

# LIENS – THE ABILITY TO COLLECT

**Presented by John Traylor  
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# WHAT WE WILL COVER

- \* **Legal definition of a lien**
- \* **Types of legal liens**
- \* **When is a lien created?**
- \* **When does a lien attach?**
- \* **Perfecting a lien & why it's important**
- \* **Difference between liens & reimbursement**
- \* **What is the value of a lien?**

# WHAT WE WILL COVER

- \* **What property a lien attaches to**
- \* **What counties can do to improve reimbursement collections**
- \* **How to deal with divorce decrees and “married but separated” spouses**
- \* **Types of actions on liens**
- \* **Liens and bankruptcy**
- \* **Filing liens in other counties & states**

# LEGAL DEFINITION OF A

- \* **Idaho Code 45-101**

- \* **A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.**

# LEGAL DEFINITION OF A

\* Idaho Code 45-111

\* **The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.**

# TYPES OF LIENS

- \* **Materialman's Liens**
- \* **Mechanic's Liens**
- \* **Mortgages**
- \* **Auto Financing**
- \* **HOA Liens**
- \* **Judgment liens**

# TYPES OF LIENS

- \* **Attorney Liens**
- \* **Tax Liens**
- \* **Pawn Shops**
- \* **Hospital & Medical Liens**

# WHEN IS A LIEN CREATED, WHEN DOES IT ATTACH & PERFECTING A

- \* **Creation of the lien**
- \* **Attachment of the lien**
- \* **Perfection of the lien**
- \* **Execution of the lien**



# THE DIFFERENCE BETWEEN LIENS & REIMBURSEMENT

\*Liens and Reimbursement  
are NOT THE SAME THING!

\*Liens secure the debt

# THE DIFFERENCE BETWEEN LIENS & REIMBURSEMENT

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# THE DIFFERENCE BETWEEN LIENS & REIMBURSEMENT

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# REIMBURSEMENT

- \* **I.C. 31-3510A**

- \* **”Receipt of financial assistance pursuant to this chapter shall obligate an applicant to reimburse the obligated county and the board...**

# REIMBURSEMENT

**“...for such reasonable portion of the financial assistance paid on behalf of the applicant as the county commissioners may determine that the applicant is able to pay from resources over a reasonable period of time.”**

# HEALTH & WELFARE RECOVERY STATUTE

- \* **I.C. 56-218 & 218A**
- \* **Limited in scope**
- \* **Can recover full amount paid out**
- \* **Lots of qualifiers**
- \* **Consult with your attorney**

# SUBROGATION

- \* **I.C. 31-3510**

- \* **Can recover full amount paid out**
- \* **Only applies where applicant is injured as a result of somebody's negligence or actions**
- \* **Only extends against parties who caused or may be liable for the applicant's injuries**

# ENFORCING THE LIEN

- \* **3 actions that would cause concern**
- \* **If the applicant tried to**
  - \* **1. Sell the property**
  - \* **2. Refinance the property**
  - \* **3. Gift the property**



# WHAT PROPERTY DOES A LIEN ATTACH TO?

- \* **The property of the applicant**
- \* **Obligated person (spouse)???**
- \* **Property of minor's parents???**

# LIENS AGAINST FUTURE PROPERTY



**WHY?**



**AGAINST WHAT?**

# LIENS AGAINST FUTURE PROPERTY

\* **CAN WE FILE LIENS  
AGAINST PROPERTY  
THE APPLICANT DOES  
NOT YET OWN?**

# LIENS AGAINST FUTURE PROPERTY

\* I.C. 45-101

\* “A lien is a charge imposed in some mode upon specific property by which it is made security for the performance of an act”

# LIENS AGAINST FUTURE PROPERTY

\* Other state appellate courts

\* “A lien is a remedy against land to enforce an underlying claim.”

