

Memorandum 80-31

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

This memorandum considers several policy issues regarding judgment liens on interests in real property. A revised staff draft of the judgment lien provisions is attached hereto along with an explanatory text. (The letters referred to were previously sent to you as exhibits to Memorandum 79-29 and the Second Supplement thereto--if you need another copy, please let the staff know.)

§ 697.310. Creation and duration of judgment lien on real property generally

Subdivision (c) of this section makes clear that certain judgments payable in installments are a lien for the full amount of the judgment. These judgments are municipal court judgments ordered payable in installments pursuant to Section 85 and vehicle damage judgments under Vehicle Code Section 16380. Since the installment feature of such judgments is for the benefit of the judgment debtor, the security of the judgment creditor should not also be reduced. Draft Section 697.350(b) makes clear that the lien may not be enforced for the full amount, however, unless the court so orders.

§ 697.320. Judgment lien for installments under support judgment or judgment against health care provider

This section continues the substance of existing law regarding installment judgments for support and against health care providers. Note that the procedure for renewing the lien under subdivision (b) is distinct from that provided for judgment liens in general under draft Section 697.310(b). This difference in renewal procedures results because ordinary money judgments have to be renewed under the recommendation at least every 10 years or they become unenforceable. Installment judgments covered by Section 697.320, however, may continue to accrue according to their terms after 10 years. In order to reduce the procedural burden, the judgment creditor is permitted to renew the lien under such judgments merely by rerecording the judgment.

Assembly Bill 3412 (a copy is attached as Exhibit 1) was recently introduced to specify that an order pendente lite under the Family Law

Act for the payment of money to a party or the party's attorney may be recorded to create a judgment lien. It is not clear to the staff that this bill would make a significant change in existing law. It also appears to overlap with Section 674.5 governing judgment liens under installment judgments for support. We will further investigate this matter and propose to add clarifying language where appropriate in the judgment lien provisions or perhaps in the Family Law Act to accomplish the intent of AB 3412.

§ 697.330. Judgment lien for worker's compensation award

This section governing judgment liens for workers' compensation awards is new.

§ 697.340. Interests subject to judgment lien

This section implements decisions made at the January 1980 meeting concerning the interests to be reached by a judgment lien. In particular, the judgment lien is extended to the interest of a buyer under an executory contract of sale, contingent interests, and leasehold interests of at least two years' term. Under existing law, the judgment lien reaches only real property owned by the judgment debtor, which has been strictly construed to mean present legal interests. A beneficiary's interest in a trust in real property would not be subject to a judgment lien, as previously decided by the Commission. A separate procedure has been approved for creating a lien on trust assets or otherwise applying them to the satisfaction of a judgment.

§ 697.350. Amount of judgment lien

This is a new provision. The general principle reflected in this section governing the amount of judgment liens is that the lien should be for the amount due on the judgment without the necessity of additional recordings. Accordingly, interest is automatically added to the lien as it accrues and costs are added to the lien when the costs are added to the amount of the judgment through the memorandum or motion procedure.

Subdivision (d)(1) applies this principle where property is transferred subject to a lien for lump-sum money judgment. The property in the hands of the transferee will be liable for the full amount of the judgment. We considered fixing the lien in the amount due at the time of transfer, but this alternative was confusing since there would be two

lien amounts. In addition, it was difficult to apply the amount of partial satisfactions in situations where costs and interests have been added to the judgment after transfer. Since a purchaser of property subject to the lien is speculating to some degree, and has presumably reduced the purchase price to take account of the lien, it makes more sense to continue to add costs and interest.

Subdivision (d)(2) applies a different rule where property is transferred subject to a lien for an installment judgment for support, against a health care provider, or for worker's compensation. Since the judgment itself continues to accrue in these cases, it is inequitable to continue adding installments to the judgment lien after transfer. Ordinarily, the transferee will insist that matured installments be satisfied before the property is transferred and amounts maturing after transfer should be a lien on the property because it is no longer owned by the judgment debtor.

§ 697.360. Effect of modification of judgment

This section is a new provision to deal with the question of the amount of the lien in a case where the judgment is modified in amount or time of payment. Basically, it requires a new recording in order to increase the amount of the lien or accelerate the time of payment from what appears in the records.

§ 697.380. Priority of judgment liens generally

This section is new. It determines priority by the time of creation of the lien regardless of whether the lien is created under a lump-sum judgment or an installment judgment. Of course, in the case of an installment judgment only the amounts actually due have a priority, but all matured installments have the priority determined by the time of recording.

§ 697.390. Priority of judgment lien on after-acquired property

Section 705.490 in the tentative recommendation prorated proceeds from the sale of property subject to liens of equal rank, such as where the property is acquired by the judgment debtor after two or more abstracts have been recorded in a county. Two writers commented that they preferred the existing case law rule that gives a priority to the first lienor who executes on the property. (See Exhibit 10, p. 2; Exhibit 22,

p. 2.) Another person suggested that the first to record should have priority even in after-acquired property. (See Exhibit 13, p. 20.) The staff draft of Section 697.390 grants priority to the first to record. We see no reason to alter the general priority rules of first in time, first in right just because of the time of acquisition of the property. If "vigilance" were to be the determining factor, it makes no sense to apply it only where property is acquired after the creation of two or more liens in a county. To reward "vigilance" in such cases encourages a race to obtain a writ and levy on the property even where the creditor would otherwise be content to rely on the judgment lien.

