

LIENS AFFECTING REAL ESTATE: A CHECKLIST

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Over the course of a real estate attorney's career, he or she, when reviewing title insurance commitments, will have the daunting task of wading through a myriad of liens that affect real estate. These liens, with their varying limitation periods, arise from numerous laws scattered throughout federal statutes and the *Illinois Compiled Statutes*. The attorney is eventually going to face questions somewhat akin to: is that three year old mechanics lien still enforceable or is it now "out on time?". While not exhaustive, this article will list many of the common (and not so common) liens that the real estate practitioner will, from time to time, encounter. The statutory citation and limitation period, if any, will be shown. Finally, a few pertinent court cases will also be noted.

Claim Against Estate (755 ILCS 5/18-12) This is a claim against the property of a decedent. The claim is barred two years after the decedent's death.

Commercial Code Financing Statement (810 ILCS 5/9-403) A financing statement executed by a borrower is a lien on fixtures or other pledged collateral. It is effective for five years from the date of recording, but it may be extended for additional five year periods by the recording of continuation statements that are recorded within six months of the expiration of the then current five year period. When a financing statement is recorded contemporaneously with a recorded mortgage, and thus serves as additional security for the mortgage debt, most title companies, notwithstanding the five year statute of limitations, will not waive the financing statement

until the mortgage is released or paid through a closing escrow.

Commercial Real Estate Broker's Lien (770 ILCS 15/10) This is a lien on commercial real estate arising from written contracts for brokerage services. The lien attaches when the notice of lien is recorded. It expires unless a foreclosure proceeding is filed within two years of the recording of the notice.

Condominium Assessment Lien (765 ILCS 605/9) The Condominium Property Act provides for the assessment of unit owners for the payment of common expenses. An assessment becomes a lien on the land if not paid, and the lien is enforceable upon the recordation of a notice of lien. There is no statute of limitations.

Demolition Lien (65 ILCS 5/11-31-1 for municipalities, 55 ILCS 5/5-1080 for counties) This is a lien for the costs incurred by a municipality or county in the repair or demolition of an unsafe building. There is no statute of limitations. (A three year limitation was repealed effective 1989).

Drainage Assessment (70 ILCS 605/5-17) The commissioners of a drainage district have the power to levy and collect drainage assessments. There is no statute of limitations.

Federal Estate Tax Lien (26 USCA 6324) This is a lien on the property of the estate of a decedent. The statute of limitations is 10 years from the date of death of the decedent.

Federal Revenue Lien (26 USCA 6321) The federal revenue lien is a lien on the property of any person who fails to pay his or her federal income tax. The statute of limitations is 10 years from the assessment date of the tax—it was changed from six years to ten years effective 1990. Recorded federal revenue liens now include a “self-releasing” feature. The lien document will state a date after which the IRS can neither enforce the lien nor extend its life. If the lien is not enforced or extended prior to the expiration of the statute of limitations (the date shown on the lien), the lien “self-releases”—i.e., the lien automatically releases itself, without a certificate of release being recorded. Indeed, the IRS will not even record a release.

General Real Estate Tax Lien (35 ILCS 200/20-180) This is an annual tax on real estate collected by the county. A delinquent but unsold tax becomes unenforceable 30 years after the delinquency date. Most title companies, though, will insist that title to the land be in a bona fide purchaser (someone not personally liable for the tax) before waiving 30 year old unpaid taxes because the statute requires the tax records to be marked “unenforceable.” If taxes are sold at tax sale, the lien of the certificate of sale expires one year after the expiration of the redemption period.

Illinois Income Tax Lien (35 ILCS 5/1101) This is a state lien on the property of any person who fails to pay his or her state income tax. The statute of limitations is 20 years from the date of recording of the lien. The previous five year statute of limitations was extended to 20 years effective 1984.

Illinois Transfer (Inheritance) Tax Lien (35 ILCS 405/10) This is a lien upon property transferred by gift or at death for the tax due by reason of the gift or death. The statute of limitations is 10 years from the date of gift or death.

Judgment Lien, including child support lien (735 ILCS 5/12-101) A recorded memorandum of judgment is a lien on the debtor’s property for seven years from the date the judgment is rendered (not from the date any memorandum of judgment is

recorded). The death of the judgment debtor can extend the limitations period by an additional year, to eight years. The lien may be extended for additional seven-year periods, and it can even be revived after a seven-year period has expired. In no event, however, may the lien be enforceable beyond 20 years from the date it was entered. See, in this regard, *The First National Bank in Toledo v. Adkins*, 272 Ill.App.3d 111, 650 N.E. 2d 277 (1995).

