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ILLINOIS REAL ESTATE LIENS AND ENCUMBRANCES AND THEIR STATUTES OF LIMITATION

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Illinois real estate liens and other documents in the nature of encumbrances are, for the most part, scattered throughout the Illinois Compiled Statutes. Their statutes of limitation are as varied as their citations. This article is an attempt to list, briefly describe, and, when applicable, note the statutes of limitation for these documents.

Annexation Agreements (65 ILCS 5/11-15.1-1) Annexation Agreements “shall be valid and binding for a period of not to exceed 20 years from the date of its execution.”

Association Lien (Common Interest Community Association Lien) 765 ILCS 160/1-35(d)(2)

Attorneys Lien (770 ILCS 5/1) Attorneys Liens attach to any verdict, judgment, or order entered and to any money or property that may be recovered on account of a suit, claim, demand, or cause of action. See *Clarke v. Ireland*, 347 Ill.App.354, 106 N.E.2d 818 (1st. Dist. 1952). Notice must be served on the defendant in order for there to be a valid lien; in this regard, see *TM Ryan Co. v. 5350 South Shore LLC*, 361 Ill. App. 3d 352, 836 N.E.2d 803 (1st Dist. 2005). The attorney's lien is a creature of statute. See *Kespohl v. Northern Trust Co.*, 93 Ill.App.2d 211, 236 N.E.2d 268 (1st Dist. 1968); *Pedersen and Haupt, P.C. v. Main Street Village West, Part I, LLC*, 2012 IL App. (1st) 11297; *DiMonte & Lizak, LLC v. Village of Calumet Park*, 2014 IL App (1st) 132127-U.

The statute provides that “on petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than five days notice to the adverse party, adjudicate the rights of the parties and enforce the lien.” There is no statute of limitations. Both the *Pedersen and Haupt* case and the *DiMonte & Lizak* case make it clear that foreclosure is not a remedy for enforcing this lien.

Business Broker Lien (815 ILCS 307/10-1 et seq.) Business brokers assist third parties in the purchase and sale of businesses. The broker has a right to a lien in the amount due the broker under the contract upon the assets of the business that was the subject of the contract. It has a two year statute of limitations.



Claim Against Estate (755 ILCS 5/18-12) This is a claim against the property of a decedent. 755 ILCS 5/18-12(b) provides that when an estate is not probated, the claims period is two years from the date of death of the decedent. 755 ILCS 5/18-3 indicates that the claims period for probated estates is six months from the date of the first publication of a notice stating information regarding the death of the decedent or three months from the date of mailing or delivery of said notice to creditors, whichever is later.

Commercial Real Estate Broker's Lien (770 ILCS 15/10) This is a lien on commercial real estate arising from written contracts for brokerage services. The lien attaches when the notice of lien is recorded. It expires unless a foreclosure proceeding is filed within two years of the recording of the notice.

Condominium Assessment Lien (765 ILCS 605/9) The Condominium Property Act provides for the assessment of unit owners for the payment of common expenses. An assessment becomes a lien on the land at the time the assessment is delinquent, and the lien is enforceable upon the recordation of a notice of lien. There is no statute of limitations.

Common Interest Community Association Lien, 765 ILCS 160/1-35(d)(2). A common interest community is any real estate other than a condominium or cooperative wherein an owner is obligated to pay for the maintenance and improvement of the common areas. The real estate may include, but not be limited to, an attached or detached townhome, a villa, or a single family home. There is no statute of limitations.

Condominium Assessment Lien, Master Associations, 765 ILCS 605/18.5(g)(2). There is no statute of limitations.

Contracts (735 ILCS 5/13-205, oral contracts, five years; 735 ILCS 5/13-206, written contracts, ten years)



Demolition Lien (65 ILCS 5/11-31-1 for municipalities, 55 ILCS 5/5-1121 for counties) This is a lien for the costs incurred by a municipality or county in the repair or demolition of an unsafe building. There is no statute of limitations. (A three year limitation was repealed effective 1989). See also Village of Lake Villa v. Stokovich, 211 Ill. 2d 106, 810 N.E.2d 13, 284 Ill. Dec. 360 (2004), wherein the Illinois Supreme Court declared the demolition statute constitutional. See also Harris, N.A. v. Zrayitel, 1 N.E.3d 663 (1st. Dist. 2011).

