

Memorandum 80-59

Subject: Study D-300 - Enforcement of Judgments (Liens)

This memorandum presents Chapter 2 of Division 2 of the comprehensive statute. This chapter, relating to liens, is attached and is divided into the following articles:

Chapter 2. Liens

Article 1. Liens Generally

Article 2. Judgment Lien on Real Property

Article 3. Judgment Lien on Personal Property

Article 4. Execution Lien

Article 5. Other Enforcement Liens

The Commission has not previously reviewed this material except that a former version (not substantially changed) of Article 2 (judgment lien on real property) has been previously reviewed and tentatively approved.

The most important policy decision presented for Commission consideration in connection with this material is the new provision for a judgment lien on personal property. Several writers (see Exhibit 1 attached) suggested this new concept be incorporated into the comprehensive statute and the staff recommends that the Commission include new Article 3 (judgment lien on personal property) in the comprehensive statute. Please read the attached preliminary portion and draft statute for details concerning the new lien.

The attached draft also attempts to specify the effect of various liens. The provisions that specify the effect of various liens are drawn from the new statute that prescribe the effect of a state tax lien where property subject to the lien is transferred or encumbered and from the Commercial Code treatment of persons holding security interests in property that is transferred or encumbered.

The attached portion of the recommendation is one of the more important portions of the comprehensive legislation; we hope you will read it with care and raise any policy issues or technical matters at the meeting.

Respectfully submitted,

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Executive Secretary

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March 5, 1979

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Proposed Judgment Lien with Resepect
to Inventory, Equipment, Accounts
Receivable and Other Property as to
which the Security Interest may be
Protected by Filing Under the UCC.

Gentlemen:

As you know, the current attachment law provides for the creation of a lien under a writ of attachment on certain types of property in which a voluntary security interest may perfected by filing under the UCC by filing under the writ of attachment with the Secretary of State in a manner similar to the filing of a UCC-1 Financing Statement. As you are also aware, California has had a long-standing procedure whereby, upon the recordation of an abstract of judgment in a county, a judgment lien attaches to all real property of the judgment debtor within the county not subject to an existing valid declared homestead. Analogyzing from the foregoing provisions, it would be possible for the law to provide that an abstract of judgment filed with the Secretary of State shall from its date of filing constitute a lien on all personal property of the judgment debtor in which a lien could be perfected by filing under the UCC; this lien could be given the same priority and duration as a voluntary, non-purchase money, security interest created and perfected as of the date of filing of the abstract with the Secretary of State. I believe this would be a significant improvement over existing law which effect provides that a judgment creditor may acquire a lien on personal property solely through the levy process which requires that the property must be taken into the physical custody of the sheriff by one means or another. Unless a keeper can be used effectively, present law requires the levying creditor to seize assets of the judgment debtor

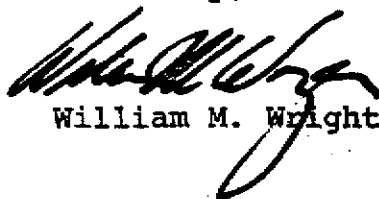
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thereby closing down his business or other operations in order for the levying creditor to protect his position vis a vis other creditors or voluntary transferees of the judgment debtor's property. Moreover, present law encourages judgment debtors to play hide and seek with the creditor with respect to the judgment debtors' property. The "personal property judgment lien" proposed would remedy both these problems as to the type of personal property covered, at least in the commercial context. Of course, the proposed legislation would not eliminate the need for actual levy in the event the judgment creditor desires to actually liquidate the judgment debtor's property by judicial sale. However, existence of such a lien would encourage the judgment debtor to make voluntary arrangements to pay the debt, thereby eliminating the cost and expense of involvement by levying officers. It is noted that the proposed legislation would have its primary, if not exclusive, effect on the collection of commercial debts rather than debts incurred for personal, family or household purposes.

Sincerely,


William M. Wright

WMW/sw

ENFORCEMENT LIENS

Liens Generally

Introduction. Under existing law, the important matter of the creation and effect of liens that arise in the course of enforcing a money judgment is left largely to case law. Existing statutes provide for the creation of a judgment lien on real property,¹ an execution lien,² and a lien on a pending action or proceeding.³ The proposed law continues these liens with some revisions and with more detail and provides also for a judgment lien on certain types of business personal property and for liens arising pursuant to examination proceedings, creditors' suits, and charging orders. The proposed law not only provides for the creation of these liens, but also specifies the time when a lien arises, which is the primary factor in determining the rights of a creditor against transferees of the debtor's property and against other creditors.⁴ The proposed law also specifies the nature and effect of various enforcement liens.

Codification of doctrine of relation back. The proposed law codifies the case law rule that a creditor's priority relates back to the time as of which the first of a series of overlapping liens is created

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1. Sections 674, 674.5, 674.7. See the discussion under "Judgment Lien on Interest in Real Property" infra.
 2. Section 688(d), (e).
 3. Section 688.1. See the discussion under "Lien on Pending Action or Proceeding" supra.
 4. A lien signifies the right of the judgment creditor to resort to the property subject to the lien for the satisfaction of the money judgment. In a sense, acquisition of a lien elevates a general judgment creditor to the status of a secured creditor. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 54 (2d ed. 1975). The time as of which a lien is created is essential because as a general rule the creditor having the earliest valid lien in time will prevail over other creditors. See Civil Code §§ 2897-2899 (general provisions concerning the priority of liens). In general, a judgment creditor holding a valid lien will also prevail over a secured party whose security interest is not perfected before the creation of the lien. See Com. Code § 9301.

on a particular item of tangible property or an obligation.⁵ This relation back doctrine may provide the judgment creditor with a priority predating the date of entry of the judgment if property of the debtor has been attached in the action.⁶ However, the proposed law protects rights of third persons acquired while the prior lien is in effect. In other words, under the relation back doctrine, the prior lien is given only the effect it had while in effect. Thus, if a good faith encumbrancer obtains priority over the rights of the judgment creditor while the prior lien is in effect, the good faith encumbrancer retains this priority even though the later lien is subsequently obtained and the latter lien would give the judgment creditor a priority over a good faith encumbrancer.

Duration of liens generally. The proposed law makes clear that, unless a lien is specifically limited to a shorter duration,⁷ a lien expires when the judgment under which it was created ceases to be enforceable.⁸ The proposed law also requires the release of property subject to the lien when the lien terminates (because the time for enforcement of the judgment has expired or for other reason).

Stay of enforcement of judgment. Under existing law, an order staying the enforcement of a judgment does not preclude the judgment

5. See, e.g., *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ____ (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126, ____ (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185, ____ (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, ____ (1928).

6. An attachment lien may run for as long as eight years. See Sections 488.500, 488.510. See also Section 488.500(i) (lien of attachment effective as of date of service of temporary protective order pursuant to Section 486.080).

7. Section 688(e) provides that a writ of execution does not bind property for more than a year from the date of issuance of the writ. Under the proposed law, the lien of execution would last for a year from the date property is levied upon. See the discussion under "Execution Lien" *supra*. A judgment lien on personal property would last for five years. See the discussion under "Judgment Lien on Personal Property" *supra*.

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

creditor from recording an abstract or certified copy of the judgment to create a judgment lien on real property unless enforcement of the judgment is stayed on appeal.⁹ The effect of a stay of enforcement on execution liens and liens arising out of enforcement proceedings is unclear.

The proposed law includes a provision dealing with the effect of a stay of enforcement of a judgment on the creation and maintenance of an enforcement lien.¹⁰ Under the proposed law, the court will determine at the time the stay order is made whether the stay order should affect the creation or maintenance of enforcement liens. The court may include a provision in the stay order that prohibits the creation of a lien. Absent such provision in the stay order, the stay order--even where an undertaking is provided on appeal--does not prevent the creation of an enforcement lien. However, no change is made in the rule that an enforcement lien may not be created or maintained if enforcement of the judgment is stayed pursuant to the provision relating to enforcement of sister state money judgments. Likewise, a lien created before the order staying the enforcement of the judgment is made is extinguished if the order expressly so provides or if the order is made pursuant to the provision relating to enforcement of sister state judgments.