Procedure for Discharge of Judgment Lien

Section 705.470 in the tentative recommendation permitted the judgment debtor to seek the discharge of a judgment lien if the property is to be sold. In effect, it provided an execution and exemption procedure instigated by the judgment debtor. Comments on this proposal were mixed. Several persons opposed it; others approved the general idea but suggested quite a few modifications in the procedure as drafted. The staff recommends that this procedure be deleted because its utility has been eliminated by the revision in the proposed dwelling exemption. The procedural burdens on the parties would be significant in relation to the \$7,500 proceeds exemption the debtor would be entitled to upon transfer of the property. The procedure also required the judgment creditor to expend time and money by showing the value of the property in order to preserve the lien.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL

No. 3412

Introduced by Assemblyman McVittie

March 18, 1980

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 674 of the Code of Civil Procedure, relating to judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 3412, as introduced, McVittie (Jud.). Judgments: liens.

Under existing law, an abstract of judgment, if recorded with a county recorder, becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county in which the abstract of judgment is recorded.

This bill would specify that an order pendente lite made pursuant to the Family Law Act shall be considered a judgment for purposes of creating such lien upon real property.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 674 of the Code of Civil
- 2 Procedure is amended to read:
- 3 674. (a) An abstract of the judgment or decree of any
- 4 court of this state, including a judgment entered pursuant
- 5 to Chapter 1 (commencing with Section 1710.10) of Title
- 6 11 of Part 3, or a judgment of any court sitting as a small
- 7 claims court, or any court of record of the United States,

1 the enforcement of which has not been stayed on appeal
2 or pursuant to Section 1710.50, certified by the clerk,
3 judge or justice of the court where such judgment or
4 decree was rendered, may be recorded with the recorder
5 of any county and from such recording the judgment or
6 decree becomes a lien upon all the real property of the
7 judgment debtor, not exempt from execution, in such
8 county, owned by him at the time, or which he may
9 afterward and before the lien expires, acquire. Such lien
10 continues for 10 years from the date of the entry of the
11 judgment or decree unless the enforcement of the
12 judgment or decree is stayed on appeal or pursuant to
13 Section 1710.50 by the execution of a sufficient
14 undertaking or the deposit in court of the requisite
15 amount of money as provided in this code, or by the
16 statutes of the United States, in which case the lien of the
17 judgment or decree, and any lien or liability now existing
18 or hereafter created by virtue of an attachment that has
19 been issued and levied in the action, unless otherwise by
20 statutes of the United States provided, ceases, or upon an
21 undertaking on release of attachment, or unless the
22 judgment or decree is previously satisfied, or the lien
23 otherwise discharged. The abstract above mentioned
24 shall contain the following: title of the court and cause
25 and number of the action; date of entry of the judgment
26 or decree; names of the judgment debtor and of the
27 judgment creditor; amount of the judgment or decree,
28 and where entered in judgment book or minutes. It shall
29 also contain the social security number or driver's license
30 number or both of the judgment debtor if they are known
31 to the judgment creditor. If such numbers are not known
32 to the judgment creditor, that fact shall be indicated on
33 the abstract of judgment.

34 (b) An order made pursuant to subdivision (b) of
35 Section 908 of the Welfare and Institutions Code shall be
36 considered a judgment for the purposes of subdivision (a)
37 of this section.

38 (c) *An order pendente lite made pursuant to Part 5*
39 *(commencing with Section 4000) of Division 4 of the*
40 *Civil Code or an order of court modifying any such order*

1 *or modifying any judgment or decree rendered pursuant*
2 *to Part 5 (commencing with Section 4000) of Division 4*
3 *of the Civil Code shall be considered a judgment or*
4 *decree for the purposes of subdivision (a) of this section*
5 *when such order requires the payment of money, either*
6 *in lump sum or periodic payments, from one party to the*
7 *action to another party to the action or to the latter*
8 *person's attorney, the indicated recipient of such money*
9 *being defined as a judgment creditor pursuant to Part 2*
10 *(commencing with Section 307) of this code.*
11 (d) With respect to real property containing a dwelling
12 house judicially determined to be exempt from levy of
13 execution pursuant to the provisions of Section 690.31, as
14 distinguished from property subject to a declared
15 homestead created pursuant to Title 5 (commencing
16 with Section 1237) of Part 4 of Division 2 of the Civil
17 Code, a judgment lien created pursuant to subdivision
18 (a) of this section shall attach to such real property
19 notwithstanding the exemption provided by Section
20 690.31.

