

**New Jersey
N2K Hour:
Judgments**

**Webex Presentation:
May 9, 2023**

stewart title[®]

Real partners. Real possibilities.™

What is a Judgment Lien?

- In a civil case a judge or jury will render a verdict that may result in a money judgment. Often, after a verdict, a defendant/debtor fails to pay the judgment. The result of the defendant/debtor's failure to pay the money judgment may lead to a judicial lien.
- Sometimes a judgment may arise in a criminal case, such as a case involving criminal restitution or fines, owed, to the US government that will result in a judicial lien.
- A judgment gives a creditor the right to satisfy its lien by taking possession of a debtor's real or personal property via execution upon the lien if the debtor fails to pay the money judgment.
- Today, we are addressing judicial liens that arise primarily as a result of a lawsuit and not statutory liens or consensual liens, sometimes referred to as voluntary liens.

The Nature and Extent of Judgment Liens in New Jersey:

- **Entry of the Judgment:** Once entered on the N.J. Superior Court's Civil Judgment and Order Docket, a judgment becomes a statewide lien on all the judgment debtor's property located in New Jersey owned by the debtor at the time of entry of the judgment or any property acquired thereafter. N.J.S.A. 2A:16-11 and R. 4:101.
- **Duration:** Pursuant to N.J.S.A. 2A: 14-5 a judgment lien in New Jersey is valid for a period of 20 years on all property owned by the debtor in the State. The judgment may be revived for an additional 20-year period provided the judgment remains unpaid in full or in part and the creditor files a timely motion to revive before the expiration of the original 20-year period.

The Nature and Extent of Judgment Liens in New Jersey (continued):

- The 20-year period begins from the time the court issues the judgment not the date of entry on the Civil Judgment and Order docket with the Clerk of the Superior Court. Judgments entered in favor of the United States also have a 20-year duration. It is a lien on all property owned at the time of entry and any after acquired property.
- **Vacation of Judgments:** A judgment may be vacated by filing a motion to vacate judgment. Once it is vacated it is no longer a lien. As a result, once the judgment is vacated and then reentered later, the judgment does not relate back to the original date of entry. Ct. R. 4:50 sets forth the grounds for relief from a judgment or order.

The Nature and Extent of Judgment Liens in New Jersey (continued):

- **Foreign Judgments:** The Uniform Enforcement of Foreign Judgments Act, N.J.S.A. 2A:49A-25, permits a judgment, decree, or order of the United States or of any other court, which is entitled to full faith and credit in New Jersey, to be filed with the Clerk of the Superior Court.
- The Clerk of the Superior Court will treat the foreign judgment in the same manner as a judgment of the Superior Court of New Jersey.
- A sister-state judgment is entered in New Jersey upon the filing of authenticated copies with the Clerk of the Superior Court and the filing of an affidavit from the creditor.

The Nature and Extent of Judgment Liens in New Jersey (continued):

- **Judgments entered in the US District Courts:** Pursuant to 28 U.S.C. §1962, judgments entered in the U.S. District Court of New Jersey are a lien on the debtor's property in NJ the same as a New Jersey Superior Court Judgment.
- It is a lien in the same manner and to the same extent and would be for a duration of 20 years.
- The same applies for a U.S. District Court Judgment from a different district. It may be docketed in the U.S. District Court for the district of NJ and have the same effect as a N.J. Superior Court judgment.

The Nature and Extent of Judgment Liens in New Jersey (continued):

- **Judgments entered against Government Entities:** A judgment lien may be entered against NJ municipalities including county governments; however, a judgment creditor may not attempt to enforce the judgment through execution on such a judgment as long as the municipality is in title.
- Once title is conveyed from the municipality to a private entity, the private entity will take subject to the judgment and at that point, the judgment creditor may attempt to enforce the judgment.

The Status and Relationship of Parties and the effect of Judgment Liens:

- **CO-OWNERS:** If property is owned as tenants in common, a judgment entered against fewer than all co-tenants will only constitute a lien on the interest of the debtor tenant. In a tenant in common situation, If the judgment debtor co-tenant dies, the judgment must still be satisfied prior to conveyance or refinance.
- If property is owned as joint tenants or as tenants by the entirety and the judgment debtor tenant predeceases the other co-tenant, the lien of the judgment is extinguished against the property. If the reverse occurs and the debtor tenant or spouse survives, the judgment lien must be satisfied upon conveyance or refinance.

