

**MARYLAND LAND TITLE ASSOCIATION
UNDERSTANDING JUDGMENTS AND LIENS**

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Note: The questions and answers for this exam are based on the text that follows as well as the “Judgment and Lien” chart attached to these written materials.

UNDERSTANDING JUDGMENTS AND LIENS

Title insurance professionals tend to think of judgments and liens as being synonymous. However, not every judgment is a lien, nor is every lien a judgment. A judgment is simply a court’s final determination of a legal controversy. A “money judgment,” on the other hand, is a judgment determining that a specified amount of money is immediately payable to the judgment creditor. Section 11-401 (c) of the Courts and Judicial Proceedings Article. With a certain exception, the entry of a money judgment does not, automatically, create a lien on the debtor’s land.

A lien, on the other hand, is a debt or obligation that is secured by land. This means that the creditor has a right to use legal means to seize and sell the land of the debtor, in payment of the debt or obligation. Liens come in two varieties: the specific lien and the general lien. As the name infers, a specific lien is a lien that attaches to a particular piece of land, such as a mortgage, deed of trust, real property taxes or a mechanic’s lien. A general lien attaches to any land then owned, or subsequently acquired, by the judgment debtor. Examples would be money judgments and state and federal tax liens.

Whether a money judgment constitutes a lien, depends upon the applicable statutes or Maryland Rule. For example, with the exception of Baltimore City, money judgments entered in the Maryland District Courts do not become liens on the judgment debtor’s land, solely upon the entry of the judgment in the case. In order for a Maryland District Court judgment to become a lien, a Notice of Lien must be filed in the Circuit Court for the County where the land is located. Maryland Rule 2-621(c). However, money judgments entered in the District Court for Baltimore City automatically become liens upon any lands of the judgment debtor located in Baltimore City. Maryland Rule 3-621(b). No additional filing in the Baltimore City Circuit Court is required.

In Maryland, a money judgment entered in a State court is effective for 12 years from the date of the entry of the judgment, or its most recent renewal. Maryland Rule 2-625. If renewed before the expiration of the original 12 years, the renewed judgment receives an additional 12 year enforcement period. However, the “12 year” rule does not apply to judgments in favor of the State of Maryland, nor to judgments entered in favor of United States. Judgments in favor of the State of Maryland have an indefinite duration. Section 5-102(c) Courts and Judicial Proceedings Article. Judgments in favor of United States fall under the Federal Debt Collection Procedures Act of 1990 and have a twenty-year duration.

Other types of liens are created by statutes and have enforcement periods that often differ from the familiar “12 year” rule. For example, federal tax liens entered on and after November 5, 1990, have a ten-year enforcement period, running from the date of the assessment of the tax (which, ordinarily, will not be the same date as the lien recording date). Federal tax liens may also be renewed for an additional ten-year period, through a refiling procedure. The assessment date and last date to refile are indicated on the federal tax lien in columns (d) and (e).

In general, Maryland State tax liens arise on the date of notice that the taxes are due, and continue until the lien is satisfied or released. Section 13-806(a) of the Tax-General Article. However, some attorneys and title insurance professionals believe that Maryland State tax liens are subject to the “12 year” rule. Specifically, Section 13-808 of the Tax-General Article provides that, once filed, Maryland tax liens have “the full force and effect of a judgment lien,” leading to the belief that the general, “12 year” rule should apply. The Maryland Court of Special Appeals declined to decide the issue in Rossville Vending v. Comptroller, 114 Md. App. 346 (1997), because the tax obligation at issue in the case was well within a 12 year period. (See footnote 4 in the case).

Other examples of liens are shown on the attached Judgment and Lien chart. The chart includes information on the applicable enforcement periods and other comments.

Determining whether or not a lien attaches to real property also requires an understanding of the manner in which persons hold title to property as co-owners with one another. When married persons acquire title, the law presumes that they hold the land as tenants by the entireties. Brewer v. Bowersox, 92 Md. 567 (1901). Of course, this legal presumption can be rebutted by a contrary indication in the deed. For example, married persons often hold title as tenants in common, for estate-planning purposes. A money judgment, (as well as most other liens) entered against one spouse in a tenancy by the entireties does not attach to the land. This general rule, however, was overridden, recently, with respect to federal tax liens. In the U.S. v. Craft case, decided on April 17, 2002,

the U.S. Supreme Court held that a federal tax lien against one spouse does attach to the property rights of that spouse in the tenancy by the entireties property. However, this novel view of spousal property rights has not been applied to other forms of money judgments and liens in Maryland.

