

An Overview of Liens and Judgments

Sam Liberto

Business Development Representative



FEDERAL LIENS

- Federal Tax Liens
- Federal Estate Tax Liens
- Federal Judgment Liens

Federal Tax Liens

- Federal Tax Liens: 26 U.S.C.A. § 6321 et seq
- Not applicable until filed in the county where the property is located
- Once filed, attaches to:
 - (1) all real property owned by the taxpayer at the time the lien is filed; and
 - (2) all real property acquired anytime thereafter until expiration of the lien
- Valid for 10 years and 30 days from the date of the assessment, but may be refiled for additional 10 year periods. 26 U.S.C.A. § 6502(a)
- The enforcement period may be tolled by bankruptcy
- Exception: IRS has stated that a purchase money deed of trust has priority over a previously filed federal tax lien. Rev. Ruling 68-57, 1968-1 C.B. 553.

Federal Tax Liens (con't)

Releases of Liens dated August 5, 2007

- Systems error at the Internal Revenue Service resulted in the preparation of Releases of Federal Tax Liens that should not have been prepared – these were dated August 5, 2007
- IRS believes no erroneous Releases were sent directly for recording, however many labeled “Taxpayer Copy” were mailed to taxpayers
- Follow-up letters were supposed to be sent by the IRS to taxpayers receiving an erroneous Release informing that the tax obligations remain outstanding and the liens had not been released
- Result - do not rely on any Releases of Federal Tax Liens dated August 5, 2007 and labeled “Taxpayer Copy”, regardless of whether it’s recorded in the land records or presented by the property owner as evidence of release
- Even if it is not labeled “Taxpayer Copy”, be cautious with any Release of Federal Tax Lien dated August 5, 2007 - contact the IRS to confirm the Release is valid

Underwriting Guidelines

Federal Tax Liens

- When insuring a conveyance or encumbrance:
- Determine if federal tax lien has been filed against the owner, or any previous owner in the chain of title – if so:
 - Require payoff and/or release of the lien; or
 - Include an exception in the Commitment and Policy for the lien
- Determine if a federal tax lien has been filed against the purchaser – if so:
 - For a Lender's Policy insuring Purchase Money Deed of Trust, no exception required
 - For the Owner's Policy, and any other Lender's Policy, list lien as an exception in the Commitment and Policy

Federal Estate Tax Liens

26 U.S.C.A. § 6324(a)

- Referred to as a “special tax lien”
- Attaches as of the date of death of the decedent
- Attaches without an assessment or demand
- Attaches to all property constituting the gross estate of the decedent
- Attaches for 10 years without the necessity to file a Notice of Lien
- Separate notice may be filed to extend the lien beyond 10 years
- Called a “silent lien” - no assessment , no demand and no Notice of Lien

Federal Estate Tax Liens (con't)

- Bona Fide Purchasers take title subject to a federal estate tax lien. See Detroit Bank v. U.S., 63 S.Ct. 297 (1943); U.S. v. Vohland, 675 F.2d 1071 (9th Cir. 1981)
- The exemption amount is set pursuant to 26 U.S.C.A. § 2010(c)(3) at \$5,000,000, plus an inflation adjustment for years after 2011
 - 2011: \$ 5,000,000
 - 2012: \$ 5,120,000
 - 2013: \$ 5,250,000
 - 2014: \$ 5,340,000
 - 2015: \$ 5,430,000
 - 2016: \$ 5,450,000
 - 2017: \$ 5,490,000

Underwriting Guidelines

Federal Estate Tax Liens

- Where the record owner is deceased, or insuring a title which is dependent thereon:
 - Determine if the property is subject to a federal estate tax lien
 - Determine the gross value of the entire estate
 - Review the probate proceedings and determine if an Order of the Court indicates the size of the gross estate and whether any estate tax is due
 - Examine the inventory and appraisal documents in the probate proceeding
 - Obtain an Opinion Letter addressed to Old Republic from Counsel representing the decedent's estate stating the gross estate valuation - be sure the letter opines that no tax is due because the gross estate is not large enough to incur an estate tax obligation
- Remember: the sales price or the Policy Amount does not determine whether an estate tax lien exists
- If the gross value of the entire estate is less than the Federal Estate Tax Exemption Amount, no exception needed