The Status and Relationship of Parties and the effect of Judgment Liens:

- N.J.S.A. 46:3-17.4 states that neither spouse may sever, alienate, or otherwise affect their interest in a tenancy by the entirety during the marriage or upon separation without the written consent of both spouses.
- Furthermore, under New Jersey law, in a tenant by entirety situation, judgment creditors cannot force a partition and sale of property owned by spouses as tenants by entirety.
- However, property held by co-tenants as tenants in common or as joint tenants is subject to partition.

The Status and Relationship of Parties and the effect of Judgment Liens:

- **FIDUCIARIES:** If a judgment lien is entered against a person in their capacity as a fiduciary, it is not a judgment against them individually. The opposite is also true: if a judgment is entered against a person individually, it is not a judgment against that person in their capacity as a fiduciary.
- **PARTNERSHIPS AND LLC:** The same may be said for Partnerships and Limited Liability Companies. A judgment lien against a partner in his or her capacity as a partner in a partnership or a member in his capacity as a member in an LLC is not a lien on their personal property.

The Status and Relationship of Parties and the effect of Judgment Liens

- **LEASEHOLDS:** Under N.J.S.A. 46:8-5 the estate of any lessee of real estate, for a term of not less than two years, wherein the lease has been recorded in the manner prescribed by law, shall be liable to sale under a judgment or decree, in like manner as estates of freehold are liable to be sold thereunder.
- **Life Estate:** a judgment lien will attach to a life estate interest, but will be extinguished upon the death of the life tenant.

The Status and Relationship of Parties and the effect of Judgment Liens

- **CONTINGENT AND EQUITABLE INTEREST**: Pursuant to N.J.S.A. 46:3-7, estates of expectancy, i.e., estates or interests that will vest in the future, like contingent or equitable interest, are not subject to judgment execution and therefore judgment liens will not attach to such interests.
- Thus, certain interests such as contingent remainders, beneficiaries in a trust, and marital interests such as dower, courtesy and the right to joint possession are not subject to judgment execution.

Child Support Judgments

- Child support judgments once docketed with the Clerk of the Superior Court, have the same force and effect, and enjoy the same priorities as a civil money judgment entered by the court. N.J.S.A. 2A:17-56.23a.
- Child support obligations continue until a child reaches the age of 19; however, they may continue until the child reaches the age of 23 and beyond with exceptions made in extreme circumstances (e.g., medical disability).
- Like other judgments entered in the Superior Court, some title insurers take the position that child support judgments expire after 20 years; however, the obligation may continue thereafter.

Child Support Judgments (cont.)

- When an obligor's child support arrears are equal to or greater than one month's support obligation and 45 calendar days have elapsed since the entry of the order, a child support judgment is filed electronically through the NJ Superior Court's database. This is known as an arrearage judgment and may be in addition to a separate child support order.
- N.J.S.A. 2A:17-56.23b, also known as the New Jersey Child Support Lien Law (CSLL), a child support judgment shall be a lien against the net proceeds of any settlement of a lawsuit, civil judgment, civil arbitration award, inheritance or Workers' Compensation award.

Certificate of Debt

- The NJ Division of taxation takes action on overdue tax liabilities against taxpayers by what is called a Certificate of Debt (COD). It is the primary vehicle in the tax debt collection process.
- A COD is a tax lien that is filed with the Clerk of the New Jersey Superior Court to secure a tax debt.
- A COD has the same force and effect as a Docketed Judgment adjudicated in any court of law. N.J.S.A. 2A:16-11.1
- Once a COD is secured, a warrant of Execution is utilized to conduct a levy enforcement action, such as bank levies or placing liens against motor vehicles.
- In order to satisfy the COD, the debtor must obtain a Warrant of Satisfaction from the collection/judgment unit by paying off the tax lien.

Recognizance (Bail Bonds)

- A recognizance is an obligation of record entered into before a court or magistrate requiring the performance of an act under the penalty of a money forfeiture.
- The act required is usually the defendant's appearance in court, and a recognizance is acknowledged in NJ as a lien on real estate.
- N.J.S.A. 2A:14-29 notes the limitation of lien on a civil recognizance and states that if there are no actions or proceedings to enforce or collect the bond within a period of 6 years from the date of filing, the lien will no longer attach to the real property.
- If the recognizance has not lapsed, then it must be discharged of record by the Superior Court Clerk.