Drainage Assessment (70 ILCS 605/5-17) The commissioners of a drainage district have the power to levy and collect drainage assessments. There is no statute of limitations.

Federal Estate Tax Lien (26 U.S. Code 6324) This is a lien on the property of the estate of a decedent. The statute of limitations is 10 years from the date of death of the decedent.



Federal Revenue Lien (26 U.S. Code 6321; 26 U.S. Code 6322; 26 U.S. Code 6323) The federal revenue lien is a lien on the property of any person who fails to pay his or her federal income tax. The statute of limitations is ten years from the assessment date of the tax--it was changed from six years to ten years effective 1990. Recorded federal revenue liens now include a "self-releasing" feature. The lien document will state a date after which the IRS can neither enforce the lien nor extend its life. If the lien is not enforced or extended prior to the expiration of the statute of limitations (the date shown on the lien), the lien "self-releases"--i.e., the lien automatically releases itself, without a certificate of release being recorded. Indeed, the IRS will not even record a release.

General Real Estate Tax Lien (35 ILCS 200/20-180) This is an annual tax on real estate collected by the county. A delinquent but unsold tax becomes unenforceable twenty years after the delinquency date. Most title companies, though, will insist that title to the land be in a bona fide purchaser before waiving unpaid taxes because the statute requires the tax records to be marked "unenforceable." If taxes are sold at tax sale, the lien of the certificate of sale expires one year after the expiration of the redemption period.

Homeowners Association lien (non-condominium) There is no statutory reference for this type of lien, and thus there is no statutory statute of limitations. Consider, though, the ten-year statute of limitations for written contracts found at 735 ILCS 5/13-206. (For oral contracts, see 735 ILCS 5/13-205.) See also the Common Interest Community Association lien at 765 ILCS 160/1-35(d)(2).

Illinois Income Tax Lien (35 ILCS 5/1104) This is a state lien on the property of any person who fails to pay his or her state income tax. The statute of limitations is 20 years from the date of recording of the lien. The previous five year statute of limitations was extended to 20 years effective 1984.

Note that if a title company agrees to endorse over a lien in favor of the Illinois Department of Revenue, it must notify the State of Illinois. See 215 ILCS 155/22.

Illinois Transfer (Inheritance) Tax Lien (35 ILCS 405/10) This is a lien upon property transferred by gift or at death for the tax due by reason of the gift or death. The statute of limitations is ten years from the date of gift or death.

Judgment Lien (state), including child support lien (735 ILCS 5/12-101) A judgment is a lien on the debtor's property for seven years from the date the judgment is rendered (not from the date any memorandum of judgment is recorded). The death of the judgment debtor can extend the limitations period by an additional year, to eight years. The lien may be extended for additional seven-year periods, and it can even be revived after a seven-year period has expired. In no event, however, may the lien be enforceable beyond twenty years from the date it was entered. (Note, though, that because of a statutory amendment, child support liens now have no statute of limitations.)



Judgment in favor of the State of Illinois (735 ILCS 5/12-401)

Judgment Lien, federal (28 U.S. Code 3201) a judgment in favor of the United States in a civil action creates a lien on all real property of a debtor upon (in Illinois) the recording of a certified copy of the abstract of the judgment. The lien has a statute of limitations for twenty years, and it can be renewed for an additional twenty years. See also 735 ILCS 5/12-502.

Note that the above pertains to judgments in favor of the United States. On the other hand, see 28 U.S. Code 1962; this statute, which indicates that it does not apply to judgments in favor of the United States, states that every judgment in entered in a district court within a state shall be a lien in the same manner and extent as if it were a judgment entered in a state court.

Lottery; Illinois Lottery Law Lien (20 ILCS 1605/10.3) Lottery sales agents are personally liable for lottery ticket sale proceeds. The Department of the Lottery shall have the right to file a lien on all personal and real property of any person so personally liable. The lien has the same statute of limitations as a Retailers' Occupation Tax lien, which is twenty years.



Mechanics Lien (including property manager lien) (770 ILCS 60/1 et seq.) This is a lien for the cost of labor, services, or materials a contractor or sub-contractor furnishes to the building or improvements located on the land. Generally speaking, the statute of limitations is two years from the date the work was completed. See, though, *Garbe Iron Works, Inc. v. Priester* 99 Ill.2d 84, 457 N.E.2d 422 (1983), wherein the Illinois Supreme Court held that a bankruptcy filing by a party who would be a necessary defendant in a mechanics lien foreclosure extends the time within which the lien claimant may file a foreclosure.