Underwriting Guidelines

Federal Estate Tax Liens (con't)

- If (1) the gross value of the entire estate exceeds the Federal Estate Tax Exemption Amount, or (2) you are not able to determine whether or not it does, then either:

- Include the following Exception in the Commitment and Policy:

“Item __. The lien of any federal estate tax by reason of the death of _____, a former owner of the Land.”

OR

- Obtain a Release from the IRS. 26 U.S.C.A. § 6325

OR

- Obtain proof of payment of the Federal Estate Taxes

OR

- Obtain a copy of the Federal Estate Tax Return (Form 706) stamped Filed by the IRS; verification of payment of the tax (cancelled check, etc.); and verified audit from the IRS showing no additional tax due (if less than 3 years has elapsed since the payment of the tax)

Federal Judgment Liens

- Judgment liens (other than federal tax liens) in favor of the United States: 28 U.S.C.A. § 3001 et seq
- “United States” includes its agencies, departments, commissions, boards, and other entities and instrumentalities
- Examples:
 - Judgments rendered in federal drug seizures or federal racketeering cases (e.g. Department of Justice Notice of Lien for Fine and/or Restitution Imposed Pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996)
 - Judgments resulting from defaults on student loans guaranteed by the Federal Government
 - Deficiency judgments in foreclosure cases on loans guaranteed by an entity of the Federal Government
 - Judgments rendered on environmental suits by the Environmental Protection Agency

Federal Judgment Liens (con't)

- Not applicable against purchasers or encumbrancers until filed in the county where the property is located.
- Once filed, attaches to:
 - (1) to all real property owned by the person at the time the lien is filed; and
 - (2) all real property acquired anytime thereafter until expiration of the lien
- Valid for 20 years from the initial filing of the judgment in the land records and may be refiled for additional 20 year periods. 26 U.S.C.A. § 3201(c).
- The enforcement period may be tolled by bankruptcy.

Federal Judgment Liens (con't)

- Has priority over any other lien or encumbrance that is perfected later in time. 28 U.S.C.A. § 3611(b)
- Unlike with federal tax liens, purchase money mortgages do not have priority over judgment liens in favor of the United States
- Foreclosures where a judgment lien in favor the United States should be reviewed very carefully - must be a judicial foreclosure and the United States must be a party and given proper notice
- Even with a judicial foreclosure and proper notice the United States has a one year period following the foreclosure to redeem the property. 28 U.S.C.A. § 2410(c)

Underwriting Guidelines

Federal Judgment Liens

- When insuring a conveyance or encumbrance:
 - Determine if a judgment lien in favor of the United States has been filed against
 - The Owner; or
 - Any previous owner in the chain; or
 - The purchaser
 - If so, require payoff and/or release of the lien
or
 - Include an exception in the commitment and policy

TENNESSEE STATE LIENS

- Tennessee State Tax Liens
- Tennessee Judgment Liens

Tennessee State Tax Liens

- Tax Enforcement Procedures Act: Tenn. Code Ann. § 67-1-1401 et seq.
- Not applicable until filed in the county where the property is located. Tenn. Code Ann. § 67-1-1403.
- Once filed, attaches to:
 - (1) all real property owned by the taxpayer at the time the lien is filed;
 - (2) all real property acquired anytime thereafter until the taxes are paid or the lien expires
- Valid for 10 years from the date of the assessment and may be renewed. Tenn. Code Ann. § 67-1-1403(f).
- NOTE: Unlike the IRS, the State of Tennessee takes the position that a Purchase Money Deed of Trust does NOT have priority over a previously filed state tax lien



Underwriting Guidelines

State Tax Liens

- When insuring a conveyance or encumbrance:
 - Determine if the state tax lien has been filed against
 - The Owner; or
 - Any previous owner in the chain; or
 - The purchaser
 - If so, require payoff and/or release of the lien
or
 - Include an exception in the commitment and policy