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Judgment Liens on Interests in Real Property

Under existing law, the abstract of a money judgment, or a certified copy of certain installment money judgments, may be recorded with the county recorder to create a judgment lien on the real property owned by the judgment debtor in the county or thereafter acquired.¹ The judgment lien is one of the simplest and most effective means by which a judgment creditor may seek to secure payment of the judgment and establish a priority over other judgment creditors and is among the least disruptive enforcement remedies because it results only in a lien. Generally, the lien is enforced by levy and sale under a writ of execution.²

Courts Which May Issue Judgments as Basis for Lien

Any judgment, order, or decree for the payment of money which is enforceable in California may provide the basis for a judgment lien. Existing law specifically refers to judgments and decrees of courts of this state, judgments entered in this state on the basis of sister state judgments, judgments of small claims courts, judgments of "any court of record of the United States," and orders for the reimbursement to a county for legal services, probation supervision, or support in a county

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1. See Sections 674 (money judgments in general), 674.5 (child and spousal support judgments), 674.7 (installment judgments against health care provider). Section 674 refers to judgments, but only money judgments may create judgment liens. See *Laubisch v. Roberdo*, 43 Cal.2d 702, 707-08, 277 P.2d 9 (1954); 4 B. Witkin, *California Procedure Judgment* § 139, at 3286 (2d ed. 1971).
 2. See the discussion under "Execution" supra. If execution is unavailable, the judgment lien may be foreclosed by an action in equity. Hence, after the death of the judgment debtor, a claim may be made against the estate or the judgment lien may be foreclosed. See Prob. Code §§ 716, 732; *Corporation of America v. Marks*, 10 Cal.2d 218, 220-222, 73 P.2d 1215 (1937). The judgment creditor may also foreclose a judgment lien in a cross-complaint in an action to foreclose by a mortgagee. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 71 P. 334 (1903).

institution, provided to wards and dependent children.³ The proposed law would continue the substance of existing law except that the misleading language pertaining to judgments of federal courts would be eliminated. A federal money judgment may be recorded to create a judgment lien pursuant to federal law if it is rendered in California or is registered in a federal court sitting in California.⁴ An abstract may be recorded to create a judgment lien when enforcement of the judgment is stayed, unless it is stayed on appeal.⁵

Property Subject to Judgment Lien

Under existing law, a judgment lien reaches all the real property owned by the judgment debtor in the county where the lien is created.⁶ This provision has been strictly construed with the effect that the lien

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3. See Section 674(a). Orders for reimbursement to a county issuable under Welfare and Institutions Code Section 908 are referred to in Section 674(b). A judgment may be entered in California on the basis of a sister state money judgment pursuant to Sections 1710.10-1710.65 and is enforceable as if originally entered in California. Section 1710.35. A sister state support order may be registered in California and enforced as a support order issued in California. Section 1699. A foreign nation money judgment may be recognized and enforced as provided in Sections 1713-1713.8.
 4. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district) (1976).
 5. Section 674(a); *Industrial Idem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712 (1975). The proposed law would continue this aspect of existing law except that it would preclude creation of a judgment lien pursuant to a judgment entered in California based on a sister state judgment only if the sister state judgment is stayed by a sufficient undertaking. Section 674(a) precludes creation of such a judgment lien if enforcement of the sister state judgment is stayed for any reason specified in Section 1710.50.
 6. Section 674(a).

does not reach estates for years,⁷ equitable interests,⁸ contingent interests,⁹ or naked title.¹⁰

The proposed law expands the coverage of judgment liens to leasehold interests with an unexpired term of two or more years at the time of creation of the lien,¹¹ equitable interests (other than the interests of a beneficiary in real property held in trust),¹² and contingent

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7. See Summerville v. Stockton Milling Co., 142 Cal. 529, 537, 76 P. 243 (1904); Arnett v. Peterson, 15 Cal. App.3d 170, 173, 92 Cal. Rptr. 913 (1971) (90 years remaining of a 99-year lease). It has been asserted, however, that a lease for an indefinite term would be real property subject to a judgment lien. See 2 A. Bowman, Ogden's Revised California Real Property Law § 19.19 (1975).
 8. See Helvey v. Bank of America, 43 Cal. App.2d 532, 535, 111 P.2d 390 (1941) (right of redemption of tax deeded property). Poindexter v. Los Angeles Stone Co., 60 Cal. App. 686, 687, 214 P. 241 (1923) (interest of beneficiary of trust in land); Belieu v. Power, 54 Cal. App. 244, 246, 201 P. 620 (1921) (interest of purchaser in possession under executory contract for sale of land).
 9. Cf. Anglo California Nat'l Bank v. Kidd, 58 Cal. App.2d 651, 655, 137 P.2d 460 (1943) (contingent remainder under trust not subject to execution).
 10. See Iknoian v. Winter, 94 Cal. App. 223, 225, 270 P. 999 (1928) (lien did not apply against fully paid vendor under installment land contract who neglected to give deed). See also Majewsky v. Empire Constr. Co., 2 Cal.3d 478, 483-84, 467 P.2d 547, 85 Cal. Rptr. 819 (1970); Parsons v. Robinson, 206 Cal. 378, 379, 274 P. 528 (1929).
 11. The treatment of leases with an unexpired term of two years or more is consistent with the extent of the right of redemption under existing law (see Section 700a(a)) and the proposed provisions for delay of sale of real property. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" supra.
 12. The proposed law provides a separate procedure for reaching the judgment debtor's interest as beneficiary of a trust, which in the court's discretion may result in the imposition of a lien on trust income or the trust assets.