**AND**

“A lien is a legal right or interest that a creditor has in another’s property... lasting until a debt or duty that it secures is satisfied.” **AND**

# LIENS AGAINST FUTURE PROPERTY

- \* “Although a lien is an incident of and inseparable from, the debt it secures, it is distinct from that debt. Liens relate to assets or collateral, while the debt underlying the lien appertains to a person.”**

# LIENS AGAINST FUTURE PROPERTY

- 1. A lien is can be imposed only on specific property; and**
- 2. A lien is imposed on property – not the person.**

# LIENS AGAINST FUTURE PROPERTY

## Other state appellate courts:

- \* “Inasmuch as a lien is method of attaching some designated property or fund, if there is no property or fund for the lien to seize hold of, there can be no lien...thus notice of the lien must be filed while the debtor still has the property or fund in their possession.”



# LIENS AGAINST FUTURE PROPERTY

Idaho Code 45-107 provides:

- \* “An agreement can be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence.”
- \* “In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the [property].”

# LIENS AGAINST FUTURE PROPERTY

**I believe that**

**\*Liens do not and cannot attach to property that the applicant does not yet own...or yet-to-be-acquired property!!!**

# LIENS AGAINST FUTURE PROPERTY

**“A lien created by statute is limited in its operation and extent to the terms of the statute and can be enforced only in the event and under the facts provided for in the statute.”**

**AND**

# LIENS AGAINST FUTURE PROPERTY

**“A statutory lien must be strictly confined within the ambit of the legislation giving it birth.” [For us, that’s Chapter 35]**

**AND – Finally, case law has held:**

# LIENS AGAINST FUTURE PROPERTY

**“The terms of the statute are controlling with respect to the character, conditions and extent of the lien; the persons who may be held liable, the amount recoverable, and the duration of the lien.”**

# TYPES OF ACTIONS ON

- \* **Full Release**
- \* **Partial Release**
- \* **Subordination of Lien**
- \* **Consensual Lien**

# LIENS & BANKRUPTCY

- \* **Bankruptcy discharge wipes out the debt owed to the county...BUT**
- \* **Medical Indigency liens remain intact on pre-petition property**
- \* **Lien does NOT attach to property acquired after bankruptcy**

# FILING LIENS IN OTHER COUNTIES

- \* **Only if applicant has property in that county**
- \* **Liquidated resources**
- \* **Unliquidated resources**



# FILING LIENS IN OTHER STATES

- \* Only if applicant has property there
- \* File lien with YOUR court first
- \* Provide notice to applicant
- \* After 20 days, court will enter judgment
- \* File judgment in other state
- \* Consult with your attorney

# WHAT PERSONAL PROPERTY DO OUR LIENS ATTACH TO?

- \* Any & all personal property they own at the time of filing**
- \* Send notice and copy of liens to insurance companies and attorneys**
- \* Don't bother with Worker's Comp and Crime Victims Account**

# SOME GENERAL QUESTIONS

**1. What do we do when a title company calls and says the closing date on a property is set for 2 days from now? They want us to hurry and take some action on our lien. What do we do?**

# SOME GENERAL QUESTIONS

**2. What if an applicant's property that we have a lien on goes through probate and the executor of the estate deeds the property to an heir? What can we do?**

# SOME GENERAL QUESTIONS

**3. What information should be presented to the Board of County Commissioners to consider taking action on a lien?**

# SOME GENERAL QUESTIONS



**4. Who pays to have the line paperwork drawn up by the county attorneys?**

# HOW TO IMPROVE COLLECTIONS

- \* **Starts with your investigator/service worker**
- \* **Be “mildly aggressive” and resolute**
- \* **Have written policies and follow them**
- \* **Have applicant sign promissory note**
- \* **Require minimum payment from all applicants.**
- \* **Follow-up, follow-up, follow-up**
  - \* **Use tickler systems**

# DIVORCED & SEPARATED SPOUSES

- \* **Always consult with your attorney first**
- \* **Divorce decrees not binding on Indigent Svcs.**
- \* **Law obligates only the “applicant” to reimburse**
- \* **Married or separated – medical debt is a “community debt”**



# YOU CAN APPLAUD NOW

**THE END** 😊

