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Judgment Lien v. Judgment Lien

There are several differences between a lien granted in a judgment (this article will focus on judgments of divorce) and a lien recorded pursuant to the Michigan Judgment Lien Act, M.C.L. 600.2801 et seq. (the "MJLA"). In both situations, a creditor has a lien on a debtor's real property. Accordingly, both may be referred to as "judgment liens." However, there are significant differences between the two, with each having advantages and disadvantages.

A Judgment Lien

It is common for liens to be granted via judgments of divorce.¹ The following is an example of a lien granting provision:

C. Real Property: The marital home located at ... shall be awarded to Plaintiff ... subject to a lien in favor of Defendant as more particularly described herein below ...

IT IS FURTHER ORDER AND ADJUDGED Defendant shall have a lien on the above mentioned marital home, in the amount of ... which shall accrue simple interest at the rate of ... ; said lien shall be payable, in full, upon the occurrence of any of the following:

1. Plaintiff's remarriage or death.
2. Plaintiff's cohabitation with an adult female in a quasim marital situation.
3. The youngest child attains the age of 18 years old or graduates from high school, whichever is later, but not later than the age of 19 1/2 years.
4. The home is no longer used as a primary residence for any of the minor children.
5. Sale of the home.

Upon the first of the above events, Plaintiff shall immediately pay Defendant, in full any balance remaining on his/her lien and in the event s/he fails to do so, the marital home shall be immediately listed for sale and sold to a bona fide purchaser, and Defendant shall be paid his/her lien from the net proceeds of sale.²

This type of lien will hereinafter be referred to as a "JOD Lien."

A Lien filed pursuant to the MJLA

Now compare a lien pursuant to the MJLA:

"Judgment lien" means an encumbrance in favor of a judgment creditor against a judgment debtor's interest in real property, including, but not limited to, after acquired property³

This type of lien is hereinafter referred to as a "MJLA Lien."

Creation

When a creditor obtains a money judgment against a debtor, it does not automatically have a lien on real property of said debtor.⁴ In other words, the judgment does not create the lien unless there is specific lien granting language. The MJLA was created so creditors can secure their money judgment. To secure a money judgment, the creditor must record a notice of judgment lien pursuant to the specific requirements of the MJLA.

A JOD Lien is *created* by the language in the judgment itself. A MJLA lien is in addition to and separate from any other remedy or interest created by law or contract.⁵ So when a JOD Lien is created, it is a separate remedy/interest from a lien created by the MJLA.

The creation advantage of the JOD Lien is that it, unlike a MJLA Lien, it is created contemporaneously with the judgment. On the other hand, it is advantageous that the



MJLA precisely prescribes the steps needed for the creation of a MJLA Lien. Lien language written into a divorce judgment could later be cause for different interpretations and more litigation. Due to the MJLA mandates and form 94, available from the State Court Administrative Office's website,⁶ there is practically zero room for interpretation with a MJLA Lien.

It is also easier to obtain a MJLA Lien since it is a creature of statute. Most often, a JOD Lien is only created when the debtor agrees to it. The creditor does not need the debtor's consent or a separate court finding to obtain a MJLA Lien.

Perfection

A MJLA lien is perfected the same way it is created, by following the procedures described in the MJLA and recording a notice of MJLA Lien. A JOD Lien is perfected⁷ by recording a certified copy of the judgment itself after its entry (preferably immediately after its entry) in the register of deeds of the county where the real property is located. A JOD lien can also be recorded pursuant to the MJLA. Another way to perfect a JOD Lien, is to specifically reserve the lien in the deed conveying the real property from husband to wife. Depending on the circumstances, this could work with other liens granted via judgments as well.

The MJLA Lien has the perfection advantage because it is perfected at the same time it is created. There is only one step as opposed to the process of perfecting a JOD Lien where it is necessary to ensure the judgment itself is recorded. If the JOD lien is not recorded, it will be unprotected against subsequent recordees in the chain of title.

Priority

For policy reasons, there are a variety of subsequently perfected security interests that rise above a MJLA Lien in priority.⁸

The JOD Lien, if properly perfected,⁹ will have priority over subsequently recorded encumbrances,¹⁰ unless those encumbrances are accorded priority by operation of law or other statutes such as the Construction Lien Act, M.C.L. 570.1101 et seq.

Enforceability

Another important difference is that the judgment will (or should) provide ways to enforce the lien like requesting the court order the property sold or foreclosure. A MJLA Lien cannot be foreclosed upon.¹¹ It will follow the real property while it is valid but payment cannot be forced.

In most cases, a JOD Lien will be created to attach to a specific piece of real property. A MJLA Lien is effective against all real property of the debtor, including property acquired after its creation.¹² The creditor with the JOD Lien must utilize the MJLA procedures to attach a lien to other real property.

Conclusion

Due to the various characteristics of each lien, it is important to know the difference. You should be able to recognize which one your client has or needs so you can ensure it is properly created, perfected and advise your client of enforcement methods. In this author's opinion, a properly drafted and perfected JOD lien is always preferable to a MJLA Lien.

Endnotes

1. *Walworth v. Wimmer*, 200 Mich. App 562, 564; 504 NW2d 708 (1993).
2. This language was taken from an actual Judgment of Divorce with minor changes to reflect gender neutrality.
3. M.C.L. 600.2801(c).
4. *George v. Sandor M. Gelman, P.C.*, 201 Mich. App 474, 506 NW2d 583 (1993).
5. M.C.L. 600.2817.
6. <http://courts.michigan.gov/scao/courtforms/generalcivil/gcindex.htm>
7. A JOD lien can also be recorded pursuant to the MJLA. It is better to record the judgment itself when the lien is granted therein. This is due to the statute of limitations for the enforcement of each lien which will be addressed in a future article.
8. M.C.L. 600.2807(2).
9. M.C.L. 552.104: A certified copy of any decree granted in a suit for divorce may be recorded in the office of the register of deeds of any county in this state.
10. Michigan is a race-notice state. See M.C.L. 565.29.
11. M.C.L. 600.2819.
12. M.C.L. 600.2803.