interests. The equitable interest of a buyer of real property is subject to execution¹³ and should be subject to a judgment lien. Contingent interests should be subject to judgment liens to help ensure eventual collection of the judgment, but the proposed law would require court approval before contingent interests could be sold on execution since it is likely that such interests can be sold only at a great sacrifice.¹⁴

Duration of Judgment Lien Generally

Under existing law, a judgment lien may continue for as long as 10 years from the date of entry of judgment.¹⁵ The lien may be extended in effect by bringing an action on the judgment and obtaining a judgment lien under the second judgment while the judgment lien under the first judgment is still in effect.¹⁶

13. See Hansen v. d'Artenay, 13 Cal. App.2d 293, 297, 57 P.2d 202 (1936).

14. See generally Halbach, Creditors' Rights in Future Interests, 43 Minn. L. Rev. 217 (1958).

15. Section 674(a). For a discussion of special rules applicable to installment judgments, see "Judgment Liens Under Installment Judgments" infra. From 1851 until 1923, the judgment lien lasted two years although a writ of execution could be issued without prior court approval for five years after entry of judgment. See 1851 Cal. Stats. ch. 123, § 204. In 1923 the duration of the judgment lien was increased to five years, consistent with the period for automatic issuance of a writ of execution. See 1923 Cal. Stats. ch. 368, § 2. In 1955, the duration of the judgment lien and the period for automatic issuance of a writ of execution were raised to 10 years. See 1955 Cal. Stats. ch. 781, § 1; ch. 754, § 1. The 10-year periods do not necessarily run concurrently under existing law because the time during which enforcement is stayed other than on appeal is excluded from the time during which execution may automatically issue but not from the running of the judgment lien. Compare Section 674 with Section 681. The proposed law eliminates this purposeless inconsistency.

16. See Provisor v. Nelson, 234 Cal. App.2d Supp. 876, 879-80, 44 Cal. Rptr. 894 (1964).

The term of the judgment lien under the proposed law is 10 years, but the lien may be renewed with the same priority if a certified copy of an application for renewal of the judgment is recorded before the lien expires.¹⁷ The renewed judgment lien runs for 10 years from the date the application for renewal was filed with the court clerk to renew the judgment. By using this renewal procedure, the judgment lien may be continued for as long as the judgment is enforceable.

Judgment Liens Under Installment Judgments

Until it was changed by statute, a money judgment payable in installments for an indefinite period could not create a judgment lien because the total amount was uncertain.¹⁸ In the case of child or spousal support judgments¹⁹ and certain medical malpractice judgments,²⁰

17. See the discussion under "Time for Enforcement of Judgments" supra.

18. See Moniz v. Moniz, 142 Cal. App.2d 641, 646, 299 P.2d 329 (1956); Bird v. Murphy, 82 Cal. App. 691, 694-95, 256 P. 258 (1927); 2 A. Freeman, Law of Judgments § 932, at 1965 (5th ed. 1925). Under this rule, the judgment creditor could obtain a judgment lien only for installments that had fallen due and remained unpaid, thus requiring repeated filings over a period of time.

19. See Section 674.5 (enacted in 1959).

20. See Section 674.7 (enacted in 1975).

this rule was changed to permit recordation of the abstract of judgment to create a judgment lien in the amount of installments as they become due. Whether a judgment for a certain amount payable in installments may create a judgment lien under existing law is unclear.²¹

Under the proposed law, judgment liens created under lump-sum judgments that are payable in installments pursuant to Code of Civil Procedure Section 85 (municipal court judgments) or Vehicle Code Section 16380 (vehicle accident damage awards) are treated as other lump-sum money judgments.²² The whole amount of the judgment is a lien on the property when an abstract of judgment is recorded with the county recorder, but the lien may not be enforced for installments that have not matured unless the court so orders. This scheme recognizes that the installment payment feature of such judgments is for the benefit of the judgment debtor and is not an inherent part of the judgment as is the case with installment judgments for support. The judgment creditor is given a lien for the full amount to prevent a transfer of property free of the lien and to establish a priority for the full amount over other creditors.

Under the proposed law, a different rule applies to judgment liens created under installment judgments for child or spousal support, installment judgments against health care providers for future damages, and installment judgments based on workers' compensation awards.²³

21. Such judgments may be issued pursuant to Code Civ. Proc. § 85 (installment payment of judgments of municipal or justice courts), Lab. Code § 5801 (installment payment of worker's compensation award), and Veh. Code § 16380 (installment payment of vehicle accident damage award).

22. The treatment of lump-sum judgments payable in installments is not specified under existing law.

23. See Sections 674.5 (judgment lien for installment judgments for child or spousal support), 674.7 (judgment lien for installment judgment against health care provider); Labor Code §§ 5801 (installment workers' compensation awards), 5806 (entry of judgment based on award). Existing law does not provide specifically for judgment liens based on workers' compensation awards, but since a judgment may be entered on the basis of the award and there is no exception prescribed by statute, a judgment lien should be available. Cf. *Myers v. Workmen's Compensation Appeals Bd.*, 2 Cal. App.3d 621, 83 Cal. Rptr. 427 (1969) (dictum). Lump-sum workers' compensation awards are treated like other lump-sum judgments under the proposed law.

