

## Judgment Liens and Lien Enforcement for Collection of Money Judgments a summary

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*Please understand that the information discussed in this Article is general in nature and is not intended to be legal advice. It is intended to assist owners and managers in understanding this issue area, but it may not apply to the specific fact circumstances or business situations of all owners and managers. You may need to consult applicable state and local laws. For specific legal advice, consult your attorney.*

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### Creation of the Lien

A judgment creditor lien perfects the money judgment against property of the judgment debtor. If the judgment debtor fails to voluntarily satisfy the judgment, a judgment lien can be utilized to obtain proceeds of the sale of the lien property, or in some cases, cause the Sheriff to sell the lien property.

### Creation of the Real Property Lien

To create a judgment lien against real property, the judgment creditor typically obtains an Abstract of Judgment from the court that issued the judgment. The Abstract of judgment lists information about the judgment creditor, the judgment debtor and the amount of the judgment. The judgment creditor then records the Abstract of Judgment with the County Recorder in the county in which the judgment debtor owns real property. Usually the judgment lien is then satisfied from the sale proceeds when the judgment debtor sells the real property. In the meantime, the judgment creditor has a lien against the property (which in effect secures payment of the judgment) and the outstanding balance of the judgment increases due to the addition of statutory interest on the amount of the judgment which remains unsatisfied.

### Creation of the Personal Property Lien

To create a judgment lien against personal property, the judgment creditor typically files a notice of judgment lien with the Secretary of State where the judgment debtor resides. The judgment lien notice contains information about the judgment creditor; the judgment debtor; the date, court of issuance and amount of the judgment; and the date that a copy the notice was sent to the judgment debtor.

A judgment lien against personal property of the judgment debtor is typically effective against property upon which a security interest may be perfected, such as accounts receivable, chattel paper, equipment, farm products, and negotiable documents of title. As with a real property lien, typically the judgment is satisfied from the sale proceeds when the judgment debtor sells property that is subject to the lien, but this method can be cumbersome to enforce.

### Enforcement of the Lien

Under execution and levy, property of the judgment debtor is taken and sold with the proceeds of the sale delivered to the judgment creditor. The judgment creditor must take a series of legal steps which include involving the county Sheriff to perform the levy of property.

### Enforcement of the Real Property Lien

Under an execution and levy, the judgment debtor is forbidden from selling or refinancing the real property without payment of the lien, since under California law, real property of the judgment debtor which is transferred without satisfaction of the judgment is transferred subject to the lien. This means that if the lien is not satisfied prior to the transfer being made, the property remains subject to the lien in the hands of the transferee. Failure to satisfy the lien results in the lien remaining on the judgment debtors property until payment in full, so a title company will require payment during close of escrow. If the judgment creditor does not wish to wait for sale or refinance, then the real property may be sold, in conjunction with a court order and a sale by the County Sheriff, providing there is some demonstrated equity in the property.

### Enforcement of the Personal Property Lien

The first step is for the judgment creditor to obtain a Writ of Execution. A Writ of Execution is issued the Clerk of the Court where the judgment was obtained and states information about the judgment creditor, the judgment debtor and the judgment itself, and directs the local Sheriff or Marshal to enforce the judgment together with interest and allowable costs.

The next step is to deliver the Writ of Execution to the Levying Officer (usually the Sheriff where the property is located) together with instructions on what property is to be levied. Examples of typical property subject to levy include:

- equipment & inventory;
- money in a deposit account;
- property held in a safety deposit account;
- personal property owned by the judgment debtor in the judgment debtor's possession;

- personal property owned by the judgment debtor in a third party's possession;
- a vehicle or vessel owned by the judgment debtor;

Upon levy, the Levying Officer delivers to the judgment debtor a copy of the Writ of Execution, a notice of levy and a form listing exemption to levy. The Levying Officer then takes such property into his/her possession and waits a period of time to allow the judgment debtor to file a claim of exemption. If the judgment debtor does not file a claim of exemption (or if the claim of exemption is denied), the property is sold at a public auction and the proceeds delivered to the judgment creditor. This process may be conducted serially, until the judgment is satisfied, or until (unexempt) assets are depleted.

There are alternative, more complicated, proceedings for possession of accounts receivables, intangible assets or proceeds from an entered or pending money judgment obtained by the judgment debtor against a third party.

After receiving her a B.S. in Finance and her J.D. from the University of San Francisco in 1988, Catherine Robertson has provided collection, bankruptcy and pre-judgment remedy solutions for the clients of Pahl & McCay. She is a partner at Pahl & McCay, and has been rated A-V (highest professional and ethical rating) by Martindale-Hubbell. Should you require expertise or assistance in collecting an outstanding obligation, please consider Pahl & McCay.