Judgment Lien on Interest 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

9. Section 674(a); *Industrial Indem. Co. v. Levine*, 49 Cal. App.3d 698, 699, 122 Cal. Rptr. 712 (1975). Section 674(a) also precludes the creation of such a judgment lien if enforcement of a sister state judgment is stayed for any reason specified in Section 1710.50.

10. See the proposed amendment to Code of Civil Procedure Section 918.

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).

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

A judgment, order, or decree for the payment of money which is enforceable in California may provide the basis for a judgment lien.³ 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 institution, provided to wards and dependent children.⁴ The proposed

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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).
 3. The law relating to whether some types of installment judgments may be the basis for a judgment lien is unclear. See discussion under "Judgment Liens Under Installment Judgments," infra.
 4. 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.

law continues the substance of existing law except that the misleading language pertaining to judgments of federal courts is eliminated.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 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

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5. 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. 28 U.S.C. §§ 1962 (judgment lien of federal judgment), 1963 (registration of judgment of one federal district court in another district) (1976).
 6. Section 674(a).
 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). The proposed law makes no change in the exception provided by existing law that the lien does not reach naked title.

of creation of the lien,¹¹ equitable interests (other than the interests of a beneficiary in real property held in trust),¹² and contingent interests. The equitable interest of a buyer of real property is subject to execution¹³ and should be subject to a judgment lien. Contingent interests are made subject to the judgment lien to help ensure eventual collection of the judgment, but the proposed law requires court approval before a contingent interest can be sold on execution since it is likely that such interests will 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

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.
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.

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

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 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

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

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).

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).

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 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. As under existing law,^{23.5} the lien is for the amount of installments as they mature.

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.

23.5. Sections 674.5, 674.7.

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 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 certain lump-sum judgments payable in installments^{25.1} 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

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.

25.1. See text at note 21 supra.

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.

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.

Priorities of Judgment Liens

The proposed law continues the existing rule that a lump-sum judgment lien has priority over a lump-sum judgment lien thereafter created.^{26.5} The rules under existing law are unclear concerning the priorities where there is a conflict between a lump-sum judgment lien and an installment judgment lien or between two installment judgment liens. Since the installment judgment lien is only a lien for installments as they mature on the judgment, the proposed law gives a lump-sum judgment lien later recorded priority over the lien on the installment judgment as to unmatured installments but not as to matured installments. Where there are competing installment judgment liens, each lien is given priority as to the matured installments over the unmatured installments on the other judgment.

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

26.5. However, a judgment lien later recorded may prevail over an earlier recorded judgment lien, for example, where the later recorded lien dates back to the effective date of an attachment lien. See Section 683.430.

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

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 is determined on the basis of the priority established by the time of the 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.

Judgment Lien on Personal Property

Existing law permits the judgment creditor to obtain a judgment lien on real property,¹ but there is no comparable procedure for obtaining a judgment lien on personal property. The proposed law includes a new procedure for obtaining the judgment lien on personal property that is analogous to the procedure provided in the Commercial Code for perfecting a security interest by filing a financing statement in the office of the Secretary of State.²

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.

1. See discussion of "Judgment Lien on Interest in Real Property," supra.

2. See Com. Code §§ 9302, 9304, 9305; Veh. Code §§ 6300, 6301, 9919, 9920. This judgment lien procedure is an expanded version of the provisions in the Attachment Law for obtaining an attachment lien on equipment of a going business (Section 488.340) and inventory (Section 488.360). Unlike the Attachment Law, the judgment lien will not attach to growing crops or timber to be cut. Compare Section 488.360 (Attachment Law). The new procedure is also similar to but more limited than the provisions for the filing of notice of a state tax lien. See Gov't Code § 7171 [enacted in 1980 by SB 1541]. See also Section 2101 (filing of notice of federal tax lien). Iowa has recently adopted a procedure for filing a sheriff's inventory of property with the Secretary of State or county recorder with the effect of a financing statement. Iowa R. Civ. Proc. 260.

Under the proposed law, the judgment creditor may obtain a judgment lien on the following kinds of personal property:

- Accounts receivable
- Chattel paper
- Equipment
- Farm products
- Inventory
- Negotiable documents of title

The judgment lien would not attach to a vehicle or vessel required to be registered with the Department of Motor Vehicles.³

The judgment lien on personal property is obtained by filing a notice of judgment lien in the office of the Secretary of State.⁴ The judgment lien is good for not more than five years, the same duration as

3. "Equipment" may include vehicles and vessels required to be registered with the Department of Motor Vehicles, but such vehicles and vessels are not subject to the judgment lien on personal property as "equipment" because a security interest in such property is generally perfected by deposit of a properly endorsed certificate of ownership to the vehicle or vessel with the Department of Motor Vehicles. See Veh. Code §§ 6300-6303 (vehicle), 9919-9924 (vessel).

"Inventory" may include vehicles and vessels required to be registered with the Department of Motor Vehicles, but such vehicles and vessels are not subject to the judgment lien on personal property as "inventory" because generally a security interest may be obtained only if the secured party has possession of the certificate of ownership. See Veh. Code § 5907. See also Veh. Code §§ 6300-6303 (vehicles), 9919-9924 (vessel).

Although a judgment lien is not allowed, the judgment creditor may, of course, obtain an execution lien on the vehicle or vessel by levy of execution.

4. Because the notice of judgment lien is filed in the office of the Secretary of State, a judgment lien can be obtained only on property which is property in which a security interest could be perfected by filing a financing statement in that office. As to the place of filing to perfect a security interest, see Com. Code §§ 9302(3)(b), 9401.

a security interest.⁵ The filed notice of judgment lien will be reported (along with security interests, state and federal tax liens, and attachment liens) in a certificate issued pursuant to the request of an interested person by the Secretary of State.⁶ Upon satisfaction of the judgment, the judgment creditor is required on written demand to send the judgment debtor a termination statement.⁷ The judgment creditor may also release the lien as to all or part of the property.⁸

The judgment lien extends to after-acquired property of the type to which a judgment lien initially attaches,⁹ but a subsequent secured party under a purchase money security interest may obtain priority by timely filing a financing statement.¹⁰ The judgment lien also extends to identifiable cash proceeds of the transfer of the property subject to the lien. This provision is similar but narrower than the Commercial Code provision relating to proceeds where a financing statement was filed to perfect a security interest.¹¹

The proposed law makes clear that a judgment lien has the same priority over a security interest that is given a lien creditor under Section 9301 of the Commercial Code. Accordingly, the judgment lien has priority if the notice of judgment lien is filed before the security interest is perfected,¹² but a purchase money security interest may have

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5. See Com. Code § 9403(2). Unlike a security interest, the judgment lien on personal property would not be extended by filing of a continuation statement. The judgment creditor can reasonably be expected within the five-year period to apply the property subject to the lien to the satisfaction of the judgment.
 6. See Com. Code § 9409 as proposed to be amended in this recommendation.
 7. This provision is comparable to Commercial Code Section 9404 but incorporates the procedure provided for enforcing a demand for an acknowledgment of satisfaction of judgment.
 8. This provision is comparable to Commercial Code Section 9205.
 9. This is consistent with Commercial Code Section 9204, but the judgment lien automatically extends to such after-acquired property.
 10. This is consistent with the Commercial Code rule as to the rights of a lien creditor. See Com. Code § 9301(2).
 11. See Com. Code § 9306. Money, checks, deposit accounts, and the like are "cash proceeds."
 12. This provision gives the judgment lien on personal property the same effect against unperfected security interests as an execution lien under Commercial Code Section 9301.

priority over earlier filed notice of judgment lien.¹³ In the case of a nonpurchase money security interest, the security interest has priority if it is perfected before the notice of judgment lien is filed.¹⁴

The new judgment lien does not follow the property when it is transferred to any of the following:

--A buyer in the ordinary course of business who, under the Commercial Code, would take free of a security interest created by the seller.

--A holder to whom a negotiable document of title has been duly negotiated.

