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Understanding Liens and Garnishments

This article explores what you need to do to enforce your claims after you have gone to court to enforce a debt. It describes the operation of liens-claims against property of the debtor-and garnishments-a legal process of attaching the debtor's property such as bank accounts, accounts receivable or wages to satisfy your claim.

Garnishments are typically used after you've won in court and need to reach debtor's assets.

WHAT IS A LIEN?

A lien is a legal claim that comes into effect by operation of the law. A lien attached to property and can create serious legal consequences. In many cases, a creditor who holds a lien can have property sold to satisfy the lien

Consequences of Liens

A lien is merely a claim until it is enforced. However, the mere presence of a lien can have serious consequences. For example, the presence of a lien attached to real estate will normally make the property unsalable until the lien is removed. Buyers normally want to avoid buying a property with a lien. For this reason a title insurance company will not insure the legal title of the property with an outstanding lien.

Execution

If the owner did not pay off the lien, the creditor can force the matter by executing the lien and having the property sold. Although filing a lien is complicated, it is generally less complicated than going to court and suing. For this reason, the use of liens can be quite effective. Filing a lien varies depending on the state in which you live. You should consult a local attorney for help in enforcing a lien.

COMMON TYPES OF LIENS

There are number of common types of liens.

1. Property tax liens
2. Income tax liens
3. Mechanic's liens
4. Artisan's liens
5. Judgement Liens



Tax Liens

Property tax liens are imposed by taxing authorities. Additionally, the state and federal government often attach tax liens when income or business tax go unpaid. The government can also execute against the property to have it sold after a statutory period of time.

Mechanic's Liens

In most states, a party who has rendered services or material to improve real property and has not been paid can normally attach a mechanic's or artisan's liens on the property. Generally, a lien can be imposed only on the property that is benefitted by the materials or service. In many states the lien attached when the materials and supplies are delivered, not when the lien is actually filed.

Artisan's Liens

An Artisan's lien is one that is imposed on personal property. Personal property is property other than real estate or things attached to it. Furniture, equipments, and vehicles are considered personal property. Like Mechanic's Liens, Artisans's Liens are designed to protect workers who render services and cannot easily recapture the value of their services.

Judgment Liens

A judgement lien is one that comes into effect after a party has won a lawsuit. However, the lien does not arise automatically; the winner must take affirmative steps for the lien to attach. Generally, you will need the services of a lawyer to properly record a judgement lien.

Forcing a Sale

The holder of a lien can enforce the lien and ultimately have the property sold. The proceeds of the sale would go first to pay the expenses of the sale, and then to satisfy the outstanding debt. If there is a deficit-if the sale proceeds fell below the amount of the lien-the debtor normally would still be liable for the unpaid balance of the debt. Mere execution and sale of the property will not by itself extinguish a legal debt.

LIEN PRIORITIES

Sometimes there is more than one lien attached to property. This is the area covered by lien priorities. It can be messy, but it becomes more complicated if you need to find out if the debtor will be paying your bill. It is important to understand how lien priority rules operate.



Reconciling Competing Claims

The law provides a set of rules to impose some order in this process. Generally, the rule about priorities is “first in time, first in right.” The first lien to be filed takes priority over the others. In other words, the law protects the rights of those who act promptly! when liens are concerned, if you sit idly by, you may get left out when the debtor's bills are finally paid off.

Special Priorities

Certain type of liens get higher priorities; in some states, mechanic's liens and artisan's liens relate back to the start of work, rather than the time the liens were actually filed. This allows the mechanic's liens to go to the front of the line for payment. The special priority rule can be a great advantage to the tradesperson if other liens have been filed after the start of work.

Effect of a Bankruptcy Filing

The lien priority rules operate even after a debtor has filed for bankruptcy. In other words, even in bankruptcy the lien with most seniority will be entitled to recovery first.

GOVERNMENT LIENS

The most important type of government lien is a tax lien. Tax liens are imposed by various levels of government agencies. Government liens are also imposed in connection with worker's compensation claims. Government liens generally enjoys no special priority and must compete against private liens when the two conflict.

COMPETING INTEREST

Liens and security interests compete against one another when they coexist. The resolution of this problem will hinge on the priority of the security interest verses the lien.

Necessity of Filing

A security interest is normally “perfected” by filing a document with the state called a “Financing statement.” This is sometimes referred to “UCC Form.” However, when consumer goods are sold there is “automatic perfection” without the need to file a financing statement. Consumer goods are goods valued at under \$2,500 that will be used for personal, family, or household use. When consumer goods are sold, a security interest will be considered to be perfected at the date of the sale. Accordingly, the security interest's relative priority will be determined by the sale date.

WHAT IS GARNISHMENT?

A garnishment is a legal process in which a creditor attaches wither wages or a bank account from a debtor once a debt has been established. To protect the public, there are a number of legal restrictions involving wage garnishment.



GARNISHING WAGES

Wages are garnished after a creditor has obtained a court order that orders an employer to pay a portion of an employee wages directly to the creditor. Obviously wage garnishments are effective only when a debtor is an employed individual. When a business debtor is involved, a wage garnishment will be ineffective. Another disadvantage of wage garnishments is that they are limited in amount by law.

FEDERAL RESTRICTIONS OF WAGE GARNISHMENTS

Because the obvious hardship imposed on the debtors, the Federal Consumer Credit Protection Act has established certain limits on how garnishments operate and also limits the amount of wages that may be garnished. Generally, the amount of wage garnishment may not exceed the lower of either of the following:

1. 25% of take-home pay
2. The amount by which the employee's weekly pay exceeds 30 times the highest current minimum hourly wage.

An employer may not fire an employee who's wages are garnished. The Act also prohibits employers from discriminating against an employee who have had their wages garnished.

GARNISHING BANK ACCOUNTS

A creditor with a judgement needs to execute against the debtor's assets. This is not simple if the debtor want to protect the assets. Occasionally a sophisticated debtor will make garnishment impossible. A skilled debtor who loses a lawsuit will quickly change banks, emptying out old accounts, and will use cash machines in supermarkets to make deposits and withdrawals to keep the bank identity secret.

For this reason, creditors should always keep a copy of a customers first check. The check will have the customer's name and address on it and will also have the name and address of the customer's bank and all-important account number. Armed with this information, the garnishment will go much smoother for the creditor.

To find out more about how credit and collections works in the economy, and how to better manage the credit functions in your business, call us today at (661) 810-2446 or visit us on-line at www.azarandassociates.com