Tennessee Judgment Liens

- Does not become a lien on real property of the judgment debtor until filed in the Register's Office. Tenn. Code Ann. § 25-5-101
- For judgments filed after May 17, 2000, attaches as a lien for 10 years. Tenn. Code Ann. § 25-5-105(a)
- May be renewed
- Penalty for failure to release a satisfied judgment lien
- A lienholder that refuses to release a satisfied judgment lien within fifteen (15) days after written demand is liable for the penalty under § 66-25-102 (failure to release a mortgage after payment). Tenn. Code Ann. § 66-21-106

Underwriting Guidelines

Tennessee Judgment Liens

- When insuring a conveyance or encumbrance of property:
 - Determine if a judgment lien has been filed against:
 - the owner, or
 - any previous owner in the chain of title
 - If the lien has not expired:
 - require payoff and/or release of the lien; or
 - list the lien as an Exception in the Commitment and Policy

Underwriting Guidelines

Tennessee Judgment Liens (con't)

- Determine if a judgment lien has been filed against the purchaser:
 - For the lender's policy insuring a purchase money deed of trust, no exception is required
 - A Purchase Money Deed of Trust will have priority over a previously filed judgment lien against the purchaser. *Guffey v. Creutzinger*, 984 S.W.2d 219 (Tenn. Ct. App. 1998); *Marks, Shell & Maness v. Mann*, 2007 WL 1341766 (Tenn. Ct. App. 2007)
 - For the owner's policy, and any other lender's policy:
 - Require payoff and/or release of the lien; or
 - List the lien as an exception in the Commitment and Policy
- For transactions with either a buyer or seller with a common last name, provide that party's social security along with your title order - will allow the abstractor to eliminate bankruptcies and other matters



Common Scenario 1

- A judgment lien is filed against purchaser in 2005. Purchaser buys property in 2007 and desires to refinance this mortgage in 2010.
- The Purchase Money Deed of Trust has priority over the judgment lien; however, any subsequent refinance or sale will be subject to the judgment lien. ATS, Inc. v. Kent, 27 S.W.3d 923 (Tenn. Ct. App. 1988).
- In the refinance transaction, the judgment must be paid and/or released or the title insurance policies will include an exception for the judgment.

Common Scenario 2

- A judgment lien is filed against purchaser in 2005. Purchaser is buying property and wants to structure the loan as an 80/20 loan, secured by a first and second deed of trust.
- The Purchase Money Deed of Trust concept only applies to the first deed of trust.
- The first deed of trust could be insured without exception for the judgment lien.
- The Second Deed of Trust and Owner's Policy would contain exceptions for the judgment.

Common Scenario 3

- A judgment lien is filed against owner. Owner files for bankruptcy and is discharged. Owner wants to sell the property.
 - The judgment lien remains a lien against the real property even after a discharge in bankruptcy.
 - Exception: where there has been an adversary proceeding during the bankruptcy and the Court enters an order avoiding the specific lien, the property will no longer be subject to the lien.
- Options:
 - Review the bankruptcy proceeding to determine if there is an order stating that the judgment lien in question was cancelled; or
 - Require payoff and/or release of the lien; or
 - List the lien as an exception in the commitment and policy.

Common Scenario 4

- Owner is deceased. Heirs want to sell the property.
 - Liens against the heir attach when the heir inherits the property.
 - Be sure to provide all of the names of the heirs to the abstractor so that he or she can search for liens.
- If a lien is found:
 - Require payoff and/or release of the lien; or
 - List the lien as an exception in the commitment and policy.

THANK YOU

Sam Liberto

Business Development Representative

T: 901.761.2030 | F: 901.683.8646 | C: 901.634.3838

sliberto@oldrepublictitle.com

Old Republic National Title Insurance Company

5865 Ridgeway Center Parkway Suite 104 | Memphis, TN 38120

OldRepublicTitle.com