--A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

These exceptions are comparable to those applicable to property covered by an execution lien where the levying officer does not have custody of the property.¹⁵

The proposed judgment lien on personal property offers a speedy and inexpensive means whereby a judgment creditor may obtain priority over other creditors with a less drastic disruption of the judgment debtor's business affairs than a levy of execution would have. Moreover, the judgment creditor does not risk incurring considerable expenses with no return such as might happen, for example, if a person with a perfected security interest in the inventory makes a successful third-party claim. The judgment lien pressures the judgment debtor to settle with the judgment creditor since the property subject to the lien cannot be pledged to finance continuation of the business unless the judgment is satisfied or the lien is released as to some or all of the property. The interests of the judgment creditor are also protected to some extent because the judgment lien will cover after-acquired property and the identifiable cash proceeds from the sale of the inventory or other property subject to the lien. Ultimately, if the judgment lien does not result in voluntary compliance or a settlement, the judgment creditor may find it necessary to resort to an execution levy to enforce the lien.

13. See Com. Code § 9301(2).

14. See Com. Code § 9301(4). A special rule is provided by Section 9301(4) as to future advances made after the judgment lien is created.

15. See discussion under "Execution Liens" infra.

Execution Lien

The proposed law continues the rule of existing law that an execution lien is created when property is levied under pursuant to a writ of execution and that the execution lien continues for one year after the issuance of the writ.¹ But the proposed law adds new provisions to specify the effect of an execution lien when the property levied upon is sold, exchanged, encumbered, or otherwise disposed of after the creation of the lien. This subject is not covered by existing statutes.

Under the proposed law, the following rules govern the effect of an execution lien after transfer or other disposition:

(1) A transferee of a judgment debtor's interest in real property that is subject to an execution lien takes the property subject to the lien. The recording of a copy of the writ of execution and a notice of levy to create an execution lien provide constructive notice to any potential transferee.

(2) A transferee of a judgment debtor's interest in growing crops or timber to be cut that is subject to an execution lien takes the crops or timber subject to the lien. This is because the form of levy on this type of property--by recording with the county recorder a writ of execution and a notice of levy--provides constructive notice to all potential transferees or encumbrancers, just as a levy upon real property.

(3) If a levying officer has levied upon tangible personal property under a writ by taking possession, the execution lien created by the levy remains on the property despite any purported transfer to a third person. This rule is based on the principle that the potential transferee has a duty of inquiry where it appears that the judgment debtor does not have possession of the property or is unable to deliver it. The inability to deliver the property is constructive notice of the execution lien in such cases.²

(4) If a lien is created on personal property pursuant to a levy of execution, but the property subject to the lien is not in the possession

1. See Section 688(d), (e).

2. Cf. Civil Code § 3440 (transfer without delivery under Uniform Fraudulent Conveyance Act).

of a levying officer, the interests of bona fide purchasers are protected because the process that creates the lien is not sufficient to provide constructive notice. Accordingly, the lien does not follow the property when it is transferred to a buyer in the ordinary course of business even if the buyer knows of the lien³ or to any other transferee who gives fair consideration without knowledge of the lien, including a purchaser of chattel paper or an instrument.⁴ Certain types of property subject to a lien of this type may be transferred free of the lien even where the transferee knows of the lien. This principle applies to:

--Holders in due course of a negotiable instrument.⁵

--Holders to whom a negotiable document has been duly negotiated.⁶

--Bona fide purchasers of securities.⁷

--A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.⁸

--The holder of a purchase money security interest.⁹

--A collecting bank holding a security interest in items being collected and accompanying documents and proceeds pursuant to the Commercial Code.¹⁰

--Persons acquiring any right or interest in letters of credit or advises of credit.¹¹

3. "Buyer in the ordinary course of business" is defined in Commercial Code Section 1201(9). This principle is consistent with the treatment of a perfected security interest pursuant to Commercial Code Section 9307.

4. This is consistent with the treatment of a perfected security interest in chattel paper or instruments pursuant to Commercial Code Section 9308.

5. See Com. Code § 3302.

6. See Com. Code § 7501.

7. See Com. Code § 8302.

8. See Com. Code § 9308.

9. See Com. Code § 9312.

10. See Com. Code § 4208.

11. See Com. Code § 5116.

These principles recognizing the rights of bona fide purchasers and transferees of freely negotiable property are consistent with case law relating to the effect of equitable liens and recent legislation governing the effect of state tax liens.¹²

Other Enforcement Liens

The existing statutes do not cover the effect of equitable liens that are created in the enforcement process. However, the courts have held that those liens created by service of an order in supplementary proceedings or by the commencement of a creditor's suit¹ are not effective against a subsequent transferee of the property subject to the lien who gives fair consideration for the property without knowledge of the lien.²

The proposed law includes provisions specifying the effect of the lien created by examination proceedings, a creditor's suit, or a charging order. Such a lien is given the same effect as the execution lien is given where the property levied upon is not in the custody of the levying officer.³

12. See Gov't Code § 7170.

1. See Canfield v. Security-First Nat'l Bank, 13 Cal.2d 1, 28-30, 87 P.2d 830, 844 (1939).

2. See Jud Whitehead Heater Co. v. Obler, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); Wagner v. Sariotti, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); cf. Taylor v. S & M Lamp Co., 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323, ____ (1961) (transferee of partnership property with knowledge of charging order which created lien is liable in tort to judgment creditor); see generally 1 J. Pomeroy, Equity Jurisprudence §§ 165, 171(4) (5th ed. 1941); 4 id., §§ 1233-1234. The effect of an execution lien against a bona fide purchaser under existing law is not clear. In one early decision, it was indicated that a levy of attachment would not be effective as against a good faith purchaser from the defendant. See Rogers v. Gilmore, 51 Cal. 309, 312 (1876). In the case of real property, it is clear that a transferee takes the property subject to a judgment lien that attached when it was owned by the judgment debtor. See Section 682, subd. 1; Kinney v. Valentine, 15 Cal.3d 475, 479, 541 P.2d 537, 124 Cal. Rptr. 897 (1975).

3. See discussion of "Execution Lien" supra.

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CHAPTER 2. LIENS

Article 1. General Provisions§ 697.010. Amount of lien generally

697.010. Except as otherwise provided by statute, a lien created under this title or under Title 6.5 (commencing with Section 481.010) (prejudgment attachment) is a lien for the principal amount of the money judgment, plus the accrued interest as it accrues and the 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.

Comment. Section 697.010 makes clear that a lien includes accrued interest and costs. For special rules as to the amount of the lien in the case of particular liens, see Sections 697.350 (judgment lien on real property), 697.540 (judgment lien on personal property). These special rules prevail over Section 697.010 where applicable.

992/926

§ 697.020. Relation back of liens

697.010. (a) If a lien is created on property pursuant to Title 6.5 (commencing with Section 481.010) (prejudgment attachment) in favor of a plaintiff in an action in which property was attached and a subsequent lien is created on the same claim by the plaintiff (after obtaining judgment) on the same property pursuant to this title at a time when the earlier lien is still in effect, for the purposes of priority the subsequent lien relates back to the date the earlier lien was created.

(b) If a lien is created on property pursuant to this title in favor of a judgment creditor and a subsequent lien is created on the property pursuant to this title on the same judgment while the earlier lien is still in effect, for the purposes of priority the subsequent lien relates back to the date the earlier lien was created.

(c) Nothing in this section affects the priorities that were established by third persons while the earlier lien was in effect under the law governing the earlier lien.

Comment. Section 697.020 states the general rule regarding the relation back of liens to preserve the judgment creditor's priority as of the creation of the first in a series of overlapping liens on the same property. This principle is consistent with case law. See *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 100 P. 242, ____ (1909); *Riley v. Nance*, 97 Cal. 203, 205, 31 P. 1126, ____ (1893); *Bagley v. Ward*, 37 Cal. 121, 131 (1869) (dictum); *Durkin v. Durkin*, 133 Cal. App.2d 283, 294, 284 P.2d 185, ____ (1955); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, ____ (1928).

Attachment liens, which may exist for as long as eight years, are governed by Sections 488.500 and 488.510. The lien of a temporary protective order served in an attachment proceeding is governed by Section 486.110. An attachment lien relates back to the effective date of the lien of a temporary protective order pursuant to Section 488.500(i).

Various liens are provided by this title. See Sections 697.310 (judgment lien on real property), 697.520 (judgment lien on personal property), 697.710 (execution lien), 706.029 (lien of earnings withholding order), 708.205 (lien of order for examination of judgment debtor or lien of order for examination of judgment debtor's debtor), 708.250 (lien of creditor's suit), 708.320 (lien of charging order), 708.510 (lien on pending action or proceeding), 708.780 (lien on money owed judgment debtor by public entity).