Section 75 of the Illinois Residential Real Property Transfer on Death Statute (755 ILCS 27/1 et seq.) allows the representative of a deceased owner of residential property to manage said property. This statute indicates that the personal representative is entitled to a lien for the costs and expenses incurred in said management. Because the mechanics lien statute states that a property manager's lien arises under the mechanics lien statute, it appears that the lien rights of a "transfer on death" property manager would be in the nature of a mechanics lien claim.

Mortgage (735 ILCS 5/13-116) If the mortgage has a due date on its face, then the lien expires 20 years after the due date. If there is no due date, then the mortgage expires 30 years after the date of the instrument. The title insurer might require that title to the land be in a bona fide purchaser before it will waive a mortgage based on the statute of limitations. A mortgage foreclosure must be commenced within ten years after the right to bring the action accrues. (735 ILCS 5/13-115)



Municipal Tax (65 ILCS 5/8-3-15) The corporate authorities of a municipality can enforce the collection of any tax by recording a notice of lien. There does not appear to be any statute of limitations for this lien. However, the statute does state that “a municipality creating a lien may provide that the procedures for its notice and enforcement shall be the same as that provided in the Retailers’ Occupation Tax Act....” As noted below, this lien has a twenty year statute of limitations.

Order (735 ILCS 5/2-1304) When a party to an action is required to perform any act other than the payment of money, or, to refrain from performing any act, the court may, in the order, provide that the same shall be a lien upon the real estate of the party until the order is complied with. Since this statute also states that this lien “shall have the same force and effect, and be subject to the same limitations and restrictions, as judgments for the payment of money...”, it appears that the statute of limitations would be the same as for a judgment.

Public Aid Lien (305 ILCS 5/3-10.2) This is a lien in favor of the State of Illinois for the repayment of monies paid under the Public Aid Code. The statute of limitations is five years from the date of recording of the lien. The lien may be extended for additional five year periods upon the reording of a new notice of lien prior to the expiration of the then current period of enforceability. 305 ILCS 5/3-10.8; provides that Illinois public aid liens survive the death of a joint tenant; see also 305 ILCS 5/3-9, which indicates that the lien is enforceable against the estate of a deceased recipient of public aid. See Hines v. Illinois Department of Public Aid, 221 Ill.2d 222, 850 N.E.2d 148, 302 Ill. Dec. 711 (2006).

Recapture Agreement (65 ILCS 5/9-5-1) Pursuant to an ordinance or an annexation agreement, a municipality may contract with a subdivider to reimburse the subdivider a portion of the costs to install water mains, sewers, roadways, or other public improvements. 65 ILCS 5/9-5-2 provides that the recording of this contract between the municipality and the subdivider puts all parties on notice “of the fact that there will be a charge in relation to such property for the connection to and use of the facilities constructed under the contract.

Receiver’s Lien (65 ILCS 5/11-31-2) There is no statute of limitations. The lien is a lien that is prior to all other liens except for taxes. See also 735 ILCS 5/15-1704; 765 ILCS 605/14.5; 770 ILCS 60/1(b); 770 ILCS 60/12.

Retailers Occupation Tax Lien (35 ILCS 120/5a) The Department of Revenue has a lien on the real estate of any person against whom a tax is assessed. There is a twenty year statute of limitations from the date the lien was recorded.

Removal of Garbage, Debris and Graffiti Lien (65 ILCS 5/11-20-13; 65 ILCS 5/11-20-15) A municipality may provide for the removal of garbage, debris, and graffiti from private property when the owners of said property refuse to undertake such removal. The cost is a lien on the real estate. There is no statute of limitations.



Removal of Pests Lien (Pest Extermination Lien) (65 ILCS 5/11-20-8, 65 ILCS 5/11-20-15) A municipality may provide for the extermination of pests from private property when the owner of said property refuses to exterminate the pests. There is no statute of limitations.

Removal of Infected Tree Lien (65 ILCS 5/11-20-12) A municipality may provide for the treatment or removal of diseased elm trees or ash trees. The cost to remove the tree (but apparently not the cost to treat the tree) is a lien on the real estate. There is no statute of limitations.

