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## BILL ANALYSIS

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House Bill 5381 (Substitute H-1 as passed by the House)  
Sponsor: Representative Charles LaSata  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 5-18-04

**CONTENT**

**The bill would add Chapter 28 ("Judgment Liens") to the Revised Judicature Act (RJA) to provide for the establishment and dissolution of a judgment lien on a judgment debtor's interest in real property. The bill would do all of the following:**

- Provide that a judgment lien would attach to a judgment debtor's interest in real property if a judgment lien notice were filed with the county register of deeds.**
- Require a court clerk to certify a notice of judgment lien that was filed with the court and met certain criteria.**
- Establish requirements for serving a judgment lien notice on a judgment debtor.**
- Provide that, with certain exceptions, a judgment lien would have priority over a lien recorded after the notice of judgment lien.**
- Provide for the expiration of a judgment lien and allow only one rerecording of a judgment lien.**
- Specify events that would extinguish a judgment lien, and require a judgment creditor to discharge the lien after the judgment was paid in full.**
- Provide that a judgment creditor would be liable to a judgment debtor if the creditor failed to discharge a judgment lien within a certain period.**
- Provide for the discharge of a judgment lien as to property owned by someone with the same or a similar name as the judgment debtor.**
- Specify that 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 the wife.**

The bill would take effect on September 1, 2004.

"Judgment lien" would mean an encumbrance in favor of a judgment creditor against a judgment debtor's interest in real property, including after-acquired property. "Judgment" would mean a final judgment of a Michigan court of record, a U.S. District Court or bankruptcy court, or a foreign judgment filed under the Uniform Enforcement of Foreign Judgments Act.

**Attachment; Certification**

Under the bill, a judgment lien would attach to a judgment debtor's interest in real property, if a notice of judgment lien were recorded pursuant to Chapter 28 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 was recorded or, for after-acquired property, at the time the judgment debtor acquired the interest in the property.

The clerk of a court that entered a judgment would have to certify a notice of judgment lien that had been filed with the court and that included all of the following:

- The case caption and docket number.
- The current name and address of the judgment creditor and his or her attorney, if the creditor had an attorney.
- The judgment debtor's name, last four digits of his or her Social Security or tax identification number, and last known address.
- The judgment's current balance due.
- The date the judgment was entered, the judgment's expiration date, and the judgment lien's expiration date.
- The judgment creditor's signature, or that of his or her attorney.

A notice of judgment lien would not have to include a legal description of the debtor's interest in real property.

#### Service on Judgment Debtor

A copy of a notice of judgment lien that was certified by the court clerk would have to be served by certified mail on the judgment debtor at his or her last known address. If the judgment were for \$25,000 or more, however, a copy of a notice of judgment lien certified by the court clerk would have to be served personally on the judgment debtor. In either case, proof of service would have to be filed with the court that issued the judgment.

#### Lien Priority

A judgment lien would have priority over a lien recorded with the register of deeds after the notice of judgment lien was recorded, subject to the following exceptions:

- A purchase money mortgage.
- A mortgage to the extent that its proceeds were used to purchase money mortgage debt, pay a subsequent refinancing of purchase money mortgage debt, or pay a nonpurchase money mortgage recorded before the judgment lien attached.
- A lien that secured an advance made under a previously recorded future-advance mortgage.
- A lien that had or acquired priority by operation of law.
- A claim of lien recorded with the register of deeds under the Construction Lien Act.
- A lien for unpaid assessments or charges due to a condominium association, homeowners' association, or property owners' association that arose from or pursuant to recorded restrictions that ran with the land.
- A State or Federal tax lien.

If property subject to a judgment lien recorded under Chapter 28 were sold or refinanced, proceeds of the sale or refinancing due to a judgment creditor would be limited to the judgment debtor's equity in the property at the time of the sale or refinancing after all liens senior to the judgment lien, property taxes, and costs and fees necessary to close the sale or refinancing were paid or extinguished.

#### Expiration & Rerecording

Generally, a judgment lien would expire five years after it was recorded. If a judgment lien were rerecorded, it would expire five years after the date it was rerecorded. If the

judgment expired before the judgment lien, the judgment lien would expire on the date the judgment expired.

