

A mother owned a two-family apartment house on a small city lot not suitable for partition-in-kind. Upon the mother's death, her will devised the apartment house to "my two sons, in equal shares."

A week ago, a creditor obtained a money judgment against the youngest son and properly filed the judgment in the county where the apartment house is located. A statute in the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

The youngest son needed cash, but the oldest son did not wish to sell the apartment house. Nevertheless, the youngest son commenced a partition action against the oldest son and the creditor. The court properly ordered a partition by judicial sale.

After the sale, the creditor's judgment will be a lien on what interest?

- A. All of the apartment house.
- B. All of the proceeds of sale of the apartment house.
- C. Only a one-half interest in the apartment house.
- D. Only the portion of the proceeds of sale due to the youngest son.

Explanation:

Co-tenants can **freely encumber** their **separate interests** in the property without consent of the other tenants (except in a tenancy by the entirety). This means that a tenant can use his/her share of the property to secure repayment of a debt, and creditors will only have a **lien on that tenant's property interest**. And if any tenant later seeks to divide the property through a **partition** by sale, that lien will either:

remain on the tenant-debtor's **property interest** if the **creditor is *not* a party** to the partition action *or*

attach to the tenant-debtor's **share of proceeds** from the sale if the **creditor *is* a party** to the partition action.

Here, the two sons became co-tenants when the mother devised them a duplex in equal shares. A creditor later obtained and filed a money judgment against the youngest son, creating a judgment lien on his one-half interest in the duplex. The youngest son then commenced an action for partition by sale against the oldest son *and* the creditor—which the court granted. Since the creditor was a party to the partition action, the judgment lien will attach to the youngest son's portion of the *proceeds* from the judicial sale **(Choices A, B & C)**.

Educational objective:

When a co-tenancy is divided in an action for partition by sale, any lien on a tenant's property interest will stay attached to that interest if the creditor is *not* a party to the action. But if the creditor *is* a party, then the lien will attach to the sale proceeds attributable to that interest.

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Attachment of lien after partition