Mechanics Lien (including property manager lien) (770 ILCS 60/1 et seq.) This is a lien for the cost of labor, services, or materials a contractor or sub-contractor furnishes to the building or improvements located on the land. Generally speaking, the statute of limitations is two years from the date the work was completed. See, though, *Garbe Iron Works, Inc. v. Priester* 99 Ill.2nd 84, 457 N.E.2d 422 (1983), wherein the Supreme Court held that a bankruptcy filing by a party who would be a necessary defendant in a mechanics lien foreclosure extends the time within which the lien claimant may file a foreclosure.

Mortgage (735 ILCS 5/13-116) If the mortgage has a due date on its face, then the lien expires 20 years after the due date. If there is no due date, then the mortgage expires 30 years after the date of the instrument. The title insurer will most likely require that title to the land be in a bona fide purchaser (someone other than the mortgagor) before it will waive a mortgage based on the statute of limitations. A mortgage foreclosure must be commenced within 10 years after the right to bring the action accrues. (735 ILCS 5/13-115)

Municipal Tax (65 ILCS 5/8-3-15) The corporate authorities of a municipality can enforce the collection of any tax by recording a notice of lien. There does not appear to be any statute of limitations for this lien. However, the statute does state that “a municipality creating a lien may provide that the procedures for its notice and enforcement shall be the same as that provided in the Retailers’ Occupation Tax Act. . .”. As noted below, this lien has a 20 year statute of limitations.

Order (735 ILCS 5/2-1304) When a party to an action is required to perform any act other than the payment of money, or, to refrain from performing any act, the court may, in the order, provide that the same shall be a lien upon the real estate of the party until the order is complied with. Since this statute also states that this lien “shall have the same force and effect, and be subject to the same limitations and restrictions, as judgments for the payment of money. . .”, it appears that the statute of limitations would be the same as for a judgment.

Public Aid Lien (305 ILCS 5/3-10.2) This is a lien in favor of the State of Illinois for the repayment of monies paid under the Public Aid Code. The statute of limitations is five years from the date of recording of the lien. The lien may be extended for additional five year periods upon the recordation of a new notice of lien prior to the expiration of the then current period of enforceability.

Retailers Occupation Tax Lien (35 ILCS 120/5a) The Department of Revenue has a lien on the real estate of any person against whom a tax is assessed. There is a 20 year statute of limitations from the date the lien was recorded.

Removal of Garbage and Debris Lien (65 ILCS 5/11-20-13) A municipality may provide for the removal of garbage and debris from private property when the owners of said property refuse to undertake such removal. The cost is a lien on the real estate. The statute of limitations is two years from the recording date of the lien.

Sanitary District Lien (70 ILCS 3010/17) Charges or rates for sanitary district services shall be a lien on the real estate for which sewerage service is supplied. There is no statute of limitations.

Senior Citizen Property Tax Deferral Lien (320 ILCS 30/1 et seq.) This statute allows a senior citizen to defer all or a portion of his or her real estate taxes. The County Collector records a notice of this tax deferral and the state actually pays the taxes. The amount of lien is for the deferred taxes, together

with interest. The property cannot be “sold or transferred” until the lien is paid. In addition, upon the death of the taxpayer, the lien for deferred taxes and interest shall be recovered from the estate of the taxpayer within one year of the date of death.

Sewer and Water Lien (Municipal) (65 ILCS 5/11-139-8) Charges for municipal sewer and water services shall be a lien on the real estate for which water and sewerage service is supplied. There is no statute of limitations. See also *65 ILCS 5/11-141-16*.

Sidewalk Construction and Repair Lien (65 ILCS 5/11-84-1) A municipality, by ordinance, may provide for the construction and repair of sidewalks, payment for which to be by special taxation of the adjoining parcels of land. There is no statute of limitations.

Special Assessment (65 ILCS 5/9-2-65) Special assessments are levied by a municipality to fund a particular service project that is intended to benefit only a specific area. At one time there was a thirty year statute of limitations for such liens. However, the Illinois Supreme Court, in *G.D. Hardin, Inc. v. Village of Mount Prospect*, 99 Ill.2d 96, 457 N.E.2d 429 (1983), held that this statutory limitation was unconstitutional. Hence, there is no longer any statute of limitations. Nonetheless, it is possible that a title company, under certain circumstances, may waive old but still unpaid special assessments. See also *65 ILCS 5/9-2-70*.

Unemployment Compensation Lien (820 ILCS 405/2400) The Director of the Department of Labor has a lien on the real estate of an employer from whom contributions for unemployment compensation are due. The statute of limitations is three years from the date the lien was recorded.

Weed Cutting Lien (65 ILCS 5/11-20-7 for municipalities, 60 ILCS 1/105-15 for townships) A municipality or township can provide for the cutting of weeds when the owner of real estate fails to cut them. The cost of doing so is a lien on the real estate. There is no statute of limitations. ☐