

Unit 15: Real Estate Taxes and Other Liens

LECTURE OUTLINE

- I. Lien—a charge or claim against property made to enforce the payment of money
 - A. Encumbrance is any charge or claim that attaches to real property, including liens and nonmonetary claims; lessens the value or impairs the use of the real property
 - B. Types of Liens—Liens may be voluntary or involuntary, statutory or equitable, and general or specific. (See Figure 15.1)
 - 1. A lien attaches to real property the moment it is filed and recorded
 - 2. A lien does not attach to personal property until that property is seized.
 - C. General liens are imposed on all property owned by a debtor, both real and personal, including those created by
 - 1. Judgments
 - 2. Estate and inheritance taxes
 - 3. Debts of a deceased person (decedent)
 - 4. Corporate franchise taxes
 - 5. Internal Revenue Service (income) taxes
 - D. Specific liens are imposed only on identified property and affect only that particular property and include
 - 1. Real estate tax (ad valorem tax) liens
 - 2. Special assessment liens
 - 3. Mortgage liens
 - 4. Trust deed liens
 - 5. Mechanic's liens
 - 6. Utility liens (refer to local laws)
 - 7. Bail bonds
 - 8. Vendor's liens
 - E. The effect of lien on title
 - 1. Lien runs with the land.
 - 2. Lien attaches to the property, not the property owner.
 - 3. Lien binds all successive owners until the lien is paid and title is cleared.

- F. Priority of liens refers to the order in which claims against the property will be satisfied.
 - 1. Generally, liens for unpaid real estate taxes and special assessments take priority over all other liens.
 - 2. Other liens follow in the order in which they were recorded.
 - 3. Subordination agreements between lien holders can change priority.

II. Real Estate Tax Liens

A. General real estate or ad valorem tax

- 1. Levied by taxing bodies as a government power and include:
 - a. States and counties
 - b. Cities, towns, boroughs, and villages
 - c. School districts
 - d. Drainage districts
 - e. Hospital districts
 - f. Water districts
 - g. Sanitary districts
 - h. Transportation districts
 - i. Parks, forest preserve, and recreation districts
- 2. Levied according to the value of the property being taxed (ad valorem = according to value).
- 3. Ad valorem taxes create that are *specific*, *involuntary*, and *statutory*.
- 4. Exemptions include properties used for governmental and tax-exempt purposes
 - a. Cities
 - b. Various municipal organizations
 - c. State and federal governments
 - d. Religious and charitable organizations
 - e. Hospitals
 - f. Educational institutions
- 5. The method of assessment varies among jurisdictions (could be a property's market value, a percentage of market value, or replacement cost).
- 6. Equalization process used to achieve uniformity

7. Arriving at the tax rates
 - a. A budget is adopted by the taxing body.
 - b. The amount of tax money needed specifically from real estate is derived from the budget figures.
 - c. An appropriation is made by which the taxing body authorizes the expenditure of the funds and provides for their sources.
 - d. The tax levy is imposed on each parcel of real property.
 - e. The tax rate for each taxing body is computed separately.
 - f. The tax bill is sent to each property owner.
 8. Tax bills
 - a. Due date, called penalty date, is set by statute.
 - b. Discounts offered by some states to encourage prompt payment.
 9. Enforcement of tax liens
 - a. Real estate taxes must be valid to be enforceable.
 - b. Provisions for delinquent taxes
 - i. Published notice after a court has rendered a judgment
 - ii. Tax sale
 - iii. Penalties collected when delinquent taxes are paid
 - iv. Right of redemption can be equitable or statutory
- B. Special assessments (local improvement district taxes)
1. Annual bills are typically spread out for a number of years, with the property owner having the right to prepay at any time without penalty.
 2. A local improvement district (LID) may be created to fund large-scale improvement projects.

III. Other Liens on Real Property

- A. Mortgage lien—*voluntary, specific* lien used in real estate financing (see Unit 12)
- B. Mechanic's lien—*involuntary, statutory, specific* lien
 1. Mechanic's liens give security to those who perform labor or furnish material in the improvement of real property.
 2. There must be a contract (expressed or implied, but usually written) between the owner and the contractor.

3. Depending on the jurisdiction, lien priority can be established by
 - a. the date the construction began or materials were first furnished,
 - b. the date the work was completed,
 - c. the date the individual subcontractor's work was either commenced or completed,
 - d. the date the contract was signed or work was ordered, or
 - e. the date a notice of the lien was recorded, filed, posted, or served.
 4. In some states, mechanic's liens may be given priority over previously recorded liens, except for real estate taxes and special assessments.
- C. Judgment lien—*involuntary, equitable, general* lien
1. A judgment is a decree issued by a court.
 2. A judgment lien takes its lien priority according to the laws of the state in which the property (real or personal) is located.
 3. It is enforced through the issuance of a writ of execution and the ultimate sale of the property.
 4. When property is sold, a satisfaction of judgment should be filed.
 5. Lis pendens (litigation pending) is an encumbrance that is a notice of a court action that may result in a lien on real estate
 6. Attachment—the court retains custody of property until a lawsuit is concluded
- D. Estate and inheritance tax liens—*involuntary, statutory, general* liens that are usually paid during probate court proceedings
- E. Utility lien—*involuntary, equitable, specific* lien granted to municipalities to assure collection of the funds due them for utility services they have provided
- F. Bail bond lien—*voluntary, statutory, specific* lien to assure the appearance of the defendant in a criminal action
- G. Corporate franchise tax lien—*involuntary, statutory, general* lien for taxes imposed on corporations as a condition of conducting business in some states
- H. Internal Revenue Service (income) tax lien—*involuntary, statutory, general* lien that results from a person's failure to pay any portion of federal tax liability, such as income and withholding taxes