for a certainty to ascertain from a search and examination of the public land records whether a judgment lien in favor of the United States has expired. Sec. 3201(c) provides “a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.” However, it is not possible to ascertain whether the United States will at a future date initiate an action as against the debtor for a new judgment on the debt of a prior judgment in order to revive its lien. Although a lien on debtor’s real estate had expired ten years after the prior judgment, the judgment itself continued, and the United States was free to bring an action to renew the judgment. United States v. Hannon, 728 F.2d 142 (7th Cir. 1984). Michigan’s ten-year limitation period for actions founded upon judgments do not time-bar an action by the United States acting in its governmental or sovereign capacity in acquiring the claim, reducing it to judgment and bringing suit on the judgment. United States v. Peoples Household Furnishings, Inc., 75 F.3d 252 (6th Cir. 1996). Thus, in the event that the debtor remains vested with title to real property, though the judgment in favor of the United States has expired, it is possible that the United States could initiate a suit to revive its lien.

E. Mechanics Liens

1. Laws construed favoring those who furnish labor and materials

State laws providing for the attachment and priority of mechanics liens vary considerably. In some states, mechanics lien laws dictate that prospective real estate investors and homeowners face an ever present potential risk of loss

occasioned by lien claims when acquiring real estate in which work on the site occurred, regardless whether such work or its non-payment is known or suspected by the purchaser. Mechanics liens that pose the greatest risk to real estate investors are those that are “unfiled:” The lien right of the unpaid claimant exists, but on the date that the purchaser or lender that lacks priority is to acquire their respective interests from the grantor, the lien claim was not as yet filed in the public land records. Thus, the mechanics lien may become filed after the new owner becomes vested with title, thus impairing the title and priming the mortgage. In states where mechanics liens are secret liens that attach without any requirement for filing in the public land records, lien laws are based on longstanding public policy favoring builders and, conversely though not deliberately, imperiling consumers and investors who eventually acquire improved property. “It has been consistently held by this court that the lien statutes of this state provide new or additional remedies supplementary to the common-law remedies and that such laws should be liberally construed for the purpose of aiding materialmen and laborers to obtain compensation for materials used and services bestowed upon the property of another enhancing its value.” Roseliep v. Herro, 206 Wis. 256, 260; 239 N.W. 413 (1931) quoting Vilas v. McDonough Mfg. Co. 91 Wis. 607, 65 N.W. 488 (1895); Wiedenbeck-Dobelin Co. v. Mahoney, 160 Wis. 641, 152 N.W. 479 (1915).

2. Duration

Although mechanics lien laws will be liberally constructed to protect the rights of those who furnish labor and materials and who enhance the value of property, a law that mandates compliance rather than a law that is directory only, must be complied with for the mechanics lien to attach. Thus, in Arizona, the lien claimant’s failure to file a lis pendens within the requisite time period resulted in the expiration of the mechanics lien. HCZ Constr., Inc. v. First Franklin Fin. Corp., 199 Ariz. 361, 18 P.3d 155 (App.2001). In Minnesota, the one-year limitation of the lien statutes is no ordinary statute of limitations; it puts a limit to the life and duration of the lien. Bauman v. Metzger, 145 Minn. 133, 138, 176 N.W. 497, 499 (1920). The statute requires that not only filing a complaint, but also making the defendant-landowner a party to the suit—accomplished by serving the defendant-landowner with the summons—must be done within one year. Smith v. Hurd, 50 Minn. 503, 507, 52 N.W. 922, 922 (1892). Where statute provided that action to

foreclose mechanics lien must be filed within twelve months after completion of contract, the date on which the lien claimant and owner agreed that owner would finish the work, the fact that the materials furnished were not used until after the 1-year time period did not extend the time for completion and the mechanics lien expired. Govert Copier Painting v. Van Leeuwen, 801 P.2d 163 (Utah App.1990). The mechanics' lien expired one-year after lien claimant obtained valid extension of lien period, even though action to foreclose lien was commenced during extension period, where no notice of pendency as required by statute was filed within that period. Bianchi Constr. Corp. v. D'Egidio, 165 Misc.2d 973, 976, 630 N.Y.S.2d 904 (1995).

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