Holding title in a joint tenancy offers limited protection against liens. Although the entry of a money judgment, alone, against one owner in a joint tenancy does not sever the joint tenancy and does not attach to the property as a lien, a judgment creditor can easily sever the joint tenancy by executing upon the judgment via a sheriff's sale. In order to create a joint tenancy, each joint tenant must receive his or her interest at the same time, pursuant to the same title deed. Each joint tenant must hold the same undivided interest (e.g., one joint tenant cannot hold a 25% interest with another holding a 75% interest) and each must have the same right to possess the property. Joint tenancies are fragile. In Maryland, there is a presumption against joint tenancies. Section 2-117 of the Real Property Article. Likewise, any act by an owner in a joint tenancy indicating a desire to end, or sever, that owner's interest as a joint tenant, will have such an effect. For example, the following acts, if undertaken by one owner in a joint tenancy would sever such owner's interest as a joint tenant, making the owner a tenant in common with the other (former) joint tenant or the remaining joint tenants, as the case may be: executing a deed, contract of sale, lease or mortgage; filing a bankruptcy petition; signing an agreement to break the joint tenancy and/or similar agreements to treat the property in a manner inconsistent with the existence of a joint tenancy. On the other hand, the joint action of all joint tenants does not, ordinarily, have the effect of severing or ending the joint tenancy. For example, if all joint tenants execute a deed of trust, the joint tenancy is preserved.

Holding title as tenants in common provides absolutely no protection against liens. A judgment lien or other lien entered against the tenant in common, attaches to be fractional interest owned by that tenant in common in the property.

JUDGMENT AND LIEN CHART

REVISED 07/21/03

<u>TYPE OF JUDGMENT OR LIEN</u> <u>Judgments</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
(1) State Court Judgments (Md Rule 2-625, §5-102 Courts Article)	<ul style="list-style-type: none">• 12 years from date of entry of judgment or most recent renewal.	<ul style="list-style-type: none">• 12 year limitation does not apply to judgments in favor of the State of Maryland or U.S.A.
(2) Judgments in favor of the United States (28 USC §3001, et seq.)	<ul style="list-style-type: none">• 20 years from date of filing of the copy ("abstract") of judgment in the Circuit Court.• One renewal period of additional 20 years available if Court approves and Notice of Renewal is filed.• Judgments in favor of U.S. entered since 6-1-1981 are also effective for 20 years from original filing date.	<ul style="list-style-type: none">• Statute specifically preempts State law, such as Maryland's purchase money mortgage statute.• Statute allows for tenancy by entireties protection if exemption is claimed and allowed by Court.
(3) Judgments in favor of the State of Maryland (§5-102, Courts Article)	<ul style="list-style-type: none">• No limitation.	<ul style="list-style-type: none">• Applies to State agencies and entities.

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<p style="text-align: center;"><u>Tax Liens</u></p> <p>(4) Federal Tax Lien (26 USC §6322)</p>	<ul style="list-style-type: none"> • 10 years from date of assessment per notice of lien filed in Circuit Court (old rule had been 6 years). See column (d) of notice of tax lien. • Note - IRS may refile within time period provided in notice of tax lien, column (e) • Current 10 year rule does not extend life of federal tax liens with previous 6 year limitations and which expired prior to 11-5-1990 	<ul style="list-style-type: none"> • Federal tax lien against one spouse in a tenancy by the entirety <u>does</u> attach to the property per <u>U.S. v. Craft</u>, 535 U.S. 274 (2002), decided on April 17, 2002. • Generally has priority over all liens, with certain exceptions. • Purchase money mortgage statute not pre-empted. • Subsequently filed federal tax lien may take priority over certain "future advances" under an earlier recorded line of credit.
<p>(5) Maryland Tax Liens (§13-806, Tax-General Article)</p>	<ul style="list-style-type: none"> • Indefinite period: "until satisfied or released . . . " 	<ul style="list-style-type: none"> • Notice of lien must be filed in Circuit Court to be effective against a "purchaser, holder of security interest, mechanic's lienor or judgment creditor". (§13-807, Tax-General)

