

Study #D-300

5/27/80

First Supplement to Memorandum 80-31

Subject: Study D-300 - Enforcement of Judgments (Judgment Liens on Real Property)

Further review of the provisions relating to judgment liens on real property causes the staff to recommend some changes in the draft statute attached to Memorandum 80-31.

The rule stated in Section 697.390 should be limited to determining priority of two or more judgment liens on property acquired by the judgment debtor after the liens have been created by recording with the county recorder. Accordingly, the staff suggests that Section 697.390 be included as a subdivision of Section 697.380.

The draft does not state adequately the effect of a subsequent transfer or encumbrance of the judgment debtor's interest in real property subject to a judgment lien. We propose that a new section be added to deal with this situation and that subdivision (d) of Section 697.350, which is continued in the new section, be deleted.

The specific changes to be made in the draft statute are set out in Exhibit 1 attached.

Respectfully submitted,

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Executive Secretary

EXHIBIT 1

REVISIONS OF DRAFT STATUTE ON JUDGMENT LIEN ON REAL PROPERTY

Delete subdivision (d) of Section 697.350 and last paragraph of
Comment to that section

The substance of this subdivision is continued in new Section
697.390 infra.

Add the following new subdivision to Section 697.380:

(c) For the purposes of this section, the priority of a judgment lien that becomes a lien on an interest in real property acquired by the judgment debtor after the recording of the abstract of judgment or the certified copy of the judgment is determined as of the time the abstract of judgment or the certified copy of the judgment was recorded with the county recorder to create the judgment lien.

Add the following at the end of the Comment to Section 697.380:

Subdivision (c) changes the rule under former law. Under former law, judgment liens on after-acquired property of the debtor in a county where two or more abstracts of judgments had been recorded were granted the same priority, but the creditor who acted first by levying upon and selling the property under execution was given priority over the other judgment liens. See *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190, ___ (1919).

Delete draft Section 697.390 and insert the following new section:

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§ 697.390. Effect of transfer or encumbrance of interest subject to judgment lien

697.390. If the judgment debtor's interest in real property that is subject to a judgment lien is transferred or encumbered without satisfying the judgment lien:

(a) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.310 in the same amount as if the interest had not been transferred or encumbered.

(b) The interest transferred or encumbered remains subject to a judgment lien created pursuant to Section 697.320 in the amount of the lien at the time of transfer or encumbrance plus interest on such amount.

Comment. Section 697.390 states rules governing judgment liens on interests in real property that have been transferred or encumbered.

Under Subdivision (a), the lien on the property interest transferred remains a lien in the same amount as is provided by

subdivision (a) or (b) of Section 697.350 and includes interest that accrues and costs that are added to the judgment after the transfer. Under subdivision (a), the judgment lien has priority over any subsequent encumbrance in the same amount as is provided by subdivision (a) or (b) of Section 697.350 and this priority extends to interest that accrues and costs that are added to the judgment after the encumbrance of the interest. Subdivision (a) is consistent with prior case law. See, e.g., Kinney v. Valentine, 15 Cal.3d 475, 479, 541 P.2d, 537, ___, 124 Cal. Rptr. 897, ___ (1973).

Subdivision (b) provides a special rule derived from portions of former Sections 674.5 and 674.7 applicable to the transfer of property subject to certain installment judgment liens. Subdivision (b) makes clear that interest accrues on the judgment lien for matured but unsatisfied installments where property is transferred or encumbered subject to the judgment lien. However, unmatured installments that fall due after the transfer or encumbrance and additional costs added to the judgment after the transfer or encumbrance are not added to the amount of the judgment lien on the property transferred or to the amount of the judgment lien given priority over the encumbrance.

Section 697.390 deals only with the situation where the transfer or encumbrance is made after the judgment lien is created. However, if the transfer is in fraud of the creditor, the creditor may follow the property into the hands of the transferee even if the transfer took place before the judgment lien attached. See, e.g., McGee v. Allen, 7 Cal.2d 468, 473, 60 P.2d 1026, ___ (1936); Liuzza v. Bell, 40 Cal. App.2d 417, 429, 104 P.2d 1095, ___ (1940). The same reasoning would require that preference be given to the judgment lien where an earlier encumbrance was in fraud of the creditor.