

APPLICABLE PERIODS OF LIMITATION FOR COMMONLY ENCOUNTERED LIENS

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State Court Judgments

G.S. 1-234. A Judgment duly docketed in the county where the property is located is a lien against the property for a period of 10 years. The statute begins to run from the date the judgment is **entered**. This should not be confused with the date the judgment is **docketed**. The language in G.S. 1-234 was modified in 2003 to substitute the word *entered* for the word *rendered* with respect to when the period of limitations begins to run.

The judgment creditor may bring an independent action on the initial judgment in order to keep the judgment "alive". The new action must be filed within the 10 year period from rendition of the original judgment. Once obtained, the new judgment does not relate back to the original judgment and will not take priority over intervening liens or interests. *Springs v. Pharr* 131 N.C. 191, 42 S.E. 590 (1902).

An execution sale commenced within the applicable time frame tolls the 10 year statute of limitations. G.S. 1-339.48. Compare the case of *McMullen v. Durham* 229 N.C. 418, 50 S.E. 2nd 511 (1948). G.S. 1-339.48 appears to have overruled the *McMullen* case.

There can be no execution or enforcement of judgment liens for a period of 10 days after the judgment has been entered.

Notation of a stay on the execution of a judgment, pending appeal, can be entered on the judgment docket. No execution can issue upon such judgment during pendency of the appeal. G.S. 1-293.

Effective October 1, 1991, allocation of property as exempt can effect a suspension of the 10-year statute of limitations period. In order to effect the suspension, a copy of the order of designation must be recorded in the register of deeds office where the property is located. G.S. 1C-1604(a1). A one year grace period to October 1, 1992 was allowed by session law.

Prior to G.S. 1C-1604(1), some asserted that designation of the property as exempt under Chapter 1C not only stayed enforcement of liens but also suspended the 10-year period. Therefore, some authorities took the position that the appropriate period for a judgment search was back to 1972. However, even prior to G.S. 1C-1604(a1), G.S. 1C-1603(f) required a notation of exemption to be listed on the judgment docket opposite the judgment in question. A.M. Humphreys Legislative Report, Real Property Law Section Newsletter, Vol. 13, No. 1 (NCBA 1991).

A good faith purchaser of property or good faith mortgagee is protected against injunction or restraint against judgment enforcement. G.S. 1-234. This statute might protect such a party against a specific stay other than (1) those noted on the judgment docket or by virtue of G.S. 1C-1604(a1) or pursuant to G.S. 1-310 and G.S. 1A Rule 62(a) and (2) facts known to a good faith purchaser or mortgagee that could result in the suspension of the 10 year period. See G.S. 1-21.

Judgment –federal court

A judgment rendered in Federal Court is subject to state law rules, noted above. G.S. 1-237; 28 U.S.C. 1962.

Judgment- for debt owed the United States or its Agencies

A Judgment owed to the United States or one of its Agencies is governed by the Fair Debt Collection Procedures Act of 1990. The Act became effective on May 28, 1991. The Act does not apply to judgments entered **more** than 10 years before that date. The Act **does** apply to judgments entered 10 years or less before that date. 28 U.S.C. 3005.

State law inconsistent with 28 U.S.C. Sec. 3005 is preempted. 28 U.S.C. Sec. 3003(d).

Rules with respect to attachment to entireties property are the same as for judgments under state law. 28 U.S.C. 3010(a).

Judgments will be filed on the judgment docket in the same manner as State Court Judgments. The lien is created by filing a certified copy of the abstract of judgment in the same manner as with a Federal Tax Lien. 28 U.S.C. 3201(a).

A Federal Judgment has an effective life of 20 years, apparently from the date of filing. 28 U.S.C. 3201(c)(1).

The lien may be renewed for one additional period of 20 years. The party seeking renewal must file a Notice of Renewal prior to the expiration of the original 20 year period. In addition, the Court must approve the extension. Once renewed, however, the lien relates back to the filing of the judgment. 28 U.S.C. 3101(c)(2).

The lien can be enforced by judicial sale or execution sale procedures referenced in the statutes. 28 U.S.C. 3202(e).

Assertion of exemption by judgment debtor stays the United States' disposition of the property. U.S.C. 3014(b)(3).

