Medical Indigency Liens and Bankruptcy: It Can Be Messy.

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What is a “lien”?

A "lien" is defined as "a charge against or interest in property to secure payment of a debt or performance of an obligation."

11 U.S.C. § 101(37)

And in plain English?
What is a “lien”? . . .

LENDER:
Bank, private party, judgment creditor, etc.

Lien: The lender’s right to seize the collateral for non-payment.

Secured Debt Enforcement

COLLATERAL:
Home, car, bank accounts, etc.

DEBTOR/BORROWER

Personal Liability

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Creation, Perfection and Priority

Idaho Code § 31-3504(4)

CREATION AND ATTACHMENT

- “Upon application for financial assistance . . . an automatic lien shall attach to all real and personal property of the applicant.”

- “The lien shall also attach to any additional resources to which it may legally attach....” This may include future property.
PERFECTION

- **Real Estate**: Perfected by recording a Notice of Lien and Application for Financial Assistance within 30 days of receipt of the application.

- **Personal Property**: Perfected by filing a Notice of Application with the IDSOS within 30 days of receipt of the application. (Titled vehicles are an exception to this approach).
If timely perfected, the lien priority date is “as of the date the necessary medical services were provided.”
Bankruptcy Impacts

A. Automatic Bankruptcy Stay:

   The “Breathing Spell”

B. The Bankruptcy Discharge:

   The Debtor’s “Fresh Start”
THE FRESH START
One of Bankruptcy’s Goals

The Bankruptcy Discharge is a \textit{permanent} prohibition on collection of \textit{pre-bankruptcy} debts as the debtor’s personal obligation.

Bankruptcy Impacts . . .

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Bankruptcy Impacts . . .

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Personal Liability:
UNENFORCEABLE
(for pre-BK debts)

Secured Debt Enforcement

BANKRUPTCY DISCHARGE

DEBTOR/BORROWER

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Pre-Bankruptcy Lien & Discharge Illustration

A PRE-BANKRUPTCY LIEN REMAINS ON PROPERTY AFTER BANKRUPTCY IS FILED,

AND AFTER DISCHARGE, . . . EXCEPT THE LIEN DOES NOT ATTACH TO PROPERTY ACQUIRED AFTER BANKRUPTCY.
Remember

- The County's lien can reach all the Debtors' real estate and personal property if appropriately filed before bankruptcy.
- The reach of the lien is limited when a bankruptcy is filed.
- If properly asserted and perfected prior to bankruptcy, the lien is limited to the real or personal property that existed as of the bankruptcy filing date.
- The lien does not attach to property or a right to property acquired by a debtor after bankruptcy has been filed and where the debt is discharged against the debtor personally.
A Few Notable Bankruptcy Cases
Dealing with Medical Indigency Liens


- *In re Hendricks*, Case No. 09-41113, Memorandum Decision entered March 1, 2010 (Bankr. D. Idaho) (deciding lien duration is perpetual).

- *In re Johnson*, 386 B.R. 272 (Bankr. D. Idaho 2008) (continuation of administrative proceedings post-discharge is not a discharge violation where purpose was to determine County’s liability to care provider).

Thank you for your kind attention!

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