Recognizance (Bail Bonds) (cont.)

- A recognizance can be discharged by court order upon proof of compliance with the conditions thereof or disposition/settlement of the case, or the expiration of time which is six years from the time of filing.
- A federal recognizance will usually be disclosed in an Upper Courts search as a judgment if it was entered by the United States District Court and may have a duration of more than six years.
- If a recognizance is not disclosed in your judgment search, you must request a representation from the seller or borrower in the Affidavit of Title that there have been no recognizances entered against them.

Institutional Liens

- An institutional lien secures the repayment of debts to public hospitals, and has a duration of 20 years. N.J.S.A. 30:4-80.3.
- For over 80 years, state law required state and county psychiatric hospitals to file a lien against all former patients for the full cost of their care and maintenance, regardless of the patient's ability to pay.
- However, on March 24, 2005, Acting Governor Codey amended N.J.S.A. 30:4-80.1 et. seq. by ending the practice of filing these liens against former psychiatric patients.

Institutional Liens (cont.)

- The law extinguished all previously filed liens and allowed former patients to request that the state or county psychiatric hospital file a certificate of discharge of the lien.
- The 2005 amendment to the law extinguished all previously filed liens that were based on treatment at a psychiatric facility. This amendment was effective both retroactively and prospectively.
- However, under the 2005 amendment not all institutional liens were abolished, only those that were related to treatment conducted in psychiatric hospitals.
- As a result, all institutional liens filed after 2005 are presumed to be non-psychiatric and must be cleared.

Institutional Liens (cont.)

- Currently, an institutional lien can still be filed as a certificate of debt and appear on your upper court search or can be reduced to a claim for judgment if the hospital or medical facility files an action in NJ Superior Court and filed on the Clerk's Civil Judgment and Order Docket,
- Please note that if parties hold title as tenants in common, an institutional lien will not be extinguished by the death of the debtor.
- As a result, an institutional lien must still be discharged or satisfied if it comes up in your search.

Federal Judgment Liens

- A money judgment can be obtained by the U.S. government against a debtor.
- The most common money judgment is usually obtained by the IRS under the Federal Debt Collection and Procedures Act.
- Although a federal tax lien is effective for 10 years, and 30 days from the date of assessment, a federal judgment lien is effective for 20 years and, with court approval, may be renewed once for an additional 20 years.
- The U.S government can also obtain a restitution judgment in certain circumstances, where a convicted offender may be ordered to reimburse the government for financial losses incurred due to the offender's crime.

Judgments in Bankruptcy:

- It is a common misconception that judgments discharged in bankruptcy also extinguish the judgment lien and that the real property passes through bankruptcy free from the lien.
- Unfortunately, this is not the case. The discharge only releases the debtor from personal liability on the debt but not the lien. There are, however, a couple methods wherein a judgment lien may be voided.
- First, a lien may be discharged in the US Bankruptcy Court under 11 USC §522(f) if within one year of the date of the discharge, the debtor obtains an Order specifically discharging the lien of the judgment.

Judgments in Bankruptcy (continued):

- Lien avoidance under 11 USC §522(f) is permitted for avoiding liens to the extent the liens impair the debtor's exemption rights. The lien must conflict with a bankruptcy exemption you can take under federal law or the laws of New Jersey; the lien cannot be a result of child support or alimony obligations; and, the lien must be a judicial lien
- Second, a lien may be discharged in the N.J. Superior Court, if more than one year from the date of the discharge in bankruptcy has passed, the debtor must file a motion in the county to discharge the lien of the judgment, in the underlying action giving rise to the judgment, seeking an Order of the Superior Court pursuant to N.J.S.A. 2A:16.49.1.

Judgments in Bankruptcy (continued):

- Lien avoidance under N.J.S.A. 2A:16.49.1, as stated above, one year must have elapsed since the discharge; the debt must have been scheduled in the bankruptcy petition; the debt must be dischargeable' and, if avoidable, the trustee could have avoided the judgment lien during the bankruptcy proceedings if such motion had been made.
- Third, 11 USC §363(f), subject to the satisfaction of certain statutory criteria, gives a bankruptcy trustee, pursuant to court order, the power to sell debtor's property free and clear of liens, including judgment liens. The court order must specifically list the liens which the property is to be sold "free and clear".

