

HOUSE BILL No. 5381

December 11, 2003, Introduced by Rep. LaSata and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding chapter 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 28. JUDGMENT LIENS

Sec. 2801. As used in this chapter:

(a) "Judgment" means a final judgment of 1 of the following:

(i) A court of record of this state.

(ii) A United States district court or bankruptcy court.

(iii) A foreign judgment filed under the uniform enforcement
of foreign judgments act, 1996 PA 502, MCL 691.1171 to 691.1179.

(b) "Interest in real property" means an interest enumerated
in section 6018.

(c) "Judgment lien" means an encumbrance in favor of a
judgment creditor against a judgment debtor's interest in real

1 property, including, but not limited to, after acquired property.

2 Sec. 2803. A judgment lien attaches to a judgment debtor's
3 interest in real property if a notice of judgment lien is
4 recorded in accordance with this chapter in the land title
5 records of the register of deeds for the county where the
6 property is located. The judgment lien attaches at the time the
7 notice of judgment lien is recorded or, for after acquired
8 property, at the time the judgment debtor acquires the interest
9 in the property.

10 Sec. 2805. (1) The clerk of a court that entered a judgment
11 shall certify a notice of judgment lien that has been filed with
12 the court and that includes all of the following:

13 (a) The case caption and docket number.

14 (b) The current name and address of the judgment creditor
15 and, if the judgment creditor has an attorney, the attorney.

16 (c) The name, last 4 digits of the social security or tax
17 identification number, and last known address of the judgment
18 debtor.

19 (d) The current balance due on the judgment.

20 (e) The date the judgment was entered, the expiration date of
21 the judgment, and the expiration date of the judgment lien.

22 (f) The signature of the judgment creditor or the judgment
23 creditor's attorney.

24 (2) A notice of judgment lien need not include a legal
25 description of the debtor's interest in real property.

26 (3) A copy of a notice of judgment lien that has been
27 certified under subsection (1) shall be served by first-class

1 mail on the judgment debtor at the judgment debtor's last known
2 address. Proof of service shall be filed with the court that
3 issued the judgment.

4 Sec. 2807. (1) A judgment lien does not attach to an
5 interest in real property owned as tenants by the entirety unless
6 the underlying judgment is entered against both the husband and
7 wife.

8 (2) With the following exceptions, a judgment lien has
9 priority over a lien recorded with the register of deeds after
10 the notice of judgment lien is recorded:

11 (a) A purchase money mortgage.

12 (b) A mortgage to the extent that proceeds of the mortgage
13 are used to pay 1 or more of the following:

14 (i) Purchase money mortgage debt.

15 (ii) A subsequent refinancing of purchase money mortgage
16 debt.

17 (iii) A nonpurchase money mortgage recorded before attachment
18 of the judgment lien.

19 (c) A lien that secures an advance made under a previously
20 recorded future-advance mortgage.

21 (d) A lien that has or acquires priority by operation of
22 law.

23 (e) A claim of lien recorded with the register of deeds under
24 section 111 of the construction lien act, 1980 PA 497, MCL
25 570.1111.

26 (f) A lien for unpaid assessments or charges due to a
27 condominium association, homeowners' association, or property

1 owners' association that arises from or pursuant to recorded
2 restrictions that run with the land.

3 (3) If property subject to a judgment lien recorded under
4 this chapter is sold or refinanced, proceeds of the sale or
5 refinancing due to a judgment creditor are limited to the
6 judgment debtor's equity in the property at the time of the sale
7 or refinancing after all liens senior to the judgment lien,
8 property taxes, and costs and fees necessary to close the sale or
9 refinancing are paid or extinguished.

10 Sec. 2809. (1) Unless subsection (2) or (3) applies, a
11 judgment lien expires 5 years after the date it is recorded.

12 (2) Unless subsection (3) applies, if a judgment lien is
13 rerecorded under subsection (4), the judgment lien expires 5
14 years after the date it is rerecorded.

15 (3) If the judgment expires before the judgment lien expires,
16 the judgment lien expires on the date that the judgment expires.