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<p style="text-align: center;"><u>Death Tax Liens/Claims</u></p> <p>(6) Federal Estate Tax Liens (26 USC §6324)</p>	<ul style="list-style-type: none"> • 10 years from date of decedent's death. • Attaches to gross estate of decedent. • No filing requirement. • Other rules apply re: deferrals and special valuations. 	<ul style="list-style-type: none"> • <u>No</u> protection for bona fide purchasers and lenders of probate assets. • An I.R.S. waiver, release or closing letter/discharge of Personal Representative liability letter, indicating that taxes are paid is required to pass good title; otherwise, an escrow of all proceeds.
<p>(7) Maryland Inheritance Tax Liens (§13-806 (b), Tax-General Article)</p>	<ul style="list-style-type: none"> • 4 years from date of distribution. • Special rule for co-tenancies and life estates; period begins upon succession of interest(s) to surviving co-tenant/remainderperson, i.e., prior deaths of co-tenants/distributions to surviving co-tenants do not trigger running of limitations period. • Other rules apply re: special valuation. 	<ul style="list-style-type: none"> • Notice of lien must be filed in Circuit Court to be effective against a "purchaser, holder of security interest, mechanic's lienor or judgment creditor." (§13-807, Tax General)

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<p style="text-align: center;"><u>Death Tax Liens/Claims</u></p> <p>(8) Maryland Estate Tax Liens (§13-806(a), Tax-General Article)</p>	<ul style="list-style-type: none"> Indefinite period: "until satisfied or released . . ." 	<ul style="list-style-type: none"> Notice of lien must be filed in Circuit Court to be effective against a "purchaser, holder of security interest, mechanic's lienor or judgment creditor." (§13-807, Tax General)
<p>(9) Valid Claims Against Decedent's Estates (§8-103 and §10-103, Estates and Trusts Article)</p>	<ul style="list-style-type: none"> As against estate property distributed to distributees, 3 years from date of death or 1 year from time of distribution, whichever is later. 	<ul style="list-style-type: none"> Bona fide purchasers from distributees are protected. §9-106(c), Estates and Trusts. Bona fide purchasers from Personal Representatives are protected. §7-404, Estates and Trusts
<p>(10) Maryland Property/Foreign Estate: Inheritance Taxes (§5-505, Estates and Trusts)</p>	<ul style="list-style-type: none"> 4 years from date of death 	<ul style="list-style-type: none"> No specific protective provision for bona fide purchasers.
<p>(11) Maryland Property/Foreign Estate: Claims (§5-503, Estates and Trusts)</p>	<ul style="list-style-type: none"> 12 years from date of death 	<ul style="list-style-type: none"> Sale of property by a Personal Representative converts claim to lien against proceeds of sale; property will then be free of such lien.

TYPE OF JUDGMENT OR LIEN

Miscellaneous Liens

(12) Mechanics' Liens
(§9-109, Real Property Article)

LIMITATION PERIOD

- Petition to Enforce must be filed within one year of date when Petition to Establish is filed. (Most pleadings, however, include both the Petition to Establish and Petition to Enforce.) If Petition to Enforce is so filed, and is granted, the right to enforce continues until "conclusion of enforcement proceedings."

COMMENTS

- Filing of Petition to Establish creates a *lis pendens* and prevents later purchaser or lender (our insureds) from being "bona fide." Later purchaser and/or lender will not be protected from possible lien.
- "Stay" of proceedings pending arbitration does not release lien. Arbitration may result in establishment of mechanic's lien.
- Lien and/or possible lien can be discharged by filing of bond with Court.

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<p style="text-align: center;"><u>Miscellaneous Liens</u></p> <p>(13) Commercial Real Estate Broker's Liens (§14-308, Real Property Article)</p>	<ul style="list-style-type: none"> • Petition to Enforce must be filed within one year of date when Petition to Establish is filed. (Most pleadings, however, include both the Petition to Establish and Petition to Enforce.) If Petition to Enforce is so filed, and is granted, the right to enforce continues until "conclusion" of enforcement proceedings." 	<ul style="list-style-type: none"> • Applies to land and improvements used, or intended to be used, for nonresidential purposes. • Filing of Petition to Establish creates a <i>lis pendens</i> and prevents later purchaser or lender (our insureds) from being "bona fide." Later purchaser and/or lender will not be protected from possible lien. • "Stay" of proceedings pending arbitration does not release lien. Arbitration may result in establishment of broker's lien. • Lien and/or possible lien can be discharged by filing of bond with Court.
<p>(14) Contract Liens (Condo and/or H.O.A. Liens) (§14-204, Real Property Article)</p>	<ul style="list-style-type: none"> • Action to foreclose recorded lien must be brought within 3 years following recordation of the Statement of Lien. 	<ul style="list-style-type: none"> • Bond may be filed with Court to allow release of Lien.

