

Liens: What's the Big Deal About Them?

Article by: James Monahan

Lien, in its simplest definition, is the term used to denote any charge or duty imposed against an item or property as security for payment of a debt or some other obligation.

There are certain liens that can complicate your asset protection planning. This is one of the ways that creditors can have a take on your assets. In order to know how a certain lien can affect your asset or property, it is crucial that you have a thorough understanding of the different types of liens available out there.

Liens can either be consensual, statutory or judicial liens.

Consensual liens are those types of liens that are substantiated by a contract between the creditor and the debtor. These are the liens in which you voluntarily consent to whenever you take out a loan or any other advance of credit that you require.

A homebuyer will agree to a bank taking a security interest in a home before a mortgage can be obtained. A consensual lien is also created when a car buyer opts for car financing available at the car dealer. The car purchased secures the car buyer's obligation to pay for the property.

Failing to do so may mean that the purchased property will be taken away from him. Examples of consensual liens are mortgages, car loans, and security interests in banks.

Statutory liens meanwhile are those that are ideally occurring in lieu of established statutes or as stated by common law. Non-consensual liens give the creditor the right to repayment security of a debt by imposing a lien on a property or an item once there is a determined relationship between the debtor and the creditor.

Sometimes, creditors make use statutory liens to get at your assets to satisfy a debt by the operation of state or federal laws. Examples of this type of lien include tax liens and mechanic's liens.

A tax lien is placed upon properties by local, state or federal government as stated in established statutes as security for delinquent taxes, including property and estate taxes.

A mechanic's lien will arise when a party fails to pay a contractor or mechanic for services rendered or work performed on a certain property or car. This usually occurs when a contractor installs a furnace on a home or a mechanic does some repairs on a car.

Failure of payment for the services rendered will give the contractor or the mechanic a security interest on the property. If the owner decides to sell the property, the contractor or mechanic will have a share on the proceeds of the sale to pay for the debt incurred.

Of the three type of liens, those imposed by a judicial ruling is the most dangerous for the asset or property owner but is also one in which an informed owner may be able to eliminate.

This type of lien is created when a judicial court grants a creditor an interest on the debtor's property after a judicial ruling. This lien can arise in several circumstances.

An example would be if a negligent driver injures someone in an accident, it will follow that the injured party would likely sue the driver for damages.

In some instances that the driver's insurance would not cover for the damages, a judicial lien may be placed upon the negligent driver's property as a claim for payment to the injured person. The judgment on the lawsuit filed will provide for the basis of the lien.

If the debt is not paid, the injured party or the judgment creditor can seek the enforcement of the judgment. This can be done by garnishing wages, seizing a bank account or placing a lien on the negligent driver's property.

This lien is the first step in the process that will consummately end in the sale of the property in order to pay for the damages.

A judicial lien cannot be imposed on a ruling or judgment based upon a pre-existing ruling as in the case of a judgment on a mortgage foreclosure. This understanding will greatly help the property owner in exempting his property from possible acquisition by the creditor. James Monahan is the owner and Senior Editor of LienCentral.com and writes expert articles about liens.