Judgment liens under these types of judgments are created by recording a certified copy of the judgment with the county recorder. The lien continues for 10 years from the date of recording and may be renewed by rerecording within that time. The lien is for the amount of installments that have matured as under existing law, but the priority of the lien is determined as of the date of its creation for all amounts due.

Amount of Judgment Lien

Existing law does not clearly prescribe the amount of the judgment lien.²⁴ The proposed law provides that the lien is for the principle amount of the judgment plus interest that has accrued and costs that have been added to the judgment pursuant to an appropriate procedure,²⁵

24. Section 674 states that "from such recording the judgment or decree becomes a lien." Sections 674.5 and 674.7 provide that an installment judgment becomes a "lien . . . for the respective amounts and installments as they mature (but shall not become a lien for any sum or sums prior to the date they severally become due and payable)."

25. See the discussion under "Costs of Enforcement" supra.

and less the amount of any partial satisfactions. Interest and costs are added to the judgment lien without the need of any additional recording and have the same priority as the remainder of the lien. Hence, the amount of the judgment enforceable by execution is the same as the amount of the judgment lien, except for lump-sum judgments payable in installments in which case the judgment lien is for the full principle amount of the judgment plus interest and costs even though installments not yet due may not be enforced by execution.

The proposed law prescribes special rules governing the amount of a judgment lien on property that is transferred without satisfying the lien. In the case of a lump-sum judgment, interest and costs may be added to the lien after transfer since this is likely to be a limited amount and may be reasonably anticipated by the purchaser at the time the sale price is negotiated. However, in the case of installment judgment for child or spousal support, against a health care provider for future damages, or based on a worker's compensation award, the amount of the lien is determined at the time of transfer since the liability for future amounts is usually incalculable.²⁶

The proposed law also contains a new provision governing the amount of a judgment lien in a case where the amount of the judgment or the schedule of payment of installments is modified. These provisions are designed to protect persons who rely on the papers recorded to create the lien. Hence, if the amount of the judgment is increased or the schedule of payments is accelerated, the lien continues under its original terms until the modification is recorded. If the amount of the judgment is reduced or the schedule of payment delayed, the judgment lien is considered modified whether or not the modification is recorded.

26. Installment judgments for child or spousal support may be modified in amount or term, and are subject to other contingencies such as death, remarriage, or continuation in school. See Civil Code §§ 4700, 4801, 4801.5. Installment judgments for future damages against a health care provider are subject to modification upon the death of the judgment creditor. See Section 667.7. Workers' compensation awards may be rescinded or modified by the appeals board. Labor Code § 5803.

Judgment Lien on After-Acquired Property

A judgment lien on real property acquired by the judgment debtor in the county after the creation of the lien attaches at the time the property is acquired.²⁷ Under existing law, if there are two or more judgment liens in effect in that county against property of the judgment debtor, they attach with equal status to the newly-acquired property, regardless of the order in which the liens were created. However, the judgment creditor who first levies upon and sells the after-acquired property is permitted to do so free of the other equal liens.²⁸ The nonexecuting equal lienholders in effect become subordinate lienholders and have the right to redeem the real property from the execution sale under the lien of the executing judgment creditor in order to protect their security.²⁹ The proposed law repeals this right of redemption,³⁰ and the priority in after-acquired property would be determined on the basis of the priority of creation of the judgment liens. There is no compelling reason for determining lien priorities differently depending on the time of acquisition of the property. This change preserves the benign aspect of the judgment lien by avoiding a race to execute on after-acquired property.

27. See Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, 73, 179 P. 190 (1919).

28. *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190 (1919).

29. See Section 701; 4 B. Witkin, *California Procedure Judgment* § 146, at 3292 (2d ed. 1971).

30. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" supra.

Article 2. Judgment Lien on Real Property

§ 697.310. Creation and duration of judgment lien on real property generally

697.310. (a) Except as otherwise provided by statute, a judgment lien on the judgment debtor's interest in real property in a county is created by recording an abstract of a money judgment, conforming to the requirements of Section 674, with the county recorder.

(b) Unless the judgment is satisfied or discharged or the judgment lien is released, a judgment lien created under this section continues until the later of the following times:

(1) Ten years from the date of entry of the judgment.

(2) Ten years from the date of the filing of an application for renewal of the judgment if a certified copy of the application for renewal is recorded in compliance with Section 683.180.

(c) The creation and duration of a judgment lien for a judgment entered pursuant to Section 85 or pursuant to Section 16380 of the Vehicle Code is governed by this section, notwithstanding that the judgment may be payable in installments.

Comment. Subdivision (a) of Section 697.310 supersedes a portion of the first sentence of subdivision (a) of former Section 674. Subdivision (b) of Section 697.310 supersedes a portion of the second sentence of subdivision (a) of former Section 674. However, unlike the former provision, the 10-year period under subdivision (b) of Section 697.310 is not extended in certain cases where the enforcement of the judgment is stayed.

