

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

Encumbrances

Encumbrances also include all liens on the property. An encumbrance does not prevent the owners of the property from selling the property. Encumbrances, however, diminish the land's value, since each encumbrance is a right or interest in the land.

There are five kinds of encumbrances:

1. Mortgages and liens
2. Easements
3. Covenants and restrictions
4. Conditions and limitations
5. Miscellaneous types

A mortgage is of course a loan secured by real property. While mortgages are liens, mortgages are generally considered a specific kind of lien, whereas all other "liens" are broken down into two kinds: I) general liens and II) specific liens.

I. General Liens

A general lien is a lien that encumbers all the real property owned by a person or a business entity. A specific lien encumbers only a specific piece of property.

Here is a list of general liens:

1. Money judgments, which last for 10 years from the date of docketing.

2. NY State Tax Warrants – which last 10 years from the date of docketing.

These two types of liens may be released or terminated by order of a Court upon motion of the property owner. The lien can also be lifted by the filing of a satisfaction of judgment, signed by the judgment creditor or his/her attorney, and filed with the clerk of the Court. Further, if the judgment is not executed for 10 years and is not extended, the judgment terminates automatically. Finally, under CPLR section 5015 (a)(2), a judgment lien may be terminated by a special Order for relief in a case where new evidence has been discovered.

3. Federal Estate Tax Liens – effective for 10 years from the date of death.

This lien attaches to the proceeds from the sale of the decedent's real property. Such a lien can be removed by recording a release of lien from the IRS, producing a canceled check and closing letters or 706 Form as proof of payment, or by providing proof that the decedent's estate owes no tax because its value is below the statutory threshold.

4. New York State Estate Tax Liens – which last for 15 years from the date of death.

This lien is on all the real property of the decedent, excluding real property outside New York State. It applies to all transferances of real property made by the decedent during the 3 years prior to the date of death, exclusive of bona fide conveyances made for adequate and full consideration. In other words, if the owner conveys the property as a gift during the 3 years before death, the New York Estate Tax applies to the property.

A New York State Estate Tax lien can be removed by:

A) Recording a certificate of discharge;

B) Sale of the property by a surviving spouse or other joint co-tenant to a bona fide purchaser for value, excepting where the property is conveyed to the mortgagee of a surviving co-tenant;

C) Obtaining proof of payment shown by a receipt from the Department of Taxation and Finance of the State of New York;

D) Obtaining a certificate of no tax due from the state.

5. Federal Tax Liens – effective for 10 years for liens filed on or after 11-5-90. This lien may be lifted by filing a certificate of release, discharge or nonattachment pursuant to 26 U.S.C. 6325.
6. Federal Judgments, which are judgments against a property owner and in favor of the United States, last for 20 years. Included in the

“United States” are the Small Business Administration, the Federal Deposit Insurance Corporation, the Department of Housing and Urban Development and other government entities.

7. New York State Franchise Tax and New York City Business Corporation Tax. The franchise tax is a tax on all real property located in New York State, and owned by a corporation, incorporated in or doing business in New York State. The franchise tax lien lasts for 10 years. It also applies to trusts, including real estate investment trusts, if such trusts sell shares of stock that are negotiable. The franchise tax lien may be lifted by payment or by recording a release of lien from the New York State Department of Taxation and Finance. The New York City Business Corporation Tax also lasts for ten years, and may be removed by obtaining a release from the New York City Department of Finance.
8. Public Health Law Lien. The New York State Commissioner of Health has the authority to docket as a judgment the expenses necessary to abate a threat to public safety. Such a lien takes priority over all other liens and encumbrances except a mortgage or other encumbrance for the benefit of New York State.

II. Specific Liens

These are liens that apply only to a specific piece of property.

1. Mechanics Liens are liens in favor of contractors, subcontractors, materialmen, or others who have provided labor or materials used in repair or construction of the property. Labor and materials must

be of a permanent nature or of permanent benefit to the property to serve as the basis for a mechanic's lien. Notice of mechanic's lien may be filed during the performance of work and providing of materials, but in no case later than 8 months later. The law is very strict here, as the mechanic's lien is a statutory creature and not produced by any common law right. The Lien Law should be consulted so that compliance is assured.

A mechanics lien is removed by:

A) Receipt and filing of an acknowledged certificate of release from the lienor; and

B) Failure of the lienor to commence an action to foreclose the lien within one year from the filing of the notice of lien, unless the lien is extended, or a related lawsuit is commenced and the lienor is a party to that action;

C) Bonding of the lien;

D) Obtaining a final transcript of judgment in favor of the property owner with regard to the lien;

E) On motion of the property owner because the lien is defective.

2. Emergency Repair Liens are liens filed by the Department of Health for expenses resulting from emergency situations, like failure to provide heat to tenants. This lien is effective for 4 years from its filing date.
3. Parking Violation Liens are judgments for parking infractions and are docketed as judgments. Such a lien lasts for 8 years.

4. Sidewalk Repair liens arise from the repair or installation of sidewalks, generally. They are administered by the Department of Transportation and filed in the office of the City Collector.

5. Environmental Control Board liens are administered for the costs of cleaning up air and water pollution, cleaning streets, constructing and keeping vacant lots clean. These liens are enforceable as money judgments for 8 years.

6. Transit Adjudication Bureau judgments are for transit infractions that violate the New York City health code. Included infractions are smoking, spitting, littering, etc. These liens last for 10 years from the date of docketing.

This list of encumbrances is by no means exhaustive, but it does state some of the liens one is likely to come across when property is sold or refinanced. Other encumbrances, types 2-5, will be dealt with in later issues.

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