

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.

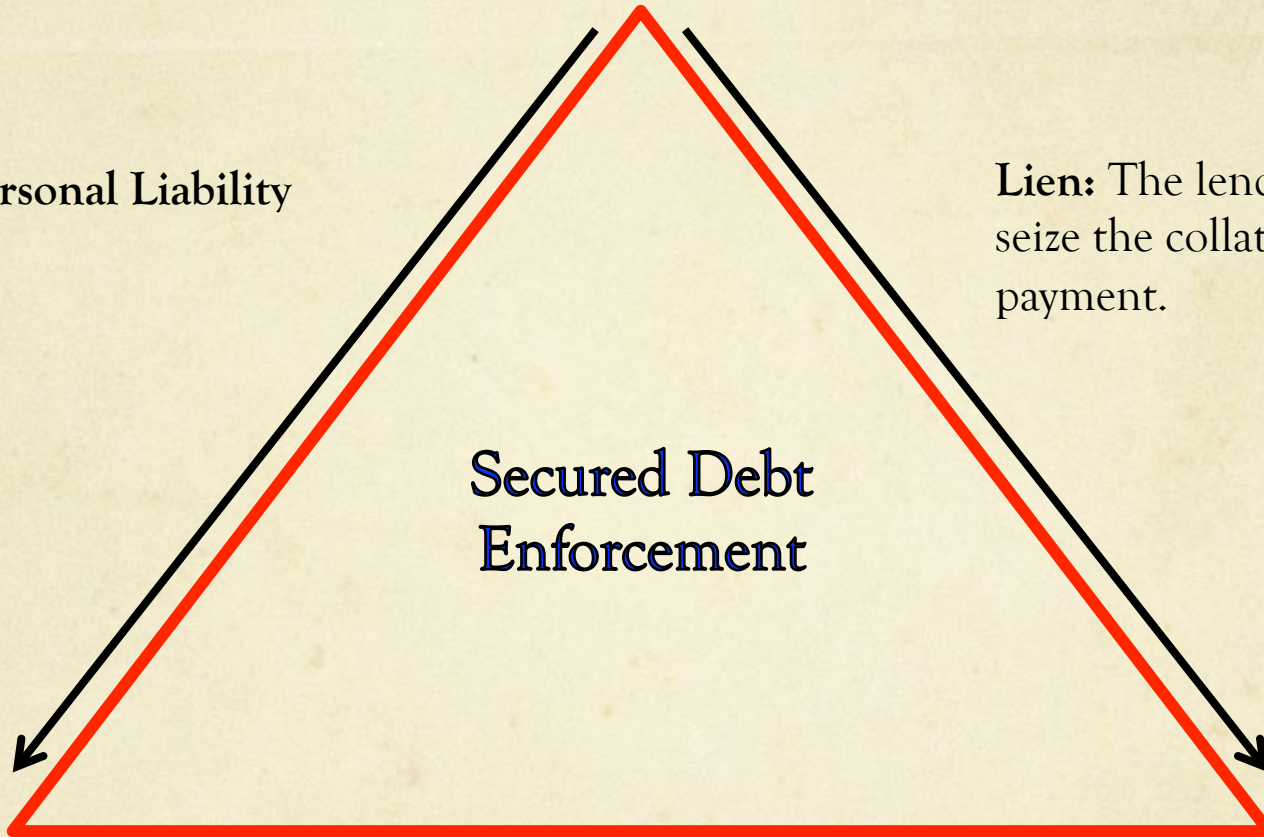
Personal Liability

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

Secured Debt Enforcement

DEBTOR/BORROWER

COLLATERAL:
Home, car, bank accounts, etc.



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.

Creation, Perfection and Priority . . .

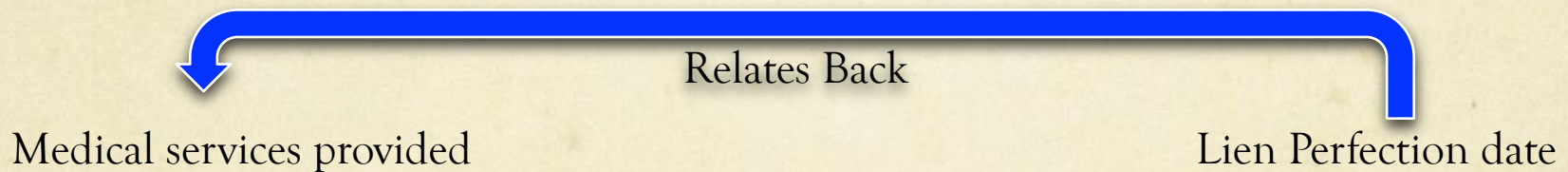
PERFECTION

- 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).

Creation, Perfection and Priority . . .

PRIORITY

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 permanent prohibition on
collection of

pre-bankruptcy debts

as the debtor's personal obligation.

11 U.S.C. § 524(a).

Bankruptcy Impacts . . .

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Bankruptcy Impacts . . .

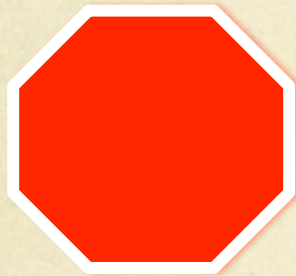
LENDER:

Bank, private party, judgment creditor, etc.

Personal Liability:
UNENFORCEABLE
(for pre-BK debts)

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

Secured Debt Enforcement



BANKRUPTCY DISCHARGE

DEBTOR/BORROWER

COLLATERAL:
Home, car, bank accounts, etc.

Pre-Bankruptcy Lien & Discharge Illustration

BANKRUPTCY
DISCHARGE

A PRE-BANKRUPTCY LIEN

REMAINS ON PROPERTY AFTER
BANKRUPTCY IS FILED,

The Lien

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 Mechling*, 284 B.R. 127 (Bankr. D. Idaho 2002)(explaining creation and perfection principles, and impact of discharge on post-bankruptcy property).
- *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).
- *In re Fuell*, Adv. No. 07-8046, Memorandum Decision entered Dec. 13, 2007 (Bankr. D. Idaho)(Lien unperfected due to clerical error—misspelling of debtor's name: Fuel instead of Fuell because it was unfound using standard search in IDSOS).

*Thank you for your kind
attention!*

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