(See Ed Urban's June 2008 article entitled: *Federal Tax Liens, Notices of Liens Under 18 U.S.C. Sec. 3613, Money Judgments in Favor of the United States- Lien Attachment and Effect on Entireties Property*)

General federal tax lien

A federal tax lien has a life of 10 years, beginning from the date of assessment. 26 U.S.C. 6502(a).

There is a re-filing period. Required re-filing period is the one year period ending 30 days after expiration of 10 years after the date of the tax assessment.

For example:

Tax assessment on 1/2/92. The first day for re-filing is 2/1/01 and the last day to re-file would be 2/1/02.

NOTE: effective 11/5/90 the statute of limitations for federal tax liens was extended from 6 years to 10 years.

State law judgment lien rules applicable to tenancy by the entireties **no longer apply**.

(See Ed Urban's June 2008 article, mentioned above, covering the effect of Federal Tax Liens on entireties property after the *U.S. v. Craft* decision cited therein).

Mechanics Liens

A Claim of Lien for labor or materials must be filed within 120 days of the **last furnishing of labor or materials**. G.S. 44A-12(b).

Once the lien is properly filed, it can be enforced by filing an action to enforce the claim of lien. The action must be filed within 180 days of the **last furnishing of labor or materials**. G.S. 44A-13(a).

If an action to enforce a claim of lien is timely filed and is voluntarily dismissed without prejudice (before or after the expiration of the 180 day period) but is recommenced within one year of the dismissal (or a shorter time if the stipulation of dismissal stipulates a shorter time), the lien enforcement action is deemed to be commenced within the 180 day period. *Newberry Metal Masters Fabricators, Inc. v. Mitek Industries*, 333 N.C. 250, 424 S.E. 2nd 383; (1993); G.S. 1A-1, Rule 41.

Federal Estate Tax Lien

The lien period for Federal Estate Tax Lien is 10 years. It begins to run from the date of the decedent's death. The lien does not need to be filed.

Certain non-probate property (for example property vested as tenancy by the entireties) is divested of the lien when property is conveyed to a purchaser or holder of a security interest. 26 U.S.C. 6324(a).

Ad valorem tax lien

The lien for ad valorem taxes runs for a period of 10 years, commencing from the date the taxes become due. An action to collect taxes owed pursuant to the lien must be commenced within the 10 year period. G.S. 105-378(a).

Liens for unpaid personal property taxes, as well as unpaid real property taxes, can attached to real property. G.S. 105-355(a).

Special assessment lien

These liens are effective upon confirmation. G.S. 153A-195; G.S. 160A-228.

The lien must be enforced by procedure commenced within 10 years of assessment. G.S. 160A-233(d); G.S. 153A-200(d).

State estate tax lien

North Carolina repealed its inheritance tax in 1999. The inheritance tax was replaced by an estate tax. G.S. 105-32.2.

A tax imposed by G.S. 105-32.2 is a lien on the real property in the estate. G.S. 105-32.6. The lien is not required to be filed.

G.S. 105-32.6(4) states that the lien will be extinguished once 10 years have elapsed since the date of the decedent's death.

State gift tax lien

A tax imposed by G.S. 105.193 is a lien on all gifts that constitute the basis for the tax for a period of 10 years from the time they are made. The lien is not required to be filed.

Other liens for state, county and municipal taxes

In order for one of these liens to be valid against a purchaser for value of real estate or a holder of a deed of trust a Certificate of Tax Liability must be filed. The Certificate must be filed in the same manner as a judgment. G.S. 105-241.

Former G.S. 105-242(c) disallowed the homestead exemption in connection with the collection of such taxes. G.S. 105-242(c) was rewritten in 2007. The current version does not specifically mention disallowing the homestead exemption.

The period of lien is 10 years from the date the Certificate of Tax Liability is recorded.

Condominiums - unit owner's association liens

Proceeding to enforce lien must be commenced within 3 years of docketing of the lien. G.S. 47C 3-116(c).

Planned unit development liens

Prior to the enactment of the North Carolina Planned Community Act there was ambiguity as to whether the 3 year or 10 year statute of limitations for enforcement applied. Compare G.S. 1-52(1) and G.S. 1-53(1) with G.S. 1-47(2) and G.S. 1-56.