Section 697.310 applies to lump-sum money judgments, including certain lump-sum judgments payable in installments. See subdivision (c) (municipal court and justice court judgments payable in installment and certain vehicle accident judgments payable in installments) and Section 697.330 (judgments entered on workers' compensation awards in a lump sum). As to support judgments and certain other judgments requiring periodic payments, see Sections 697.320 and 697.330.

CROSS-REFERENCES

Amount of lien § 697.350

Interests subject to lien § 697.340

Priorities §§ 697.380, 697.390

§ 697.320. Judgment lien for installments under support judgment or judgment against health care provider

697.320. (a) A judgment lien on the judgment debtor's interest in real property in a county is created by recording a certified copy of any of the following judgments with the county recorder.

(1) A judgment for spousal or child support payable in installments.

(2) A judgment entered pursuant to Section 667.7 (judgment against health care provider requiring periodic payments).

(b) Unless the judgment is satisfied or discharged or the judgment lien is released, a judgment lien created under this section continues for a period of 10 years from the date of its creation. The duration of a judgment lien created under this section may be extended any number of times by recording during the time the judgment lien is in existence a certified copy of the judgment in the manner provided in this section for the initial recording. Such rerecording has the effect of extending the duration of the judgment lien created under this section until 10 years from the date of such rerecording.

Comment. Section 697.320 supersedes portions of former Sections 674.5 (support judgment) and 674.7 (judgment against health care provider). This section also applies to a judgment requiring installment payments of workers' compensation. See Section 697.330(a)(2). The amount of a judgment lien created under this section is determined pursuant to Section 697.350(c).

§ 697.330. Judgment lien for worker's compensation award

697.330. (a) In the case of a money judgment entered on an order, decision, or award made under Division 4 (commencing with Section 3201) of the Labor Code (workers' compensation):

(1) If the judgment is for a lump sum, a judgment lien may be created under Section 697.310 by recording an abstract of the judgment as provided in that section and, except as otherwise provided in Division 4 (commencing with Section 3201) of the Labor Code, the lien is governed by the provisions applicable to any other judgment lien created under Section 697.310.

(2) If the judgment is for the payment of money in installments, a judgment lien may be created under Section 697.320 by recording a certified copy of the judgment as provided in that section and, except as otherwise provided in Division 4 (commencing with Section 3201) of the Labor Code, the lien is governed by the provisions applicable to a judgment lien created under Section 697.320.

(b) Nothing in this section limits or affects any provision of Division 4 (commencing with Section 3201) of the Labor Code.

Comment. Section 697.330 is a new provision intended to make clear the effect of a judgment lien where the judgment is entered on a worker's compensation award. No cases have been found where a judgment lien (as distinguished from an execution lien) was sought to be created pursuant to a workers' compensation award. However, paragraph (1) of subdivision (a) of Section 697.330 states the result that would appear to have been reached under former law, since an abstract of a lump-sum money judgment could be recorded to create a judgment lien under former Section 674 of the Code of Civil Procedure and there was no exclusion of lump-sum judgments entered on workers' compensation awards. Paragraph (2) of subdivision (a) treats a judgment entered on a workers' compensation award payable in installments the same as an installment judgment for support was treated under former law.

Paragraphs (1) and (2) of subdivision (a) are subject to the provisions of Division 4 of the Labor Code which provide the manner of enforcement of an order, decision, or award made under that division. See, e.g., Labor Code §§ 5300 (exclusive jurisdiction of appeals board for enforcement of award), 5808 (stay of execution of judgment entered upon an order, decision, or award), 5809 (order for entry of satisfaction of the judgment). See also Labor Code §§ 5600-5603 (issuance of writs of attachment upon order of appeals board), 5800 (interest on awards), 5806 (entry of judgment on award), 6000-6002 (stay of enforcement by court). It should be noted that the appeals board has authority to commute a workers' compensation award payable in installments to a lump sum. Labor Code §§ 5100-5106. If this authority is exercised, a judgment lien can then be created as provided in paragraph (1) of subdivision (a) of Section 697.330.

32450

§ 697.340. Interests subject to judgment lien

697.340. (a) From the time of recording the abstract of judgment or the certified copy of the judgment in a county, a judgment lien created under this article is a lien on any interest the judgment debtor then has in any real property in the county (whether present or future, vested or contingent, legal or equitable) that the judgment debtor could transfer to a person having no interest in the property,

but does not reach a right to rents or a leasehold estate with an unexpired term of less than two years.

(b) If the judgment debtor acquires any interest described in subdivision (a) in real property in the county after the abstract of judgment or the certified copy of the judgment has been recorded, the judgment lien becomes a lien on that interest at the time it is acquired by the judgment debtor.

