

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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### Title News

#### AFTER THE JUDGMENT

Once a creditor has obtained a money judgment against a property owner, the judgment becomes a lien on the property once the judgment is docketed with the county clerk in the county where the property is situated, or when the creditor files a notice of levy after the lien expires, under CPLR 5235.

If the judgment is obtained in the same county as where the debtor's property is located, and the court is Supreme, County or Family Court, the creditor docket the judgment by preparing and filing a judgment roll with the county clerk, and the county clerk docket the judgment.

If the property is situated outside the county where the judgment was granted, the creditor must first docket the judgment in the county of the judgment, then docket it where the property is situated by filing a transcript of the judgment.

But if the judgment was granted by a justice, city or district court or New York City Civil Court, and if the property is located in the county of the judgment, the creditor must first docket the judgment with the court that granted the judgment, conveyed prior to the docketing.

If the judgment debtor is a tenant by the entirety, that is, if the debtor owns jointly with a spouse, the creditor may attach the judgment debtor's interest but the judgment creditor is usually not allowed to share the property with the non-debtor spouse.

If one tenant by the entirety conveys his or her interest in the property, a tenancy in common is created, but only of the rents and profits of the property, not of its occupancy. If the property is non-income producing and a residence, the buyer at an execution sale gets only the right to possibly occupy in future. If the debtor spouse dies first, the title to the property passes to the surviving non-debtor spouse, and the lien on the property is terminated. But if the non-debtor spouse dies first, the lien remains in force against the debtor spouse and against the property.

The lien acquired by docketing lasts for ten years from the date when the judgment roll is filed. However, the judgment remains a debt for twenty years after docketing, even if it's not a lien on the property.

When the ten-year lien on the property expires and the twenty-year period has not yet run, the judgment creditor must restore the lien if he or she wants to continue to encumber the property. Under CPLR 5235, the restoration of the lien allows the creditor to deliver execution to the sheriff who then files a notice of levy with the clerk of the county where the property is situated. The filing of the notice of levy creates a lien of levy that does not expire until the sheriff has sold the property.

A judgment lien may be extended on motion to the court. Notice must of course and then file a transcript of the judgment with the county clerk. If the property is outside the county of the judgment, the creditor must also undertake a third step: filing a transcript of the docket with the

clerk of the county where the property is situated. In other words, courts of lesser jurisdiction than Supreme or Family Court, namely, District and Civil courts, may require extra steps to docket the judgment in order to make it a lien on the property.

It is important to docket the judgment in the correct name of the debtor/property owner. If the judgment is docketed in the wrong name, it will not be in effect against a buyer who purchases for value or against another intervening lienor who encumbers the property. In other words, if you docket your judgment in the wrong name, you don't have your place in the line of creditors.

The creditor's rights attach to the property when the judgment is docketed or a notice of levy is filed. The creditor's rights attach to property acquired while the judgment or levy lien is in effect. But if the conveyance was fraudulent, the creditor may attach property which the debtor given to the judgment debtor.

Certain transfers are exempt from docketed judgments. First, when a purchaser/debtor buys property and gives back a purchase money mortgage, the mortgage takes priority over all docketed judgments. If the mortgagee forecloses on the property, the

mortgagee takes free of creditors' liens. Second, a purchaser for value at a judicial sale takes free of the liens of all judgments, under CPLR 5203.

Docketing a judgment does not create a lien on the property when:

1. The judgment is entered after the death of the judgment debtor;
2. The judgment debtor is the state, an officer, department, board or commission of the state, or a municipal corporation; and
3. The judgment debtor is the personal representative of a decedent and the judgment was awarded in an action against him in his or her representative capacity.

There also is a homestead exemption under CPLR 5206. \$10,000.00 in value of the homestead is exempt from liens and encumbrances. Included in the exemption are a private home on a lot of land, shares of stock in a cooperative apartment, a condominium unit and a mobile home. In order to qualify for the exemption, property must be the judgment debtor's "principal residence."

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