Subdivision (c) of Section 697.020 makes clear that the relating back doctrine does not affect the priority of a third person that was established while the earlier lien was in effect. Thus, for example, if an earlier judgment lien on personal property was subject to the priority of a later purchase money security interest (see Section 697.590), a later execution lien on the same property will be subject to the earlier established priority. Likewise, for example, if the earlier judgment lien on personal property is no longer in existence at the time of execution because it was terminated by the transfer of the property subject to the judgment lien to a buyer in the ordinary course of business (see Section 697.610), the relating back doctrine of Section 697.020 has no application. Similarly, a transfer by a defendant in violation of a temporary protective order under the Attachment Law to a good faith purchaser will terminate the lien created by the temporary protective order and the relation back doctrine will not apply.

General provisions concerning the priority of liens appear in Civil Code Sections 2897-2899. Note that a lien on after-acquired property arises as of the time when the property is acquired by the person whose property is subject to the lien. Civil Code § 2883. Special rules may, however, be applicable in such case. See Sections 697.380(g) (judgment lien on real property), 697.590(b), 697.600(b) (judgment lien on personal property).

§ 697.030. Duration of liens generally

697.030. Subject to Section 697.040, except where a shorter period is provided by statute, a lien created pursuant to this title is effective during the period of enforceability of the judgment.

Comment. Section 697.030 is new. It makes clear that a lien terminates where a period of enforceability of the judgment expires. For the period of enforceability of a judgment, see Chapter 3 (commencing with Section 683.010) of Division 1. The section includes language which recognizes that a particular lien may be more limited in duration. See Sections 697.520(b) (five-year judgment lien on personal property), 697.710 (one-year lien of execution).

A lien may also be extinguished in connection with an order studying enforcement of the judgment as provided in Section 697.040.

§ 697.040. Effect of stay of enforcement of judgment

697.040. (a) A lien may not be created under this chapter during the time that creation of the lien is expressly prohibited by an order made under subdivision (c) of Section 918 or during the time that enforcement of a money judgment is stayed pursuant to Section 1710.50.

(b) A lien created under this chapter is extinguished if an order is made pursuant to subdivision (c) of Section 918 which expressly so provides or if enforcement of the judgment is stayed pursuant to Section 1710.50.

Comment. Subdivision (a) of Section 697.040 supersedes and generalizes a portion of the first sentence of subdivision (a) of former Section 674, but is conformed to Section 918. Section 1710.50 concerns enforcement of sister state money judgments. Subdivision (b) supersedes and generalizes the substance of a portion of subdivision (a) of former Section 674 and also conforms to Section 918.

§ 697.050. Effect of extinction of lien

697.050. If a lien created pursuant to this title is extinguished, property held pursuant to the lien shall be released unless it is to be held under another lien or it is ordered by the court to be held pending

resolution of a dispute concerning its proper disposition. If the property was levied upon by a levying officer, release is governed by Section 699.060.

Comment. Section 697.050 is new. Subdivision (a) requires the release of property when the lien pursuant to which it is held is extinguished, except if it is subject to another lien such as an execution lien in favor of another creditor, or if the court has ordered property to be retained such as in proceedings on a third-party claim. See also Article 5 (commencing with Section 701.010) of Chapter 3 (duties and liabilities of third persons).

31777

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 is created under this section on an interest in real property in a county by recording an abstract of a money judgment, conforming to the requirements of Section 674, with the county recorder.

(b) Unless the money judgment is satisfied 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

Defined terms

Judgment debtor § 680.____

Money judgment § 680.____

Interests subject to lien § 697.340

Priorities §§ 697.380, 697.390

32291

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

697.320. (a) A judgment lien is created under this section on an interest in real property in a county by recording a certified copy of any of the following money 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 money judgment is satisfied 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).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Money judgment § 680.____

Satisfaction of judgments § 724.010 et seq.

32298

§ 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 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.

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Money judgment § 680.____

Satisfaction of judgments § 724.010 et seq.

32450

§ 697.340. Interests subject to judgment lien

697.340. (a) A judgment lien created under this article is a lien on all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created, but is not a lien on a right to rents or a leasehold estate with an unexpired term of less than two years.

(b) If any interest on which a judgment lien on real property could be created under subdivision (a) in the county is acquired by the judgment debtor after the judgment lien was created or otherwise becomes subject to enforcement of the money judgment against the judgment debtor after the judgment lien was created, the judgment lien becomes a lien on such interest at the time it is acquired or otherwise becomes subject to enforcement.

Comment. Subdivision (a) of Section 697.340 expands the class of 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 in real property that is subject to enforcement of a money judgment (see Sections 695.010, 695.020), but will not reach the right to rents (see Sections 700.____ (garnishment of rents), 708.510 (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. Subdivision (a) also recognizes that a judgment lien reaches the community property interest of the judgment debtor's spouse by reference to the provisions concerning property subject to enforcement of a money judgment. 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; former Code Civ. Proc. § 674(c); Boggs v. Dunn, 160 Cal. 283, 285-87, 116 P. 743 (1911).

Subdivision (b) continues former law as to the time a judgment lien arises on after-acquired property. 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 697.380(g).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Property § 680.____

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 the accrued interest and the 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 the 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.

Comment. Subdivision (a) of Section 697.350 provides the general rule governing the amount of judgment liens on real property. As to the priority given to a judgment lien over other judgment liens, see Section 697.380.

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 transfers and encumbrances. See Section 697.390. 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. As to the priority given the judgment lien over subsequent transfers and encumbrances, see Section 697.390.

CROSS-REFERENCES

Defined terms

Court § 680.____

Money judgment § 680.____

3055

§ 697.360. Effect of modification of judgment

697.360. (a) If a judgment lien has been created pursuant to this article and the judgment 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 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; the judgment lien may be enforced only for the judgment as so modified. 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.

§ 697.380. Priority of judgment liens generally

697.380. (a) As used in this section:

(1) "Lump-sum judgment" means a judgment on which a judgment lien may be created under Section 697.310.

(2) "Lump-sum judgment lien" means a judgment lien created under this article on a lump-sum judgment.

(3) "Installment judgment" means a judgment on which a judgment lien may be created under Section 697.320.

(4) "Installment judgment lien" means a judgment lien created under this article on an installment judgment.

(b) Except as otherwise provided by law, the rules stated in this section govern the priorities of judgment liens created under this article.

(c) A lump-sum judgment lien has priority over any other lump-sum judgment lien thereafter created.

(d) A lump-sum judgment lien has priority over an installment judgment lien as to all of the following:

(1) Amounts or installments that have not matured on the installment judgment at the time the lump-sum judgment lien is created.

(2) Interest accruing on the installment judgment after the time the lump-sum judgment lien is created.

(3) Costs added to the installment judgment after that time.

(e) An installment judgment lien has priority over a lump-sum judgment lien as to all of the following:

(1) Amounts or installments that have matured on the installment judgment at the time the lump-sum judgment lien is created.

(2) Interest that has accrued prior to that time on the installment judgment.

(3) Costs that have been added prior to that time to the installment judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division I.

(f) When an installment judgment lien is created and another installment judgment lien is thereafter created, the installment judgment lien first created has priority over the installment judgment lien

thereafter created as to the amounts or installments that have matured on the judgment at the time the other installment judgment lien is created, the interest that has accrued prior to that time on the judgment, and the costs that have been added prior to that time to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1. Thereafter, the priority of one installment judgment lien over the other installment judgment lien is determined by the time at which each amount or installment matures on the judgment, the time the interest accrues on the judgment, and the time costs are added to the judgment pursuant to Chapter 5 (commencing with Section 685.010) of Division 1.

(g) For the purposes of this section, where two judgment liens both become liens on the same property at the same time under subdivision (b) of Section 697.340, the judgment lien has priority which was first created by the recording of the abstract of judgment or certified copy of the judgment with the county recorder.

Comment. Section 697.380 provides general rules that determine priorities of judgment liens created under this article.

Subdivision (a) sets forth definitions used only in this section.

Subdivision (b) makes clear that the rules set out in this section are subject to specific rules provided by other sections. See, e.g., Sections 683.430 and 697.020 (judgment lien dates back to effective date of attachment lien), 697.020 (judgment lien dates back to effective date of prior lien).