The assessment lien provisions set forth in the new G.S. 47F 3-116, effective January 1, 1999, is applicable to planned communities created before that dated. G.S. 47F-102-(c). Under G.S. 47F-116(c), a lien for assessments will expire if not enforced within 3 years of its docketing. However, see discussion in the above paragraph. If the 10 year statute of limitations applies to the enforcement of an assessment lien for a community created prior to January 1, 1999, it is doubtful that such a lien will be terminated by G.S. 47F-3-116(c). G.S.47F-3-1169(c) applies to new communities created after January 1, 1999.

Uniform Commercial Code security interest

A security interest perfected by a financing statement will expire after 5 years from the date of filing of the financing statement. G.S.25-9-515(a). The financing statement may be continued by the filing of a continuation statement. A continuation statement may be filed only within 6 months before the expiration of the five year period specified in subsection (a) cited above. G.S. 25-9-502(d).

Ambulance service liens

In G.S. 44-51.1 a general lien on the real property of any person who has been furnished ambulance service is created. No action to enforce the lien may be brought more than 10 years after the date on which the ambulance service was furnished nor more than 3 years after the dated of recipient's death.

Betterments lien

It is not clear what limitations period apply to a lien for betterments. See G.S. 1-340 and G.S. 1-344. Arguably, the 10 year statute of limitations under G.S. 1-234 (State court judgments) will apply.

Drainage lien

A lien for work done on a drainage project can be enforced in the same manner as a mechanics' lien. G.S. 156-50; G.S. 156-15; G.S. 156.18; G.S. 156.21; G.S. 156.26; G.S. 156.28.

Lien for care of persons in state institutions

No action to enforce this lien this lien may be brought more than three years from the date of filing of such lien nor more than three years after the death of any person confined in one of the institutions. G.S. 143-117; G.S. 143-126 and G.S. 143-126.1.

G.S. 143-125 states that any judgment obtained by the State under Chapter 143 of Article 7 shall never be barred by **any** statute of limitation but shall to the extent unpaid continue in full force.

Miscellaneous liens

Liens for fines or costs reduced to judgment; judgments for child support or alimony; employment security obligations and Department of Agriculture obligations have the same effect and priority as a judgment lien. G.S. 15A-1365; G.S. 50-13.4(f)(8); G.S. 50-16.7 (a), (i) and (k); G.S. 96-4(o); and G.S. 106-9.4.

Federal environmental liens

42 U.S.C. 9607(l) sets out the federal environmental lien for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The notice of lien will be filed where judgments are docketed. The lien continues until it is satisfied or barred by the statute of limitations set out in 42 U.S.C. 9613(g).

An initial action for the recovery of the costs referred to in 42 U.S.C. 9607 and secured by the lien if filed must be commenced (1) for a removal action, within three years after completion of the removal action, except that such cost recovery action must be brought within 6 years after a determination to grant a waiver under 42 U.S.C. 9604(c)(1)(C) for continued response action; and (2) for a remedial action, within 6 years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within 3 years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under the statute. There are other statutes of limitation pertaining to damage to national resources or federal facilities or for contribution.

Municipal “clean up” liens

Under G.S. 160A-193 a city may summarily remove or abate a nuisance or health hazard from real property. Costs for such action taken are taxes against the owner of the property. A lien against the property of the owner on which the action was taken shall arise if the owner does not pay the cost of such action. The lien shall have the same limitation period as that of unpaid ad valorem taxes. This lien appears to arise automatically. G.S. 160A-193(a) (see *ad valorem tax lien*, supra).

Under G.S. 160A-193(b) a lien can arise against *other* property, excluding the primary residence, of the person responsible for unpaid costs under G.S. 160A-193. This lien shall have the same limitation period and priority as that of a money judgment . G.S. 160A-193(b). Presumably, therefore, such a lien would have to be docketed in the Office of the Clerk of Superior Court (see *State court judgments*, supra).

Unpaid costs for removal or demolition of an unsafe building per G.S. 160A-426 can give rise to a lien against the property on which the structure was located. The lien shall have the same limitations period as liens for special assessments. G.S. 160A-432(b) (see *Special assessment liens*, supra)

G.S. 106A-432(b1) creates an additional lien against other property of the owner, excluding the primary residence, of structures demolished under this section. The period of limitations is the same as for a money judgment. (see discussion of G.S. 160A-193(b), supra)

See also liens created pursuant to G.S. 160A-443 set forth and described in G. S. 160A-443(6). The period of limitations for these liens work in the same manner as the G.S. 160A-193 and G.S. 160A-432 liens discussed above.