



# THE ENFORCER

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## THE MICHIGAN JUDGMENT LIEN ACT

Enforcement remains a difficult area for family practitioners. The financial resources which were available during marriage have been dissipated. Both the lawyers and their clients want to be paid what was agreed upon in the Judgment of Divorce. Filing a Judgment lien would seem to be a prudent and hopefully, helpful way to get paid.

Prior to the passage of the Michigan Judgment Lien Act in 2004, to secure a lien on real property, a creditor was required to first look to the debtor's personal property.<sup>1</sup> A bailiff would proceed under an execution against property entered by the Court. If insufficient personal property was collected under the execution, the bailiff could then record the execution against real property. The Michigan Judgment Lien Act was intended to offer a simplified, cost effective means of enforcing judgments.<sup>2</sup> Similar statutes have been passed in over 40 states and have been met with approval by creditors.<sup>3</sup> Subject to certain glaring limitations, the statute provides a low cost but not necessarily effective tool for creditors to enforce judgments against debtors.

### GETTING STARTED: RECORDING A JUDGMENT LIEN UNDER THE MICHIGAN JUDGMENT LIEN ACT

Under the provisions of the Act, instituting a judgment lien against a debtor's real property may be accomplished in four steps.

First, the creditor must secure a final judgment against the debtor. This Judgment may result from an action in any Michigan court or be certified by a Michigan court if the judgment was made outside of the state.<sup>4</sup>

Second, once a final judgment has been secured, a certified judgment lien notice must be obtained from the clerk of the court where the final judgment was rendered.<sup>5</sup> Of benefit to the creditor is that a Notice of Judgment Lien is not required to contain a legal description of the property.<sup>6</sup>

Third, the creditor must serve the judgment debtor with the certified notice. This may be accomplished in two different ways depending upon the amount of the judgment. If the judgment is in an amount less than \$25,000, service

may be made by certified mail to the debtor's last known address.<sup>7</sup> If the Judgment is in excess of \$25,000 service must be made personally on the debtor.<sup>8</sup>

Finally, the creditor needs to record the certified notice with the register of deeds. The recording is actually in the grantor/grantee index (i.e. it is recorded against the debtor's name rather than his property). The lien attaches to all of the debtor's real estate within the county on the date of recording.<sup>9</sup> In addition, the lien will also attach to any realty which the debtor acquires an interest in thereafter without any further action by the creditor.<sup>10</sup> A recorded lien will remain in effect for a period of five years, at the end of which time it must be re-recorded. Remember that the lien is only perfected in the county in which it is recorded.<sup>11</sup>

### ENFORCING A JUDGMENT LIEN (THE FLY IN THE OINTMENT)

With the judgment lien recorded, it may be enforced only when the debtor sells, transfers, refinances or probates the property subject to the lien. Thus, the creditor does not possess the right to foreclose on the property to satisfy the judgment lien.<sup>12</sup>

Typically, when the property subject to the lien is sold or refinanced, the title company will discover the lien and request a payoff letter from the creditor. The debtor will then produce sufficient funds to satisfy the lien in exchange for discharge of the lien. Where the equity in the property is insufficient to fully satisfy the amount of the lien, a partial discharge will occur.<sup>13</sup> Of particular assistance to creditors caught in this predicament is the fact that a judgment lien does not only attach to one particular piece of property. The lien will still remain in effect on any other property owned by the debtor within the county, and will continue to apply to any property acquired during the life of the lien.

### LIMITATIONS ON ENFORCEMENT

The Michigan Judgment Lien Act makes mention of several situations in which the lien may not be enforced. The most significant limitation on enforcing a judgment lien is the fact that a lien is limited by the amount of equity in the property.<sup>14</sup> For example, where the debtor refinances the property, if he



or she is not using the new mortgage to secure extra cash then the lien will not be enforced. In addition, a judgment lien will not be enforced in most cases where the debtor has filed for bankruptcy<sup>15</sup>, or where the property is held by tenants by the entirety and only one of the spouses is liable for the judgment.<sup>16</sup>

A judgment lien will generally take priority over any other liens recorded afterward, however there are exceptions. Where the property of the debtor is subject to one of the following liens, that lien must be satisfied prior to a Judgment Lien being paid off.<sup>17</sup>

- purchase money mortgage
- mortgage used to refinance or pay off a purchase money mortgage
- construction lien under MCL 500.111
- condominium and other home or property association fees
- federal or state tax liens
- any other lien that takes priority by law.

### CONCLUSION

While a Judgment Lien is subject to various limitations, those restraints are overshadowed by the ease and expense of securing such a lien.<sup>18</sup> Unlike a Writ of Execution, which requires the creditor to hire a certified individual to seize the property and then account the cost of holding the property, a party seeking to secure a Notice of Judgment Lien is only required to pay for certification by the clerk, the cost of service, and the cost of recording the lien. A Judgment Lien is also accommodating in that no personal confrontation between the creditor and the debtor is required nor does it necessitate seizing or holding property. While there are certain limitations, a Judgment Lien may be a relatively inexpensive and hassle free way in which one can enforce a judgement.

### ENDNOTES

1. MCL 600.6004
2. MCL 600.2801-2819
3. Michigan's Judgment Lien Statute: A new collection tool for creditors, Richard E. Kruger
4. MCL 600.2801
5. MCL 600.2805 (1)
6. MCL 600.2805 (2)
7. MCL 600.2805 (3)
8. MCL 600.2805 (4)
9. MCL 600.2803
10. *Id.*
11. MCL 600.2809
12. MCL 600.2819
13. MCL 600.2811
14. *Id.*
15. MCL 600.2809 (6)
16. MCL 600.2807 (1)
17. MCL 600.2807 (2)
18. MCL 600.2805 (1) and (4)