Subdivision (c) gives a lien created by recording of an abstract of a lump-sum money judgment priority over subsequently created lump-sum 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). See subdivision (b) (rules in this section subject to rules otherwise provided by law).

Subdivisions (d) and (e) set out the rules governing the priorities where there is a competing lump-sum judgment lien and an installment judgment lien. Since the installment judgment lien is only a lien for installments as they mature on the judgment (see Section 697.320), a lump-sum judgment lien can be given priority as to unmatured installments but not as to matured installments. Subdivision (f) sets out the rules governing priorities where there are two competing installment judgment liens; each lien is given priority as to matured installments over the unmatured installments on the other judgment. Prior law provided no rules for determining priority in these situations.

Subdivision (g) 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).

12770

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

697.390. If an interest in real property that is subject to a judgment lien is sold, exchanged, or otherwise 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, interest that accrues on such unmatured installments, 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.

32/452

§ 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 in the office of the county recorder 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. 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 to extinguish the judgment lien on an interest in real property.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

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 and that the property is not subject to the enforcement of the judgment.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor or assignee or record that the property owner is not the judgment debtor and that the property is not subject to the enforcement of the judgment, the judgment creditor or assignee of record shall deliver to the property owner a recordable document releasing the lien. If the judgment creditor or assignee or record improperly fails to deliver a recordable document releasing the lien within the time allowed, the judgment creditor or assignee 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 and that the property is not subject to the enforcement of the judgment, the court shall order the judgment creditor or assignee of record to prepare and deliver a recordable 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) |

The phrase "and that the property is not subject to the enforcement of the judgment" has been added to make clear that this section does not permit a spouse who is not a judgment debtor to use this procedure to release a lien on community property that is subject to enforcement of a judgment obtained against the other spouse.

CROSS-REFERENCES

Defined terms

Court § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____

405/768

Article 3. Judgment Lien on Personal Property

Comment. Article 3 (Sections 697.510-697.670) provides a new procedure for obtaining a judgment lien on certain personal property (see Section 697.530) in a manner analogous to the procedure in the Commercial Code for perfecting a security interest by filing with the Secretary of State. As Section 697.520 makes clear, this procedure may be used in conjunction with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors.

In certain cases, a judgment creditor will attempt to enforce a judgment through a procedure such as an examination proceeding (Sections 708.110-708.205) or a creditor's suit (Sections 708.210-708.290). In such a case, the judgment creditor will obtain a lien that can be defeated by the transfer of the property to a bona fide purchaser. See Section 697.920. However, use by such a judgment creditor of the procedure provided in this article will in certain cases enable the judgment creditor to preclude transfer to a bona fide purchaser; the notice of judgment lien filed under this article is constructive notice to certain transferees. Section 697.610. See also Sections 697.590, 697.600. In other such cases, the judgment lien will not protect against a transfer that meets the requirements of Section 697.610, but it may give the judgment creditor a priority over other creditors with respect to the identifiable cash proceeds (Section 697.620) or specified kinds of after-acquired property to which the judgment lien will automatically attach (Sections 697.530(b), 697.590(b), and 697.600(b)).

The judgment creditor may use the procedure provided in this article in order to establish a priority based on the creation of the lien. Although levy of execution creates an execution lien, the creation of

that lien may be significantly delayed because of the time required to obtain a writ of execution from the court clerk and the time required by the levying officer to levy the writ. Moreover, if the property is subject to a perfected security interest in a third person, a levy of execution on the property by the judgment creditor may require the judgment creditor to deal with a third-party claim under the third-party claims procedure (see Section 720.010 *et seq.*) in the execution proceeding. The use of the procedure under this article gives the judgment creditor a priority over other unsecured creditors but avoids the need to levy on the property and thus avoids the possibility of the third-party claim by the secured party having priority.

General provisions concerning liens are set forth in Article 1 (commencing with Section 697.010).

Note. This article is drafted on the assumption that the provisions of the California Uniform Commercial Code will be revised to adopt the 1977 amendments to that code governing investment securities drafted by the National Conference of Commissioners on Uniform State Laws. See Senate Bill 1162 of the 1980 session of the California Legislature.

15100

§ 697.510. "Judgment lien" defined

697.510. As used in this article, "judgment lien" means a lien created under this article on personal property.

Comment. Section 697.510 avoids repetition throughout this article of the phrase "lien created under this article on personal property."

999/324

§ 697.520. Creation and duration of judgment lien on personal property; use of other procedures not limited

697.520. (a) A judgment lien is created under this article by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article. Except as provided in subdivision (b) of Section 697.540, a judgment lien may not be created under this article if the judgment is payable in installments unless all of the installments under the judgment have become due and payable at the time the notice of judgment lien is filed.

(b) Unless the money judgment is satisfied or the judgment lien is terminated or released, the judgment lien continues for five years from the date of filing.

(c) A judgment lien may be obtained pursuant to this article as an alternative or in addition to obtaining a lien by any of the following methods:

(1) Levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010).

(2) Use of an appropriate enforcement procedure provided by Chapter 6 (commencing with Section 708.010).

Comment. Subdivision (a) of Section 697.520 provides for the creation of a judgment lien on personal property by filing pursuant to this article. The property which becomes subject to the lien is described in Section 697.530. The second sentence of subdivision (a) permits the creation of a judgment lien under this article only where the money judgment is a lump-sum money judgment. Because the disruptive effect of a judgment lien under this article on the business of the judgment debtor, a lien cannot be created under this article on an installment judgment if there are unmatured installments at the time of filing. Compare Section 697.320 (judgment lien on real property).

Subdivision (b) makes the duration of the judgment lien on personal property the same as the effective period of a filed financing statement under Commercial Code Section 9403(2). Unlike the financing statement, however, the judgment lien on personal property may not be extended beyond the five-year period. The five-year period is sufficient to permit the judgment creditor to obtain an execution lien on the property subject to the judgment lien by levy of a writ of execution on that property within the five-year period. Nothing prevents the filing of a second notice of judgment lien pursuant to this article, either before or after the first lien expires. But the second filing does not affect the first lien nor extend the five-year period of its duration. The priority and duration of the second lien is based on the date of filing of the second notice rather than on the date of the filing of the notice of the first lien.

Subdivision (c) makes clear that the lien procedure under this article may be used in connection with other enforcement procedures (such as levy of execution or examination proceedings) or may be used alone as a means of establishing a priority over other creditors as to certain property. See the Article Comment to this article.

CROSS-REFERENCES

Defined terms

Judgment lien § 697.510

Property subject to lien § 697.530

Termination or release of lien §§ 697.640, 697.650

§ 697.530. Property subject to judgment lien

697.530. (a) A judgment lien is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien was created if a security interest in the property would be one that would be perfected under the Commercial Code by filing a financing statement with the Secretary of State:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) Equipment.
- (4) Farm products.
- (5) Inventory.
- (6) Negotiable documents of title.

(b) If any interest on which a judgment lien could be created under subdivision (a) is acquired by the judgment debtor after the judgment lien was created or otherwise becomes subject to enforcement of the money judgment against the judgment debtor after the judgment lien was created, the judgment lien becomes a lien on such interest at the time it is acquired or otherwise becomes subject to enforcement.

(c) To the extent provided by Section 697.620, a judgment lien created is a lien on the proceeds of the transfer or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien is not a lien on any vehicle or vessel required to be registered with the Department of Motor Vehicles.

Comment. Section 697.530 specifies the types of personal property that are subject to a judgment lien.

The property subject to a judgment lien is required to be property of the described kind in which a security interest could be perfected by filing a financial statement with the Secretary of State. Thus, for example, the kinds of property listed in subdivision (a) of Section 697.530 do not include money, an instrument or a certificated security that does not constitute part of chattel paper, or letters or advices of credit. This is because, under the Commercial Code, security interests in such collateral are generally perfected by taking possession. See Com. Code §§ 5116, 9304, 9305. If possession of a type of property

would be required for perfection of a security interest under the Commercial Code, the judgment creditor will generally find it necessary to take possession by means of a levy of execution if the property is in the possession of the judgment debtor. See, e.g., Sections 700.030 (levy on tangible personal property in possession of judgment debtor), 700.010 (levy on instruments), 700.130 (levy on securities).

