

Act No. 136
Public Acts of 2004
Approved by the Governor
June 10, 2004
Filed with the Secretary of State
June 10, 2004
EFFECTIVE DATE: September 1, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Rep. LaSata

ENROLLED HOUSE BILL No. 5381

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (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 property, including, but not limited to, after acquired property.

Sec. 2803. A judgment lien attaches to a judgment debtor's interest in real property if a notice of judgment lien is recorded in accordance with this chapter in the land title records of the register of deeds for the county where the

property is located. The judgment lien attaches at the time the notice of judgment lien is recorded or, for after acquired property, at the time the judgment debtor acquires the interest in the property.

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

- (a) The case caption and docket number.
 - (b) The current name and address of the judgment creditor and, if the judgment creditor has an attorney, the attorney.
 - (c) The name, last 4 digits of the social security or tax identification number, and last known address of the judgment debtor.
 - (d) The current balance due on the judgment.
 - (e) The date the judgment was entered, the expiration date of the judgment, and the expiration date of the judgment lien.
 - (f) The signature of the judgment creditor or the judgment creditor's attorney.
- (2) A notice of judgment lien need not include a legal description of the debtor's interest in real property.
- (3) Except as provided by subsection (4), a copy of a notice of judgment lien that has been certified under subsection (1) shall be served by certified mail on the judgment debtor at the judgment debtor's last known address. Proof of service shall be filed with the court that issued the judgment.

(4) If the judgment that is the subject of the judgment lien is for \$25,000.00 or more, a copy of a notice of judgment lien that has been certified under subsection (1) shall be personally served on the judgment debtor and proof of service filed with the court that issued the judgment.

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

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

- (a) A purchase money mortgage.
- (b) A mortgage to the extent that proceeds of the mortgage are used to pay 1 or more of the following:
 - (i) Purchase money mortgage debt.
 - (ii) A subsequent refinancing of purchase money mortgage debt.
 - (iii) A nonpurchase money mortgage recorded before attachment of the judgment lien.
- (c) A lien that secures an advance made under a previously recorded future-advance mortgage.
- (d) A lien that has or acquires priority by operation of law.
- (e) A claim of lien recorded with the register of deeds under section 111 of the construction lien act, 1980 PA 497, MCL 570.1111.
- (f) A lien for unpaid assessments or charges due to a condominium association, homeowners' association, or property owners' association that arises from or pursuant to recorded restrictions that run with the land.
- (g) A state or federal tax lien.

(3) If property subject to a judgment lien recorded under this chapter is sold or refinanced, proceeds of the sale or refinancing due to a judgment creditor are 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 are paid or extinguished.

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

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

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

(4) A judgment lien may be rerecorded only once. A judgment lien is rerecorded by recording with the register of deeds, not less than 120 days before the initial expiration date under subsection (1), a second notice of judgment lien that has been certified by the clerk of the court that entered the judgment.

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

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

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

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

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

(d) A copy of the judgment debtor's discharge in bankruptcy issued by a United States bankruptcy court and a copy of the bankruptcy schedule listing the judgment debt. This subdivision does not apply if an order entered in the judgment debtor's bankruptcy case determining that the debt is nondischargeable is recorded with the register of deeds.

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

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

(2) If a judgment debtor has paid a judgment in full or has made a partial payment from equity as described in section 2807(3), has sent a request under subsection (1), and is unable, after exercising due diligence, to locate the judgment creditor or the judgment creditor's attorney, the judgment debtor may record an affidavit that complies with this subsection with the register of deeds with whom the judgment lien is recorded. The judgment debtor shall state in the affidavit that the judgment debtor sent a request under subsection (1) to the judgment creditor or the judgment creditor's attorney and shall attach to the affidavit a copy of a written instrument that evidences payment of the judgment and a copy of the receipt for the certified mailing of the request. Recording the affidavit, written instrument, and receipt discharges the judgment lien completely or, if payment is made from the judgment debtor's equity as described in section 2807(3) and is not payment in full of the amount due on the lien, partially to the extent of the amount paid.

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

(2) Within 14 days after receipt of a demand that complies with subsection (1), the judgment creditor shall deliver to the person making the demand a recordable document that discharges the judgment lien as to the property of the person. A judgment creditor that improperly fails to comply with this subsection is liable to the person making the demand for all actual damages and costs sustained by the person because of the failure and is presumed to be liable for at least \$300.00.

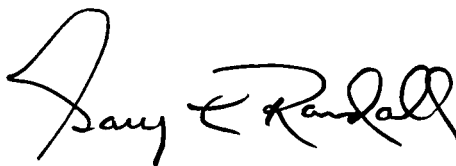
(3) If a judgment creditor does not deliver a document as required by subsection (2), the person making the demand may move the court that entered the judgment for an order discharging the judgment lien. The motion shall be served on the judgment creditor. On presentation of evidence satisfactory to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

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

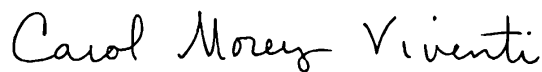
Sec. 2819. There is no right to foreclose a judgment lien created under this chapter. At the time the judgment debtor makes a conveyance, as that term is defined in section 35 of 1846 RS 65, MCL 565.35, of, sells under an executory contract, or refinances the interest in real property that is subject to the judgment lien, the judgment debtor shall pay the amount due to the judgment creditor, as determined under section 2807(3), to the judgment creditor.

Enacting section 1. This amendatory act takes effect September 1, 2004.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor