

KEY POINT REVIEW

A **lien** is a claim of a creditor or taxing authority against the **real property** of a debtor that is used as **security** to ensure repayment of the debt.

A lien is not an ownership interest in real estate; it is an **encumbrance** that transfers with it (**runs with the land**) and lessens its value or impairs its use because it binds all successive owners until paid and cleared. If a debtor **defaults** in payment of a debt secured by property, the **lienholder** can force the **sale** of the property, or **acquire title**.

Creation of a lien may be **voluntary**, if it is created by action of the property owner, such as a mortgage or **involuntary**, if it is created without the property owner's express permission. It may also be **statutory**, if it is permitted by statute, or **equitable**, if it is granted by a court.

A **general lien** affects all of a debtor's property, both real and personal; a **specific lien** affects only identified property.

Priority of liens determines the order in which claims will be **satisfied** (paid off). Generally, the first lien to be recorded will take priority, but real estate taxes and special assessments usually take priority over all other liens. If a junior lien is foreclosed, the property is still subject to prior liens. A **subordination agreement** between lienholders can be used to change the order of priority.

Real estate taxes are *ad valorem* taxes based on the value of the property taxed.

Property **assessments** (valuations) are conducted by county or township tax **assessors** or appraisers. **Assessed value** is generally based on sales prices of comparable properties. An **equalization factor** may be applied to correct inequalities in statewide tax assessments.

The **tax rate** for each taxing body is computed separately and may be expressed in **mills**. A mill is $\frac{1}{1000}$ of a dollar, or \$0.001. Mills may be shown as dollars per hundred or thousand dollars of assessed value.

Delinquent taxes can be collected through a **tax sale** following statutory notice requirements. The **taxpayer** usually has **equitable right of redemption** any time before a tax sale. The state may allow a **statutory right of redemption** following a tax sale. If there are **no bidders** at the tax sale, the property may be forfeited to the state.

Special assessments are levied and create a lien on property that benefits from public improvements, such as properties located in a **local improvement district (LID)**, and are always specific and statutory, but may be voluntary or involuntary, and are usually paid in annual installments over a period of years.

A **mortgage lien** is a voluntary lien given to a lender by a borrower as security for a real estate loan. The lien takes effect when the lender **records** the documents in the county where the property is located. A **first mortgage lien** on a property, when recorded, has **priority** over other liens (except for tax liens); subsequent liens are **junior liens**.

A **mechanic's lien** is a specific, involuntary lien that gives a security interest in real property to persons or companies that perform labor or furnish material to improve the property. A mechanic's lien is **filed** when an **owner** has not fully paid for work or the **general contractor** has been compensated but has not paid subcontractors or suppliers of materials.

A property owner who did not order improvements that are being made should execute, post, and record a **notice of nonresponsibility** to be relieved from possible lien claims.

A **judgment**, a decree issued by a court, is a general, involuntary, equitable lien on both real and personal property owned by a debtor and must be filed in **every county** in which the judgment debtor owns property.

While a lawsuit is pending, a **lis pendens** can be filed to give notice of an action pending relating to the title or possession of real property and establish priority of the claimant, and a **writ of attachment** can be sought from the court to authorize the sheriff to seize the property that the debtor may attempt to transfer. A **writ of execution** can be obtained from the court to enforce a judgment.

Estate and inheritance tax liens are general, statutory, involuntary liens that encumber a deceased person's real and personal property and are normally paid or cleared in a probate proceeding.

A **lien for municipal utilities** is a specific, equitable, involuntary lien on the property of the owner who refuses to pay bills for municipal utility services.

A **corporation franchise tax lien** is a general, statutory, involuntary lien on real and personal property owned by the corporation.

An **IRS tax lien** is a general, statutory, involuntary lien on all real and personal property held by a delinquent taxpayer; it does not supersede previously recorded liens (which is also true of most state income tax liens).