A judgment lien could be rerecorded only once. A judgment lien would be rerecorded by the recording with the register of deeds, at least 120 days before the initial expiration date, of a second notice of judgment lien that was certified by clerk of the court that entered the judgment.

The bill specifies that the filing of a State or Federal insolvency proceeding by the judgment debtor would not toll or suspend the time period in which a judgment lien was effective.

#### Extinguishment & Discharge

A judgment lien would be extinguished when one or more of the following were recorded with the office of the register of deeds where the judgment lien was recorded:

- A discharge of judgment lien signed by the judgment creditor or his or her attorney.
- A certified copy of a satisfaction of judgment that was filed with the court that issued the judgment.
- A certified copy of a court order that discharged the judgment lien.
- A copy of the judgment debtor's discharge in bankruptcy issued by a U.S. bankruptcy court and a copy of the bankruptcy schedule listing the judgment debt. (This would not apply if an order entered in the judgment debtor's bankruptcy case determining that the debt was nondischargeable were recorded with the register of deeds.)

Within 28 days after payment in full of the amount due on a judgment that was the basis for a judgment lien, the judgment creditor or his or her attorney would have to record a discharge of judgment lien with the office of the register of deeds where the judgment lien was recorded. If payment on a judgment lien were made from the judgment debtor's equity upon the sale or refinancing of the property subject to the lien, and were not payment in full of the amount due on the lien, the judgment creditor or his or her attorney would have to record a partial discharge of judgment lien for the amount paid.

If a judgment creditor had not recorded a discharge within 28 days after payment in full on the judgment, the creditor would have to record the discharge within 14 days after receiving a written request from the judgment debtor by certified mail. A judgment creditor that failed to comply with this requirement would be liable to the judgment debtor for \$300 plus actual damages and costs sustained by the debtor because of the failure to discharge the lien.

If a judgment debtor had paid a judgment in full or had made a partial payment from equity upon the sale or refinancing of property subject to the lien, had sent a request for the lien to be discharged, and could not locate the judgment creditor or the creditor's attorney, after exercising due diligence, the judgment debtor could record an affidavit with the register of deeds with whom the judgment lien was recorded. The judgment debtor would have to state in the affidavit that he or she sent a request of discharge to the judgment creditor or the creditor's attorney and would have to attach to the affidavit a copy of a written instrument that showed payment of the judgment and a copy of the receipt for the certified mailing of the discharge request. Recording the affidavit, written instrument, and receipt would discharge the judgment lien completely. If payment were made from the judgment debtor's equity upon the sale or refinancing of the property subject to the lien and were not payment in full, recording the affidavit, written instrument, and receipt would discharge the judgment lien partially, to the extent of the amount paid.

### Same or Similar Name: Discharge

A person who had the same or a similar name as a judgment debtor could demand in writing that a judgment creditor that had recorded a judgment lien against the judgment debtor deliver to the person a recordable document that discharged the judgment lien as to property owned by that person. The demand would have to be accompanied by reasonable proof that the person was not the judgment debtor and that the property was not subject to the judgment lien. Within 14 days after receiving such a demand, the judgment creditor would have to deliver to the person a recordable document that discharged the judgment lien as to that person's property. A judgment creditor that improperly failed to comply with this requirement would be liable to the person making the demand for all actual damages and costs sustained by the person because of the failure, and would be presumed to be liable for at least \$300.

If a judgment creditor did not deliver a document discharging the judgment lien, the person making the demand could ask the court that entered the judgment for an order discharging the judgment lien. The motion would have to be served on the judgment creditor. On presentation of evidence satisfactory to the court that the property was not subject to the judgment, the court would have to order the judgment creditor to prepare and deliver a recordable discharge of the judgment lien or issue an order discharging the judgment lien. The court would have to award reasonable attorney fees to a party that prevailed on a motion.

### Other Provisions

The bill specifies that there would be no right to foreclose a judgment lien created under Chapter 28. At the time the judgment debtor made a conveyance of, sold under an executory contract, or refinanced the interest in real property that was subject to the judgment lien, the judgment debtor would have to pay to the judgment creditor the amount due to the creditor.

The bill also provides that a judgment lien would be in addition to, and separate from, any other remedy or interest created by law or contract.

Proposed MCL 600.2801-600.2819

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that it would create additional administrative requirements for courts, the bill could increase costs for court funding units.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.