If the property would be included within one of the types listed in subdivision (a), a judgment lien cannot be created under this article if a security interest in the property would be perfected by a filing in a place other than in the office of the Secretary of State. Thus, a judgment lien cannot be created under this article on consumer goods (Com. Code § 9109), growing crops, or timber to be cut because the filing under the Commercial Code is made in the office of the county recorder rather than in the office of the Secretary of State. See Com. Code § 9401 (place of filing under Commercial Code).

Subdivision (d) provides that a judgment lien may not be obtained under this article on a vehicle or vessel required to be registered with the Department of Motor Vehicles. To perfect a security interest in such a vehicle or vessel, the secured party must deposit a properly-endorsed certificate of ownership to the vehicle or vessel with the Department of Motor Vehicles. See Veh. Code §§ 6300-6303 (vehicles), 9919-9924 (vessels). See also Veh. Code § 5907 (secured party must obtain possession of vehicle ownership certificate where security interest is in vehicles that are a part of dealer's inventory).

Under subdivision (b), the judgment lien on personal property is a lien on after-acquired property of a type described in subdivision (a). This lien on after-acquired property is analogous to the one provided by Commercial Code Section 9204 and is subordinate to conflicting purchase money security interests. See Section 697.580(b). As to the priorities in the case of after-acquired property, see Sections 697.590(b), 697.600(b).

Despite the unavailability of a judgment lien on money, checks, and deposit accounts by filing under this article, Section 697.620 provides for the continuation of the judgment lien in identifiable cash proceeds of a transfer of property that is subject to a judgment lien. See subdivision (b) of Section 697.530 and Section 697.620. This lien on proceeds is consistent with but more limited than Commercial Code Section 9306. See the Comment to Section 697.620.

CROSS-REFERENCES

Defined terms

Accounts receivable § _____
 Chattel paper § _____
 Equipment § _____
 Farm products § _____
 Inventory § _____
 Judgment debtor § _____
 Judgment lien § 697.510
 Negotiable document of title § _____
 Security interest § _____

§ 697.540. Amount of judgment lien

697.540. (a) Except as otherwise provided by statute, a judgment lien is a lien for the principal amount of the money judgment, plus the accrued interest and the 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.

Comment. Section 697.540 makes clear the amount of the judgment lien. Section 697.540 is consistent with the treatment given lump-sum judgments under Section 697.530 (judgment lien on real property). Except as provided in subdivision (b) of Section 697.540, a judgment lien may not be created under this article on an installment judgment if there are unmatured installments at the time of filing. See Section 697.520(a).

CROSS-REFERENCES

Defined terms

Judgment lien § 697.510

§ 697.550. Contents of notice of judgment lien

697.550. The notice of judgment lien shall be executed under oath and shall contain the following information:

- (a) The name and mailing address of the judgment creditor.
- (b) The name and last known mailing address of the judgment debtor.
- (c) A statement that all the property to which the lien attaches under Section 697.530 is subject to the judgment lien.
- (d) The date of entry of the judgment and where the judgment is entered in the records of the court.
- (e) The amount of the lien under Section 697.540 at the time of filing.

Comment. Section 697.550, which lists the contents of the notice of judgment lien, is subject to Section 697.670 which gives the Secretary of State authority to prepare a form of notice.

CROSS-REFERENCES

Declaration under penalty of perjury in lieu of oath § 2015.5

Defined terms

Judgment creditor § _____

Judgment debtor § _____

Judgment lien § 697.510

Forms § 697.670

Property subject to lien § 697.530

045/111

§ 697.560. Notice to judgment debtor

697.560. At the time of filing the notice of judgment lien or promptly thereafter, the judgment creditor shall serve personally or by mail a copy of the notice of judgment lien on the judgment debtor. The failure to comply with this requirement does not affect the validity of the lien.

Comment. Section 697.560 is analogous to other provisions of this title which require notice of a levy made on property in possession of a third person to be given to the judgment debtor. See (list sections). The last sentence of Section 697.560 is consistent with the notice of levy provisions which provide that the levy is valid notwithstanding the failure to give the required notice to the judgment debtor. The last sentence affects only the validity of the lien; it does not affect any liability the judgment creditor may have to the judgment debtor for failure to give the notice.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

Judgment debtor § _____

Judgment lien § 697.510

Manner of service §§ 684.010-684.080

405/360

§ 697.570. Filing, marking, and indexing of notice of judgment lien

697.570. Upon presentation of a notice of judgment lien for filing and tender of the filing fee to the office of the Secretary of State, the notice of judgment lien shall be filed, marked, and indexed

in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

Comment. Section 697.570 serves the same purpose as Section 9403(1) of the Commercial Code but has been adapted to require that the notice of judgment lien be treated in the same manner as a financing statement.

CROSS-REFERENCES

Defined terms

Financing statement § _____

Judgment lien § 697.510

Fee for filing financing statement, see Com. Code § _____

Manner of filing, making, and indexing financing statement, see Com. Code § _____

405/809

§ 697.580. Certificate showing liens on file; copies of notices

697.580. (a) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of judgment lien filed against the property of a particular person named in the request. If a notice of judgment lien is on file, the certificate shall state the date and hour of filing of each such notice and the name and address of the judgment creditor. The fee for a certificate issued pursuant to this subdivision is the same as the fee for a certificate issued pursuant to Section 9407 of the Commercial Code.

(b) Upon request, the Secretary of State shall furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien for the fee prescribed by subdivision (2) of Section 9407 of the Commercial Code.

Comment. Section 697.580 is based on portions of Sections 488.340 and 488.360 and of Commercial Code Section 9403. See also Com. Code § 9409 (combined certificate issued by Secretary of State).

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

Judgment lien § 697.510

Notices

Statement of release § 697.650

Termination statement § 697.640

§ 697.590. Priority of judgment lien against security interest

697.590. (a) As against security interests, upon the creation of a judgment lien, the judgment creditor has the priority of a lien creditor to the extent provided in Section 9301 of the Commercial Code.

(b) For the purposes of this section, a judgment lien that becomes a lien on property under subdivision (b) of Section 697.530 has priority over any security interest in the property subject to the judgment lien that was perfected after the judgment lien was created by filing of the notice of judgment lien in the office of the Secretary of State unless the secured party files a financing statement with respect to a purchase money security interest in the property subject to the judgment lien before or within 10 days after the debtor receives possession of the property.

Comment. Subdivision (a) of Section 697.590 makes clear that Commercial Code Section 9301 applies to judgment liens on personal property. Subdivision (b) provides a rule as to the priority in the case of after-acquired property and is consistent with Section 697.380 (judgment lien on real property). The last portion of subdivision (b) is drawn from Commercial Code Section 9301(2).

CROSS-REFERENCES

Defined terms

Financing statement § _____
 Judgment creditor § _____
 Judgment lien § 697.510
 Purchase money security interest § _____
 Security interest § _____
 Secured party § _____

§ 697.600. Priority of judgment lien against other judgment liens

697.600. (a) A judgment lien has priority over any other judgment lien thereafter created.

(b) For the purposes of this section, where there are two judgment liens that become liens of the same property at the same time under subdivision (b) of Section 697.530, the judgment lien has priority which was first created by the filing of the notice of judgment lien in the office of the Secretary of State.

Comment. Section 697.600 establishes the rules of priority as between competing judgment liens. Subdivision (b) deals with after-acquired property and is consistent with subdivision (g) of Section 697.380 (judgment lien on real property). See the Comment to that section.

CROSS-REFERENCES

Defined terms

Judgment lien § 697.510

045/094

§ 697.610. Effect of transfer of property upon which judgment lien exists

697.610. A judgment lien on an interest in property created under subdivision (a) or (b) of Section 697.530 continues notwithstanding the sale, exchange, or other disposition thereof, unless the person receiving the property is one of the following:

(a) A buyer in the ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A holder to whom a negotiable document of title has been duly negotiated.

(c) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

Comment. Section 697.610 specifies the effect of a judgment lien on personal property if the property is transferred. The judgment lien has the same effect as to property covered by the lien as an execution lien where the levying officer does not have custody of the property (see Section 697.740). Compare Section 697.390 (transfer of real property subject to judgment lien).

This section has no effect on the rights of transferees or assignees of interests of other persons in the property subject to the lien. An assignee of a security interest that has priority over the judgment creditor's lien may enforce the security interest under the terms of the Commercial Code and is not restricted in any way by this section. See, e.g., Com. Code § 9302.

