

# Legislative Analysis



## REVISED JUDGMENT LIEN PROCEDURES

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**House Bill 5381**

**Sponsor: Rep. Charles LaSata**

**Committee: Judiciary**

**Complete to 3-16-04**

## **A SUMMARY OF HOUSE BILL 5381 (SUBSTITUTE H-1) AS REPORTED FROM THE HOUSE COMMITTEE ON JUDICIARY 2-24-04**

House Bill 6381 would amend the Revised Judicature Act to add a new chapter, Chapter 28, specifying procedures for filing a judgment lien. "Judgment lien" would mean an encumbrance in favor of a judgment creditor against a judgment debtor's interest in real property. This would include, but not be limited to, acquired property. A judgment lien would be in addition to and separate from any other remedy or interest created by law or contract. (A judgment lien is, generally speaking, a lien on the property of a debtor resulting from the decree of a court resulting from a lawsuit.)

Under the bill, a judgment lien would attach to a judgment debtor's interest in real property if a notice of judgment lien was recorded in accordance with the bill's provisions in the land title records of the register of deeds for the county where the property was located. The judgment lien would attach at the time the notice of judgment lien was recorded. For acquired property, the judgment lien would attach at the time the judgment debtor acquired the interest in the property.

With a couple of exceptions, a judgment lien would expire five years after it was recorded. The time period in which a judgment lien is effective would not be tolled or suspended by the filing of a state or federal insolvency proceeding by the judgment debtor. The clerk of a court that entered a judgment would have to certify a notice of judgment lien that included information specified in the bill, i.e., the last four digits of the judgment debtor's social security or tax identification number. The bill would establish criteria for extinguishing a judgment lien and create a mechanism by which a person with the same name as a judgment debtor could have the misidentified judgment lien discharged in a timely manner.

A notice of judgment lien would not have to include a legal description of the debtor's interest in real property. A copy of a certified notice of judgment lien would have to be served by first-class mail on the judgment debtor at his or her last known address; proof of service would have to be filed with the issuing court.

A judgment lien would not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment was entered against both the husband and wife.

After the notice of judgment of lien was recorded, it would have priority over a lien recorded with the register of deeds. However, the bill would list a number of exceptions for which a judgment would not have priority, such as a purchase money mortgage or a claim of lien recorded with the register of deeds under provisions of the Construction Lien Act.

In addition, the proceeds of the sale or refinancing of property subject to a judgment lien due to a judgment creditor would be limited to the judgment debtor's equity in the property at the time of the transaction after all liens senior to the judgment lien, property taxes, and costs and fees necessary to close the transaction were paid or extinguished. However, there would be no right to foreclose a judgment lien created under the bill.

Further, a discharge of judgment lien would have to be filed within 28 days after payment in full was made on the judgment that was the basis for a judgment lien. A partial discharge of judgment lien could be recorded if a partial payment was made from equity in property that was sold or refinanced. If a judgment creditor did not record a discharge of judgment in the required time period, he or she would have to do so within 14 days of receiving a written request from the judgment debtor. A judgment creditor who failed to comply with these requirements would be liable to the judgment debtor for \$300 plus actual damages and costs arising from the failure to record the discharge of judgment lien. The bill would also create a process to be followed by a judgment debtor who, after paying the judgment in full or in part, cannot locate the judgment creditor who failed to record the discharge of judgment.

MCL 600.2801

#### **FISCAL IMPACT:**

The bill would have an indeterminate impact on the judiciary.

#### **POSITIONS:**

A representative of the Michigan Creditors Bar Association indicated support for the bill. (2-5-04)

A representative of the Michigan Retailers Association indicated support for the bill. (2-3-04)

A representative of the Process Servers of Michigan, Inc. indicated support for the bill. (2-18-04)

A representative of the Macomb County Finance Department indicated support for the bill. (2-12-04)

A representative of the Real Property Law Section of the State Bar of Michigan indicated opposition to the bill. (2-5-04)

A representative of the Michigan Mortgage Lenders Association indicated opposition to the bill. (2-24-04)

A representative of the Michigan Bankers Association indicated opposition to the bill. (2-24-04)

A representative of the Court Officers – Deputy Sheriffs Association indicated opposition to the bill. (2-5-04)

A representative of the Michigan Association of Registers of Deeds indicated opposition to portions of the bill. (2-3-04)

A representative of the Michigan Mortgage Brokers Association indicated a position of neutrality. (2-24-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.