17 (4) A judgment lien may be rerecorded only once, by recording
18 a certified notice of judgment lien more than 120 days before the
19 initial expiration date under subsection (1).

20 (5) The filing of a state or federal insolvency proceeding by
21 the judgment debtor does not toll or suspend the time period in
22 which a judgment lien is effective.

23 (6) A judgment lien is extinguished when 1 or more of the
24 following are recorded with the office of the register of deeds
25 where the judgment lien is recorded:

26 (a) A discharge of judgment lien signed by the judgment
27 creditor or the judgment creditor's attorney.

1 (b) A certified copy of a satisfaction of judgment that has
2 been filed with the court that issued the judgment.

3 (c) A certified copy of a court order that discharges the
4 judgment lien.

5 Sec. 2811. Within 28 days after payment in full of the
6 amount due on a judgment that is the basis for a judgment lien,
7 the judgment creditor or the judgment creditor's attorney shall
8 record a discharge of judgment lien with the office of the
9 register of deeds where the judgment lien is recorded. If
10 payment on a judgment lien is made from the judgment debtor's
11 equity as described in section 2807(3) and is not payment in full
12 of the amount due on the lien, the judgment creditor or the
13 judgment creditor's attorney shall record a partial discharge of
14 judgment lien for the amount paid.

15 Sec. 2813. (1) A judgment creditor that has not recorded a
16 discharge of judgment lien as required by section 2811 shall
17 record the discharge within 14 days after receiving a written
18 request from the judgment debtor by certified mail. A judgment
19 creditor that fails to comply with this section is liable to the
20 judgment debtor for \$300.00 plus all actual damages and costs
21 sustained by the judgment creditor because of the failure.

22 (2) If a judgment debtor has paid a judgment in full or has
23 made a partial payment from equity as described in section
24 2807(3), has sent a request under subsection (1), and is unable,
25 after exercising due diligence, to locate the judgment creditor
26 or the judgment creditor's attorney, the judgment debtor may
27 record an affidavit that complies with this subsection with the

1 register of deeds with whom the judgment lien is recorded. The
2 judgment debtor shall state in the affidavit that the judgment
3 debtor sent a request under subsection (1) to the judgment
4 creditor or the judgment creditor's attorney and shall attach to
5 the affidavit a copy of a written instrument that evidences
6 payment of the judgment and a copy of the receipt for the
7 certified mailing of the request. Recording the affidavit,
8 written instrument, and receipt discharges the judgment lien
9 completely or, if payment is made from the judgment debtor's
10 equity as described in section 2807(3) and is not payment in full
11 of the amount due on the lien, partially to the extent of the
12 amount paid.

13 Sec. 2815. (1) A person who has the same or a similar name
14 as a judgment debtor may demand in writing that a judgment
15 creditor that has recorded a judgment lien against the judgment
16 debtor deliver to the person a recordable document that
17 discharges the judgment lien as to property owned by the person.
18 The demand shall be accompanied by reasonable proof that the
19 person is not the judgment debtor and that the property is not
20 subject to the judgment lien.

21 (2) Within 14 days after receipt of a demand that complies
22 with subsection (1), the judgment creditor shall deliver to the
23 person making the demand a recordable document that discharges
24 the judgment lien as to the property of the person. A judgment
25 creditor that improperly fails to comply with this subsection is
26 liable to the person making the demand for all actual damages and
27 costs sustained by the person because of the failure and is

1 presumed to be liable for at least \$300.00.

2 (3) If a judgment creditor does not deliver a document as
3 required by subsection (2), the person making the demand may move
4 the court that entered the judgment for an order discharging the
5 judgment lien. The motion shall be served on the judgment
6 creditor. On presentation of evidence satisfactory to the court
7 that the property is not subject to the judgment, the court shall
8 order the judgment creditor to prepare and deliver a recordable
9 discharge of the judgment lien or issue an order discharging the
10 judgment lien. The court shall award reasonable attorney fees to
11 a party that prevails on a motion under this section.

12 Sec. 2817. A judgment lien is in addition to and separate
13 from any other remedy or interest created by law or contract.