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<u>Mortgages, Deeds of Trust, Financing Statements, etc.</u>	<ul style="list-style-type: none"> • If an action to foreclose/enforce lien has not been brought within: <ul style="list-style-type: none"> ~ (A) 12 years following last payment date/maturity date in mortgage/deed of trust or amendment and no Continuation Statement has been filed, OR ~ (B) 40 years following recording date of mortgage/deed of trust, if last payment date/maturity date cannot be ascertained and no Continuation Statement has been filed, OR ~ (C) 12 years following recording date of last Continuation Statement and no later Continuation Statement has been filed, <u>the lien is terminated and extinguished.</u> 	<ul style="list-style-type: none"> • Continuation Statements will be filed by <u>current</u> mortgagee/beneficiary; check grantee index on name of original borrowers.
(15) Mortgages/Deeds of Trust (§7-106(c), Real Property Article)		

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<u>Mortgages, Deeds of Trust, Financing Statements, etc.</u>	<ul style="list-style-type: none"> • For fixture filings: 5 years from date of filing of Financing Statement. • For a Financing Statement in a manufactured home transaction: 30 years from date of filing. • Continuation statements (which may be filed within six months before the expiration of the five-year or 30-year periods, as applicable) extend the effectiveness of the Financing Statement for a period of 5 years commencing on the day on which the financing statement would have become ineffective. • Unless continued, all Financing Statements filed pre-July 1, 2001 will lapse on the earlier of: (1) the date on which they would have lapsed under the pre-July 1, 2001 "12-year rule," or (2) June 30, 2006. • Release or partial release of mortgage/deed of trust also terminates/partially releases the 	
(16) Financing Statements (§9-515 and 9-705, Commercial Law Article and §3-105(i), Real Property Article.)		

related Financing Statement as to the fixtures described therein.

<u>TYPE OF JUDGMENT OR LIEN</u>	<u>LIMITATION PERIOD</u>	<u>COMMENTS</u>
<u>Mortgages, Deeds of Trust, Financing Statements, etc.</u>	<ul style="list-style-type: none"> No release required. 	<ul style="list-style-type: none"> A Covenant Not To Encumber or Convey does not create a lien on real property and is not recordable. (<u>Equitable Trust Co. v. Imbesi</u>, 287 Md. 249 and 73 Op. A.G. 1988)
(17) Covenant Not To Encumber Or Convey		

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**Maryland Land Title Association
Examination: Understanding Judgments and Liens**

On the Answer Sheet----please mark the statements as true or false:

- 1) ___ A judgment in favor of the United States expires 12 years from the date of entry of the judgment.
- 2) ___ With respect to a mechanic's lien, the filing of a petition to establish the lien creates a *lis pendens*.
- 3) ___ The word "lien" is synonymous with the word "judgment."
- 4) ___ A joint tenancy requires that each joint tenant own the property in equal proportions.
- 5) ___ A federal tax lien entered against one spouse in a tenancy by the entirety does not attach to that spouse's interest in the property.
- 6) ___ A federal estate tax lien attaches to the gross estate of the decedent and there is no filing required to create the lien.
- 7) ___ With respect to a Contract Lien, a bond may be filed with the Court to allow release of the lien.
- 8) ___ A money judgment entered in the Maryland District Court for Baltimore City automatically becomes a lien against all property of the judgment debtor located in Baltimore City.
- 9) ___ Federal tax liens cannot be renewed
- 10) ___ If all joint tenants jointly sign a refinance deed of trust, the joint tenancy is severed.

- 11) ___ When married persons acquire title, the law presumes that they intend to hold as tenants by the entireties, unless the deed provides to the contrary.
- 12) ___ All attorneys and title professionals agree that a Maryland State tax lien is only enforceable for a 12- year period.
- 13) ___ A specific lien is a lien that attaches only to a specific property.
- 14) ___ A Maryland Inheritance Tax lien runs for four years following the date of distribution.
- 15) ___ A judgment creditor can easily sever a joint tenancy by executing on the judgment via a sheriff's sale.
- 16) ___ There is no such thing as a "Commercial Real Estate Broker's Lien."
- 17) ___ A release of a deed of trust also terminates the related financing statement, as to the fixtures described therein.
- 18) ___ When a joint tenant files a bankruptcy petition, such an action has the effect of severing the joint tenancy as to the filing joint tenant.
- 19) ___ Maryland has adopted the Supreme Court's decision in the Craft case, with the result being that an ordinary money judgment against one spouse in a tenancy by the entireties now attaches to that spouse's interest in the property.
- 20) ___ A "covenant not to encumber or convey" does not create a lien on real property.

Answer Sheet

Examination: Understanding Judgments and Liens

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