

JUDGMENT LIENS

Ever wonder why a judgment for an unpaid medical bill or other debt unrelated to real estate becomes a lien on the person's home? Well, simply put, it's the law.

A judgment entered into the docket of the Indiana Court in the county in which the real estate is located is a lien against all the real estate owned by or acquired by a judgment debtor for 10 years. It is important to know that a judgment must be entered in the county where the real estate is located. For example, a judgment entered in Marion County is not a lien on property in Hamilton County unless or until it is transferred to and entered in the appropriate Hamilton County Court. Likewise, a judgment entered in another state's court is not lien on real estate in Indiana even if the judgment is recorded in the recorder's office in the county where the real estate is located. Also, note that a judgment becomes a lien on property acquired after the judgment was entered. For instance, a judgment entered in 1998 will be a lien against the real estate acquired by the debtor in 2002.

Another important fact to consider is that the judgment must be entered against the titleholder of the real estate. Judgments entered against a husband only are not a lien against the real estate owned by the husband and wife together as tenants by the entirety (**NOTE: SEE BELOW THE EXCEPTION TO THIS RULE FOR FEDERAL TAX LIENS.**) If a judgment was against one spouse while that one spouse owned the property, the act of getting married and putting the real estate in husband and wife does not avoid the judgment lien.

There are various methods in removing a judgment lien from the real estate. The simplest way is to pay the judgment in full from the closing proceeds and have the creditor's attorney file a satisfaction in full in the judgment docket. Another method is to have the judgment be partially released. This can be utilized if the creditor feels comfortable in knowing that the debtor owns other real estate. A partial release only releases the particular real estate so that the creditor still has a judgment lien remaining on other property of the debtor. Under the Bankruptcy Code, a judgment debtor may, at times, avoid the judgment lien where it would not be a lien against the real estate. Lastly, on occasion the title company may be willing to "insure over" the judgment lien, which means the lien is not released but the title company's insured is protected against the enforcement of the lien.

NOTE: As a result of a recent U.S. Supreme Court case, a federal tax lien against one spouse in a tenancy by the entirety attaches to the tenancy by the entirety property. Please remember that, although the federal tax lien against one spouse will attach to the husband and wife purchaser's property, a purchase money mortgage will have priority over the previously filed federal tax lien.