

8/5/80

First Supplement to Memorandum 80-59

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

The proposed statutory provisions relating to judgment liens on real property contain no provision concerning the release of the judgment lien. Such a provision would be a useful addition. The judgment creditor may be willing to release the lien on a specific parcel of property subject to the lien, retaining the lien on all other property subject to the lien. For this reason, the staff suggests that Section 697.370 (attached) be added to the proposed legislation.

Also attached is the conforming revision to Section 674 relating to an abstract of judgment.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

§ 697.370. Release of judgment lien

697.370. (a) A judgment creditor or an assignee of record may release from the judgment lien all or a part of the property covered by a recorded abstract of judgment or certified copy of the judgment. A release is sufficient if it is executed by the judgment creditor or the assignee of record in the same manner as an acknowledgment of satisfaction of judgment and contains all of the following:

(1) A statement describing the property being released sufficient if it were contained in a mortgage of the property to give constructive notice of the mortgage under the law of this state. If the judgment debtor does not have an interest of record in the real property, the statement of release must show the name of the record owner.

(2) The information required by Section 674 to be included in an acknowledgment of satisfaction of judgment.

(3) The date the abstract of judgment or certified copy of the judgment was recorded in the county in which the property is being released.

(b) A release substantially complying with the requirements of this section is effective even though it contains minor errors that are not seriously misleading.

Comment. Section 697.370 is a new provision that recognizes the practice of releasing all or a part of the property from a judgment lien on real property. The provisions relating to a sufficient description of the property and excusing errors that are not seriously misleading are drawn from Commercial Code Section 9402(5), (7) (contents of financing statement).

Code of Civil Procedure

§ 674 (amended). Abstract of judgment; contents and manner of execution

674. ~~(a)~~ An abstract of ~~the~~ a judgment or decree requiring the payment of money of any court of this state, including a judgment entered pursuant to Chapter 1 (commencing with Section 1710.10) of Title 11 of Part 3, or a judgment of any court sitting as a small claims court, or any court of record of the United States, the enforcement of which has not been stayed on appeal or pursuant to Section 1710.50, shall be certified by the clerk ~~;~~ judge ~~or~~ justice of the court where ~~such~~ the judgment or decree was ~~rendered~~ entered ~~;~~ may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterward and before the lien expires, acquire. Such lien continues for 10 years from the date of the entry of the judgment or decree unless the enforcement of the judgment or decree is stayed on appeal or pursuant to Section 1710.50 by the execution of a sufficient undertaking or the deposit in court of the requisite amount of money as provided in this code, or by the statutes of the United States, in which case the lien of the judgment or decree, and any lien or liability now existing or hereafter created by virtue of an attachment that has been issued and levied in the action, unless otherwise by statutes of the United States provided, ceases, or upon an undertaking on release of attachment, or unless the judgment or decree is previously satisfied, or the lien otherwise discharged. The abstract above mentioned and shall contain all of the following:

- (a) title Title of the court and cause and number of the action ~~;~~ .
- (b) date Date of entry of the judgment or decree ~~;~~ .
- (c) names Names of the judgment debtor and of the judgment creditor ~~;~~ .
- (d) amount Amount of the judgment or decree as entered , and where entered in judgment book ~~or minutes~~ the records of the court .
- (e) it shall also contain the The social security number ~~or~~ and driver's license number ~~or both~~ of the judgment debtor if they are known to the judgment creditor ~~;~~ if ; and, if either or both of such

numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(f) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(g) The date of issuance of the abstract.

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

~~(a) With respect to real property containing a dwelling house judicially determined to be exempt from levy of execution pursuant to the provisions of Section 690.31, as distinguished from property subject to a declared homestead created pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code, a judgment lien created pursuant to subdivision (a) of this section shall attach to such real property notwithstanding the exemption provided by Section 690.31.~~

Comment. Section 674 is amended so that the section states the person who certifies an abstract of a judgment or decree and the contents of the abstract. The remainder of the section is superseded. Subdivisions (f) and (g) state required contents not formerly specified in the section but required by the Judicial Council form for an abstract of judgment. See Official Form for Abstract of Judgment (Form Adopted by Rule 982 Judicial Council of California--Revised Effective January 1, 1979). The contents specified in this section for the abstract of judgment are subject to the general authority of the Judicial Council to prescribe forms.

The portion of the first sentence of Section 674 which specified the courts that may issue judgments as the basis for a judgment lien is not continued as such, but its substance is continued in Section 697.310 except for the misleading language pertaining to judgments of federal courts. 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. §§ 1692 (judgment lien or federal judgment), 1963 (registration of judgment of one federal district court in another district) (1976). The portion of the first sentence providing for certification by the judge or justice of the court is omitted as unnecessary in view of the general provision of Section 167. The remainder of the first sentence is continued in substance in Section 697.310 but a lien may be created under that section by recording on any interest in real property subject to levy of execution. See Section 697.340.

The portion of the second sentence of Section 674 which specifies the duration of the lien is superseded by subdivision (b) of Section 697.040. The portion of the second sentence relating to stay of enforcement of the judgment is superseded by Section 697.040. The portion

relating to an undertaking on release of attachment has not been continued, since this portion is unnecessary in view of Sections 489.310, 489.420, and 697.050. See also Section 697.400 and 697.410. The portion relating to the release of the lien if the judgment is satisfied or the lien is otherwise discharged is superseded by Section 697.050 and 697.370.

Former subdivision (b) of Section 674 has been omitted. This subdivision is unnecessary in view of subdivision (b) of Section 908 of the Welfare and Institutions Code.

Subdivision (c) is not continued. The statutes no longer provide a declared homestead procedure and the homestead exemption provided for in this statute does not prevent the creation of a judgment lien on real property. See Section 697.340 and Comment thereto.

CROSS-REFERENCES

Court without clerk § 167

Lien endorsed on judgment § _____