Judgment Lien Priority

- NJ is a race-notice jurisdiction, so judgment liens will enjoy priority over other liens and mortgages if they are filed first in time; so, the relative dates of recording determine priority.
- Any judgment liens that are direct hits against the seller on a purchase transaction or against the borrower on a refinance will need to be satisfied.
- Judgment liens against a purchaser on a purchase transaction are treated differently.
- Pursuant to N.J.S.A. 46:9-8, a purchase money mortgage will enjoy priority over any previous judgment filed of record against the purchaser.

Satisfaction of Judgments

- Once a judgment has been paid, a creditor will issue a warrant of satisfaction. Pursuant N.J. Ct. R 4:48-1 upon satisfaction of a judgment a warrant will be executed and delivered to the party making satisfaction or the party's attorney, where it is then sent to the Clerk of the Superior Court for recording and directing the Clerk to satisfy the same of record.
- The warrant may be executed by anyone entitled to receive satisfaction or by the attorney of record in the action. Additionally, the warrant of satisfaction must be e-filed. In 2017, the NJ Supreme Court made it mandatory that all documents filed with the Superior Court, Law Division, be filed electronically.
- In the alternative, a judgment lien may be released or postponed. Also, a judgment debtor may be able to obtain an assignment of a judgment.

Satisfaction of Judgments (cont.)

- Under N.J. Ct. R. 1:4-10, the assignee may become the party of record by filing the assignment of judgment with Clerk of Superior Court. The assignment of judgment must be executed by the judgment creditor or by a prior assignee and acknowledged.
- If a judgment creditor cannot be located or refuses to accept payment or refuses to issue a warrant of satisfaction in exchange for payment, the court rules provide a mechanism to satisfy a judgment.
- N.J. Ct. R. 4:48-3 allows for the Court to accept payment of the judgment amount along with interests and costs and to mark the judgment satisfied.

Underwriting Considerations

- When a judgment in our search appears to be a direct hit against our property, the judgment must be satisfied prior to closing.
- One alternative option we can consider is establishing an escrow for that specific judgment or judgments in order to move forward with closing.
- If the judgment is against a prior owner of the property, or the parties have difficulty in contacting the creditor for a Warrant of Satisfaction, our underwriting counsel will review the amount of the judgment, and determine an escrow based on the amount of the judgment and the date in which the judgment was filed of record.

Underwriting Considerations

- Please always contact your underwriter when determining an escrow for a specific judgment, or if that judgment should be omitted from your search.
- If the parties do not wish to hold an escrow for a direct hit judgment, then we require a Warrant of Satisfaction for the judgment prior to closing.
- Judgments may be omitted based upon the New Jersey Underwriter's Treaty if the Seller presents a valid current owner's policy.
- The current owner's policy liability limits will determine what size judgment the treaty may be relied on.

Summary

- In NJ, most judgment liens are for a duration of 20 years, so your judgment search must always go back 20 years for a current owner or prior owner in title.
- An upper courts judgment search will disclose judgments, liens, and bankruptcies filed in the N.J. Superior Court, the U.S. District Court for N.J. and the U.S. Bankruptcy Court for N.J., so you must always order this search on every transaction.
- Be careful when reviewing bankruptcies in connection with judgment liens on your search, since judgment liens are not automatically extinguished in a bankruptcy proceeding.
- Lastly, please contact your underwriter when determining an escrow for a specific judgment or judgments.

stewart title

Real partners. Real possibilities.™

www.VUwriter.com

stewart title

Real partners. Real possibilities.™

www.VUwriter.com

The screenshot shows the Stewart Title Virtual Underwriter website. At the top, there is a navigation bar with links for "Select Location", "Recently Viewed", "Terms of Use", and "State Laws and Customs Toolkit". Below this is a search bar and a navigation menu with items: "Forms", "Bulletins", "Real Estate Practices" (circled in blue), "Standard Exceptions", "Underwriting Manual", and "Special Alerts". The main content area features the heading "Everything you need." followed by a paragraph: "With VU, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week. [Click here](#) for a tutorial." To the right of this text is an image of several books. Below the text is a "Keyword Search" section with an input field containing "Example : Absentee" and a "Find it" button. Below the input field are three radio button options: "All of these words" (selected), "This exact phrase", and "Any of these words". To the right of the search section is a "Select a Location" section with a dropdown menu labeled "Select a state".

Virtual Underwriter

stewart title

Real partners. Real possibilities.™

NJUWing@Stewart.com