CROSS-REFERENCES

Defined terms

Buyer in ordinary course of business § _____

Chattel paper § _____

Judgment debtor \$ _____
Judgment lien § 697.510
Negotiable document of title \$ _____
Ordinary course of business \$ _____
Security interest \$ _____

405/814

§ 697.620. Lien on identifiable cash proceeds of transferred property

697.620. (a) As used in this section:

(1) "Cash proceeds" means money, checks, deposit accounts, and the like.

(2) "Proceeds" means identifiable cash proceeds received upon the sale, collection, or other disposition of property subject to a judgment lien.

(b) The judgment lien on an interest in property created under subdivision (a) or (b) of Section 697.530 continues in the proceeds to the extent that such proceeds could be reached by the secured party under Section 9306 in the case of a security interest perfected by filing with the Secretary of State.

Comment. Section 697.620 provides for the continuation of the judgment lien on identifiable cash proceeds of an interest in property subject to a judgment lien. For example, a judgment lien on inventory sold for identifiable cash proceeds continues on the proceeds. This is consistent with Commercial Code Section 9306(3)(b). As to proceeds not in the form of identifiable cash proceeds, the judgment lien will attach to the proceeds only if they are of the type of property (such as inventory) that is subject to a judgment lien under this article. In this case, the lien will attach to the property as after-acquired property under subdivision (b) of Section 697.530. The lien will not attach if the proceeds are not of a type reachable by the judgment lien in the first place nor identifiable cash proceeds since the lien will not attach under the after-acquired property provision of subdivision (b) of Section 697.530 nor under the identifiable cash proceeds provision of this section.

CROSS-REFERENCES

Defined terms .
Judgment lien § 697.510
Security interest \$ _____

§ 697.630. Enforcement of judgment lien

697.630. Unless otherwise agreed by the judgment creditor and the judgment debtor, a judgment lien under this article may be enforced only pursuant to this division.

Comment. Section 697.630 restricts the remedies available for enforcement of the judgment lien to those provided in this division. If the lien is not voluntarily satisfied, it is anticipated that the normal remedy for enforcing the lien will be by levy of execution. See Chapter 3 (commencing with Section 699.010). In certain circumstances, the judgment creditor may need to use the remedies provided by Chapter 6 (commencing with Section 708.010). An action to foreclose the judgment lien on personal property may be necessary in certain circumstances such as where the judgment debtor dies before the judgment is satisfied. See Section 686.020. In this sense the judgment lien on personal property is analogous to the judgment lien on real property which is normally enforced by execution and infrequently by foreclosure. See Article 2 (commencing with Section 697.310). As the introductory clause of this section recognizes, absent the consent of the judgment debtor, the judgment creditor is not entitled to the other remedies provided in Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, such as self-help repossession or private sale.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
 Judgment debtor § _____
 Judgment lien § 697.510

§ 697.640. Termination statement

697.640. (a) If the judgment is satisfied, the judgment debtor or the owner of personal property subject to a judgment lien created under the judgment may serve personally or by mail on the judgment creditor or assignee of record a demand in writing that the judgment creditor or assignee send to the person making the demand a statement that the judgment creditor no longer claims a judgment lien under the notice of judgment lien filed in the office of the Secretary of State. The termination statement shall identify by the date the notice of judgment lien, names of the judgment creditor and judgment debtor, and the file number of the notice of judgment lien. The fee for filing a termination statement under this section is the same as that provided in Section 9404 of the Commercial Code.

(b) The demand of the judgment debtor under subdivision (a) shall include the following statement: "Important warning. If this judgment has been satisfied, the law requires that you comply with this demand within 10 days after you receive it. If a court proceeding is necessary to compel you to comply with this demand, you will be required to pay any reasonable attorney's fees in the proceeding if the court determines that the judgment has been satisfied and that you failed to comply with the demand. In addition, if the court determines that you failed without just cause to comply with this demand within the time allowed, you will be liable for all damages I sustain by reason of such failure and will also forfeit one hundred dollars to me."

(c) If the judgment is satisfied, the judgment creditor or assignee of record shall comply with the demand within 10 days after actual receipt of the demand. If the judgment creditor or assignee of record fails to send such a termination statement within the time allowed, the judgment debtor's demand shall be treated as a demand for an acknowledgment of satisfaction of judgment and the judgment debtor may immediately proceed to enforce the demand as provided in Sections 724.050 to 724.090, inclusive.

(d) Upon payment of the fee for filing a termination statement, the judgment debtor or owner of property subject to the judgment lien may file a termination statement, an acknowledgment of satisfaction of judgment, or a court clerk's certificate of satisfaction of judgment in the office of the Secretary of State.

(e) The filing officer shall treat a termination statement, acknowledgment of satisfaction of judgment, or court clerk's certificate of satisfaction of judgment, filed pursuant to this section in the same manner as a termination statement filed pursuant to Section 9404 of the Commercial Code.

(f) Nothing in this section requires that a demand be made under this section, and the judgment debtor or owner of property subject to the judgment lien may make a demand under Section 724.050 rather than under this section.

Comment. Section 697.640 provides a procedure for obtaining and filing a termination statement terminating a judgment lien on personal property. This 10-day period to comply with the demand is drawn from

the procedure set forth in Commercial Code Section 9404 for the sake of uniformity. The Secretary of State may provide a form for the termination statement. See Section 697.670.

Subdivision (b) is comparable to subdivision (b) of Section 724.050 (demand for filing or delivery of acknowledgment of satisfaction of judgment).

Subdivision (c) makes applicable the procedure provided in Sections 724.050-724.090 for obtaining an acknowledgment of satisfaction of judgment.

Subdivision (d) permits the judgment debtor to record satisfaction of the judgment to release the lien if the judgment creditor has neglected to do so. See Sections 724.060 (acknowledgment of satisfaction), 724.100 (clerk's certificate).

The existence of this section does not preclude the judgment debtor from demanding the filing or delivery or both of an acknowledgment of satisfaction of judgment under Section 720.050. See subdivision (e) of Section 697.640. The judgment lien on personal property may then be terminated by filing the acknowledgment (or court order is a court proceeding is necessary) under Section 697.640 to terminate the judgment lien.

CROSS-REFERENCES

Acknowledgment of satisfaction § _____

Clerk's certificate of satisfaction § _____

Defined terms

Judgment creditor § _____

Judgment debtor § _____

Judgment lien § 697.510

Fee for filing termination statement, see Com. Code § _____

Forms § 697.670

405/815

§ 697.650. Release of judgment lien

697.650. A judgment creditor or an assignee of record may by a writing release the judgment lien in all or a part of the property covered by a filed notice of judgment lien. A statement of release is sufficient if it is signed by the judgment creditor or the assignee of record, contains a statement describing the property being released, the name and address of the judgment debtor, and the file number of the notice of judgment lien. The filing officer shall treat a statement of release filed pursuant to this section in the same manner as a statement of release filed pursuant to Section 9405 of the Commercial Code and the fee for filing the statement is the same as that provided in Section 9405 of the Commercial Code.

Comment. Section 697.650 is drawn from Commercial Code Section 9405 for the sake of uniformity and provides a procedure for the release of the judgment lien on all or a part of the property subject to the judgment lien. The Secretary of State may provide a form for the statement of release. See Section 697.670. See also Section 697.660 (release of erroneous judgment lien).

CROSS-REFERENCES

Defined terms

Judgment creditor § _____
Judgment debtor § _____
Judgment lien § 697.510

405/793

§ 697.660. Release of erroneous judgment lien

697.660. (a) If a notice of judgment lien filed in the office of the Secretary of State appears to create a judgment lien on an interest in personal 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 that the judgment creditor or assignee file in the office of the Secretary of State a statement releasing the lien as to the property of that owner. 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 and that the property is not subject to the enforcement of the judgment.