Comment. Subdivision (a) of Section 697.340 expands the interests covered by a judgment lien. Under former Section 674, the judgment lien reached only vested legal ownership interests. See, e.g., *Summerville v. Stockton Milling Co.*, 142 Cal. 529, 537, 76 P. 243, ____ (1904); *Lang v. Klinger*, 34 Cal. App.3d 987, 991, 110 Cal. Rptr. 532 (1973); *Belieu v. Power*, 54 Cal. App. 244, 210 P. 620 (1921); *Shirran v. Dallas*, 21 Cal. App. 405, 418-21, 132 P. 454 (1913). Under subdivision (a), the judgment lien will reach any interest the judgment debtor could transfer to a person having no interest in the property, but will not reach the right to rents (see Sections ____ (garnishment of rents), ____ (assignment of right to rents)) or a leasehold interest with less than two years to run. Hence, contingent remainders and equitable interests, such as that of a purchaser under a land sale contract, are subject to the judgment lien. The judgment lien also attaches to real property used as a dwelling, even though it may later be found to be totally or partially exempt. Under the former law, a prior homestead declaration precluded attachment of the judgment lien to the dwelling. See former Civil Code § 1241 and subdivision (c) of former Code Civ. Proc. § 674; *Boggs v. Dunn*, 160 Cal. 283, 285-87, 116 P. 743, ____ (1911).

Subdivision (b) continues former law. See former Section 674(a); *Hertweck v. Fearon*, 180 Cal. 71, 179 P. 190 (1919). The priority of a lien on after-acquired property is determined pursuant to Section 697.390.

999/359

§ 697.350. Amount of judgment lien

697.350. (a) Except as otherwise provided by statute, a judgment lien created under this article is a lien for the principle amount of the money judgment, plus accrued interest and costs that are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions.

(b) A judgment lien created pursuant to a money judgment payable in installments pursuant to a court order made under Section 85 or under Section 16380 of the Vehicle Code is in the full amount of the judgment as provided by subdivision (a), but the judgment lien may not be enforced for the amount of unmatured installments unless the court so orders.

(c) A judgment lien created pursuant to Section 697.320 is a lien for the amount of the installments as they mature under the terms of the judgment, plus accrued interest and costs as they are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1, and less the amount of any partial satisfactions, but does not become a lien for any installment until it becomes due and payable under the terms of the judgment.

(d) If the judgment debtor's interest in real property that is subject to a judgment lien is transferred without satisfying the judgment lien:

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

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

Comment. Subdivision (a) of Section 697.350 provides general rules governing the amount of judgment liens on real property.

Subdivision (b) makes clear that two types of installment judgments are liens for their full amounts. This provision protects the judgment lienholder's priority over subsequent lienors and transferees. However, as provided in subdivision (b), only the matured installments are enforceable in the absence of a court order. This will preclude enforcement of the judgment lien for amounts not yet due where such enforcement would defeat the purpose of permitting installment payments.

Subdivision (c) continues the substance of portions of former Sections 674.5 (support judgments) and 674.7 (installment judgment against health care provider) and provides the same rule for workers' compensation judgments payable in installments.

Subdivision (d) governs the amount of judgment liens on interests in real property that have been transferred. Under subdivision (d)(1) the lien on the property in the hands of the transferee is in the same amount as provided by subdivision (a) or (b) and includes interest and costs. Subdivision (d)(2) is derived from portions of former Sections 674.5 and 674.7 applicable to certain installment judgment liens. Subdivision (d)(2) also makes clear that interest accrues on the lien for matured but unsatisfied installments where property is transferred subject to the lien. Additional costs are not added to a lien under subdivision (d)(2).

§ 697.360. Effect of modification of judgment

697.360. (a) If a judgment lien has been created pursuant to this article and the judgment lien is thereafter modified as to the amount of the judgment or as to the time of payment of the judgment, an abstract of the modified judgment or a certified copy of the order modifying the judgment may be recorded in the same manner as an abstract of judgment or a certified copy of the judgment is recorded to create a judgment lien.

(b) If a judgment lien has been created pursuant to this article and the judgment lien is thereafter modified to reduce the amount of the original judgment or to delay the time of payment required under the original judgment, the judgment lien continues for the judgment as modified, whether or not the modification is recorded as provided in subdivision (a).

(c) If a judgment lien has been created pursuant to this article and the judgment is thereafter modified to increase the amount of the original judgment or to accelerate the time of payment required under the original judgment, the judgment lien continues for the amount and time of payment under the original judgment until such time as the modification is recorded as provided in subdivision (a). Upon such recording, the judgment lien becomes a lien for the judgment as modified and the priority created by the initial recording of the abstract of judgment or certified copy of the judgment with the county recorder extends to the judgment as modified.

Comment. Section 697.360 governs the amount of the judgment lien in a case where the judgment is modified in amount or time of payment. The most common application of the section will be a case where a support order requiring periodic payments is modified to change the amount of the periodic payment or to change the time when payments are required to be made. Under subdivision (a) the abstract of the modified judgment or the certified copy of the order modifying the judgment may be recorded and has the effect of conforming the terms of the judgment lien with the modified judgment.

Under subdivision (b), a new recording is not required if the amount of the judgment has been reduced or the time of payment delayed. However, subdivision (c) makes clear that, prior to recording, a modification does not affect a judgment lien under a judgment that has been modified to increase the amount of the judgment or to accelerate the time of payment. The judgment lien as modified retains its original priority upon recording of the abstract or certified copy of the modified judgment.