(b) Within 15 days after receipt of the property owner's demand and proof satisfactory to the judgment creditor or assignee or record that the property owner is not the judgment debtor and that the property is not subject to the enforcement of the judgment, the judgment creditor or assignee of record shall file in the office of the Secretary of State a statement releasing the lien as to the property of that owner. If the judgment creditor or assignee of record improperly fails to file the statement of release within the time allowed, the judgment creditor or assignee 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 file a statement of release pursuant to subdivision (b), the property owner may apply by noticed motion to the court for an order releasing the judgment lien as to the property of that owner. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to the enforcement of the judgment, the court shall order the judgment creditor or assignee of record to prepare and file the statement of release or shall itself order the release of the lien as to the property of that owner. The court order may be filed in the office of the Secretary of State with the same effect as the statement of release demanded by the property owner.

(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.

(f) The fee for filing a statement of release or court order under this section is the same as that provided in Section 9405 of the Commercial Code.

Comment. Section 697.660 is comparable to Section 697.410. See the Comment to that section.

CROSS-REFERENCES

Defined terms

Court § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____

405/816

§ 697.670. Forms prepared by Secretary of State

697.670. The Secretary of State may prepare the forms for the notice of judgment lien, the termination statement, and the statement of release provided for in this article. A form prepared pursuant to this section is deemed to comply with the requirements of this article.

Comment. Section 697.670 is an exception to the general provision (Section 681.040) giving the Judicial Council authority to prescribe forms. The Secretary of State is authorized to prepare similar forms under the Attachment Law. See, e.g., Sections 488.340(d) (notice of attachment of equipment) and 488.360(c) (notice of attachment of farm products or inventory).

29/344

Article 4. Execution Lien

§ 697.710. Creation and duration of execution lien

697.710. (a) Except as provided in subdivision (b), a levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of one year after the date of issuance of the writ unless the judgment is sooner satisfied.

(b) An execution lien on an interest of the judgment debtor as an heir, devisee, or legatee in property in the estate of a decedent continues for a period of one year after the decree distributing the interest has become final unless the judgment is sooner satisfied.

Comment. Subdivision (a) of Section 697.710 continues the substance of the first portion of former Section 688(e). The running of the lien is not tolled during a stay of enforcement and the lien may in some cases be extinguished under subdivision (b) of Section 697.040 (effect of stay of enforcement of judgment). Property is not affected by issuance of a writ or the delivery of a writ to the levying officer and no execution lien attaches to the property until levy. Subdivision (b) supersedes the last portion of the first sentence of former Section 688(e). For general provisions governing liens, see Article 1 (commencing with Section 697.010).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Property § 680.____

Methods of levy §§ 700.010-700.____

Writ of execution §§ 699.510, 699.520

§ 697.720. Lien on real property remains after transfer or encumbrance

697.720. If an interest in real property subject to an execution lien is sold, exchanged, or otherwise transferred or encumbered, the interest transferred or encumbered remains subject to the lien after the transfer or encumbrance.

Comment. Section 697.720 is a new provision that is consistent with case law. See, e.g., *Kinney v. Valentine*, 15 Cal.3d 475, 479, 541 P.2d 537, ___, 124 Cal. Rptr. 897, ___ (1975).

§ 697.730. Lien on tangible personal property in custody of levying officer remains after transfer or encumbrance

697.730. If tangible personal property subject to an execution lien is in the custody of a levying officer and is sold, exchanged, or otherwise transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

Comment. Section 697.730 is based on the principle that a potential transferee or encumbrancer of tangible personal property has a duty to determine whether the person attempting to transfer the property has possession of it and can deliver possession. Cf. Civil Code § 3440 (transfer without delivery under Uniform Fraudulent Conveyance Act). This principle applies where the property is in the levying officer's custody pursuant to execution. Compare Section 697.740 (effect of transfer or encumbrance where property not in custody of levying officer).

CROSS-REFERENCES

Defined terms

Levying officer § _____

§ 697.740. Effect of transfer or encumbrance of intangible or tangible property not in custody of levying officer

697.740. If intangible or tangible personal property subject to an execution lien is not in the custody of a levying officer and the property is sold, exchanged, or otherwise transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person (other than the judgment debtor) who acquires an interest in the property under the law of this state for fair consideration without knowledge of the lien.

(b) A buyer in the ordinary course of business who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A holder in due course of a negotiable instrument.

(d) A holder to whom a negotiable document of title has been duly negotiated.

(e) A bona fide purchaser of a security.

(f) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(g) A holder of a purchase money security interest.

(h) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(i) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(j) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

Comment. Section 697.740 is drawn from subdivision (c) of Section 7170 (state tax liens). Section 697.740 covers tangible personal property not covered by Section 697.730 and intangible personal property such as accounts receivable and general intangibles. See Civil Code §§ 955, 955.1 (transfer of accounts and general intangibles). Although the section is based on the provision relating to state tax liens, it is also consistent with case law governing the effect of equitable liens. See *Jud Whitehead Heater Co. v. Obler*, 111 Cal. App.2d 861, 872-74, 245 P.2d 608, 616 (1952); *Wagner v. Sariotti*, 56 Cal. App.2d 693, 698, 133 P.2d 430, 433 (1943); cf. *Taylor v. S & M Lamp Co.*, 190 Cal. App.2d 700, 711-13, 12 Cal. Rptr. 323, ____ (1961). It should be noted that even if the transferee gives fair consideration and has no notice of the existence of a lien on the property, the transfer may in certain circumstances be attacked as a fraudulent conveyance. See Civil Code §§ 3439-3440.

CROSS-REFERENCES

Defined terms

Advices of credit \$ _____
 Bona fide purchaser \$ _____
 Buyer in ordinary course of business \$ _____
 Chattel paper \$ _____
 Documents \$ _____
 Duly negotiated \$ _____
 Holder in due course \$ _____
 Instrument \$ _____
 Judgment debtor \$ _____
 Letters of credit \$ _____
 Levying officer \$ _____
 Negotiable document of title \$ _____
 Negotiable instrument \$ _____
 Ordinary course of business \$ _____
 Purchase money security interest \$ _____
 Security \$ _____
 Security interest \$ _____

405/880

§ 697.750. Lien on growing crops or timber to be cut after transfer or encumbrance

697.750. Notwithstanding Section 697.740, if growing crops or timber to be cut is subject to an execution lien and is sold, exchanged, or otherwise transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

Comment. Section 697.750 provides an exception to Section 697.740. Since a levy on growing crops or timber to be cut is accomplished by recording a copy of the writ and a notice of levy with the county recorder, constructive notice is thereby given to any potential transferee or person taking an encumbrance of the property. Cf. Section 697.390 (effect of lien on real property against subsequent transferee or person taking encumbrance).

405/889

Article 5. Other Liens Created by Enforcement Process

§ 697.910. "Lien" defined

697.910. As used in this article, "lien" means a lien created by any of the following:

- (a) A lien created by Section 708.205 (examination proceedings).
- (b) A lien created by Section 708.250 (creditor's suit).
- (c) A lien created by Section 708.320 (charging order).

Comment. Section 697.910 defines "lien" to include the equitable liens to which this chapter applies. The effect of liens not covered by this article or other statutory provisions is determined, as under former law, by judicial decisions applicable to the particular provision.

405/890

§ 697.920. Effect of lien

697.920. A lien continues on property subject to a lien, notwithstanding the sale, exchange, encumbrance, or other disposition of the property subject to the lien, unless the person receiving the property is one of the persons listed in Section 497.740.

Comment. Section 697.920 gives a lien (defined in Section 697.910) the same effect as is given the lien of execution when the property is not in custody of a levying officer except that Section 697.920 applies to all property, real and personal, subject to the lien.

CROSS-REFERENCES

Defined terms

Lien § 697.910

CONFORMING CHANGE

Commercial Code § 9409

9409. (a) Upon request of any person, the Secretary of State shall issue a combined certificate showing the information as to financing statements as specified in Section 9407 of this code, the information as to state tax liens as specified in Section 7226 of the Government Code, the information as to attachment liens as specified in Section 488.340 of the Code of Civil Procedure, the information for judgment liens as specified in Section 697.570 of the Code of Civil Procedure, and, if the name requested appears to be other than an individual, the information as to federal liens as specified in Section 2103 of the Code of Civil Procedure. The fee for such a combined certificate is five dollars (\$5).

(b) The Secretary of State shall construe a request for a certificate as one for a combined certificate pursuant to this section unless the request is specifically limited to federal liens, state tax liens, judgment liens, or attachment liens.

Comment. Section 9409 is amended to add a provision requiring that judgment liens on personal property be included in the combined certificate.