§ 697.370. Effect of stay of enforcement

697.370. (a) A judgment lien may not be created under this article during the time that enforcement of a money judgment is stayed on appeal or pursuant to Section 1710.50 by a sufficient undertaking.

(b) A judgment lien created under this article is extinguished if enforcement of the judgment is stayed on appeal or pursuant to Section 1710.50 by a sufficient undertaking.

Comment. Subdivision (a) of Section 697.370 continues a portion of the first sentence of subdivision (a) of former Section 674, but adds a qualification that a sufficient undertaking be provided in order to prevent creation of a judgment lien. Section 1710.50 concerns enforcement of sister state money judgments. Subdivision (b) continues the substance of a portion of subdivision (a) of former Section 674. See also Section 918 (stay of enforcement generally).

§ 697.380. Priority of judgment liens generally

697.380. Except as otherwise provided by law:

(a) A judgment lien created under Section 697.310 has priority over any other judgment lien thereafter created under this article.

(b) A judgment lien created under Section 697.320 has priority over any other judgment lien thereafter created under this article as to:

(1) The amounts or installments that have matured at the time the subsequent judgment lien is created and the accrued interest and costs that have been added prior to that time to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

(2) The amounts or installments that thereafter mature as they mature, the accrued interest as it thereafter accrues, and costs as they are thereafter added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

Comment. Section 697.380 provides general rules that determine priorities of judgment liens created under this article. These rules are subject to specific rules provided by other sections. See, e.g., Sections 683.430 and _____ (judgment lien dates back to effective date of attachment lien), _____ (judgment lien dates back to effective date of prior lien), 697.390 (priority of judgment liens on after-acquired interest in real property). See also [case or section on marshalling--see NS].

Subdivision (a) gives a lien created by recording of an abstract of a lump-sum money judgment priority over subsequently created judgment liens unless the subsequent lien relates back to a prior time (as where the judgment lien is on property attached in the action in which the second judgment is obtained).

Subdivision (b) is a new provision that gives a judgment lien on a judgment payable in installments priority for all matured installments as the installments mature. Accordingly, if there is more than one judgment lien and the property is sold to satisfy the liens, the priority of the judgment lien created under Section 697.320 extends to matured installments but not to unmatured installments. If the subsequent judgment lien is for a lump-sum judgment, it would have priority over the unmatured installments. If the subsequent judgment lien is for an installment judgment, it would have priority as to matured installments over the unmatured installments on the other judgment. These rules are consistent with the rule applicable where the property subject to the lien is transferred. See Section 697.350(d)(2). Prior law provided no rules for determining priority in these situations.

045/121

§ 697.390. Priority of judgment lien on after-acquired property

697.390. 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.

Comment. Section 697.390 is new and 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 judgment had been recorded were granted the same priority, but the creditor who acted first by levying and selling the property under execution was given priority over the other liens. See *Hertweck v. Fearon*, 180 Cal. 71, 75, 179 P. 190, ____ (1919).

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§ 697.400. Extinction of judgment lien

697.400. (a) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien created under Section 697.310, may record an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100 in the office of the county recorder. Upon such recording, the judgment lien created by the recording of an abstract of the judgment that has been satisfied is extinguished.

(b) The judgment creditor, judgment debtor, or owner of real property subject to a judgment lien created under Section 697.320, may record an acknowledgment of satisfaction of matured installments under an installment judgment executed as provided in Section 724.250 in the office of the county recorder. Upon such recording, the judgment lien created under Section 697.320 is extinguished to the extent of the matured installments described in the acknowledgment of satisfaction.

Comment. Section 697.400 is a new provision for recording the satisfaction of a judgment lien on an interest in real property.

32/453

§ 697.410. Release of erroneous judgment lien

697.410. (a) If a recorded abstract of a money judgment or certified copy of a money judgment appears to create a judgment lien on an interest in real property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner may deliver to the judgment creditor or assignee of record a written demand for a recordable document releasing the lien. The demand shall be accompanied by proof to the satisfaction of the judgment creditor or assignee that the property owner is not the judgment debtor.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor, the judgment creditor or assignee of record shall deliver to the property owner a recordable document releasing the lien. If the judgment creditor improperly fails to deliver a recordable document releasing the lien within the time allowed, the judgment creditor is liable to the property owner for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to the property owner.

(c) If the judgment creditor or assignee does not deliver a recordable document pursuant to subdivision (b), the property owner may apply by noticed motion to the court for an order releasing the judgment lien. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor, the court shall order the judgment creditor or assignee of record to prepare and deliver a record-

able document releasing the lien or shall itself order the release of the lien.

(d) The court shall award reasonable attorney's fees to the prevailing party in any action or proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

Comment. Section 697.410 is drawn from the provisions of former Section 675 indicated below.

<u>Section 697.410</u>	<u>Former Section 675</u>
Subdivisions (a) and (b)	Subdivision (f)(1)
Subdivision (c)	Subdivision (f)(2)
Subdivision (d)	Subdivision (g) (portion)
Subdivision (e)	Subdivision (h) (portion)