Removal of Weeds Lien (Weed Lien) (65 ILCS 5/11-20-7 for municipalities, 60 ILCS 1/105-15 for townships) A municipality or township can provide for the cutting of weeds when the owner of real estate fails to cut them. The cost of doing so is a lien on the real estate. There is no statute of limitations.

Removal of Garbage and Debris Lien (65 ILCS 5/11-31-1) This is the demolition lien statute. But note that this statute also refers to the removal of “garbage, debris, and other hazardous, noxious, or unhealthy substances or materials.” There is no statute of limitations. See 65 ILCS 5/11-31-1(a). See also the citation for “Demolition Lien, above.

Removal of Garbage and Debris Lien (county; 55 ILCS 5/5-1118, 55 ILCS 5/5-1121) There is no statute of limitations

Sanitary District Lien (70 ILCS 3010/17) Charges or rates for sanitary district services shall be a lien on the real estate for which sewerage service is supplied. There is no statute of limitations. The lien attaches to the land at the time the charges become delinquent.

Senior Citizen Property Tax Deferral Lien (320 ILCS 30/1 et seq.) This statute allows a senior citizen to defer all or a portion of his or her real estate taxes. The County Collector records a notice of this tax deferral and the state actually pays the taxes. The amount of lien is for the deferred taxes, together with interest. The property cannot be “sold or transferred” until the lien is paid. In addition, upon the death of the taxpayer, the lien for deferred taxes and interest shall be recovered from the estate of the taxpayer within one year of the date of death.

Sewer and Water Lien (Municipal) (65 ILCS 5/11-139-8) Charges for municipal sewer and water services shall be a lien on the real estate for which water and sewerage service is supplied. There is no statute of limitations. See also 65 ILCS 5/11-141-16.

Sidewalk Construction and Repair Lien (65 ILCS 5/11-84-1) A municipality, by ordinance, may provide for the construction and repair of sidewalks, payment for which to be by special taxation of the adjoining parcels of land. There is no statute of limitations.

Special Assessment (65 ILCS 5/9-2-65) Special assessments are levied by a municipality to fund a particular service project that is intended to benefit only a specific area. At one time



there was a thirty year statute of limitations for such liens. However, the Illinois Supreme Court, in *G.D. Hardin, Inc. v. Village of Mount Prospect*, 99 Ill.2d 96, 457 N.E.2d 429 (1983), held that this statutory limitation was unconstitutional. Hence, there is no longer any statute of limitations. Nonetheless, it is possible that a title company, under certain circumstances, may waive old but still unpaid special assessments. See also 65 ILCS 5/9-2-70.

Unemployment Compensation Lien (820 ILCS 405/2400; 820 ILCS 405/2401) The Director of the Department of Labor has a lien on the real estate of an employer from whom contributions for unemployment compensation are due. The statute of limitations is three years from the date the lien was recorded.

Uniform Commercial Code Financing Statement, or UCC Statement (810 ILCS 5/9-403) A financing statement executed by a borrower is a lien on fixtures or other pledged collateral. It is effective for five years from the date of recording, but it may be extended for additional five year periods by the recording of continuation statements that are recorded within six months of the expiration of the then current five year period. When a financing statement is recorded contemporaneously with a recorded mortgage, and thus serves as additional security for the mortgage debt, most title companies, notwithstanding the five year statute of limitations, will not waive the financing statement until the mortgage is released or paid through a closing escrow.

But see also 810 ILCS 5/9-515(b). A UCC filed in conjunction with a public finance transaction or a manufactured home transaction may have a statute of limitations of 30 years.

Vendor's Lien See *Stump v. Swanson Development Company*, 2014 IL App (3d) 110784. Citing *Krajcir v. Egidi*, 305 Ill. App. 3d 613 (1999), the court described a vendor's lien as follows: "In cases where a lien has not been reserved expressly, a lien is raised in equity in favor of the vendor who has parted with legal title without receiving payment of the full purchase price; it arises in every sale and conveyance of land when the purchaser has not paid in full. Such an implied lien is not an interest or estate in realty or a specific, absolute charge thereon, but an equitable right in the vendor by a proceeding in chancery to resort to the property in case the purchase price is not paid; it is not a debt or right of property, but merely a remedy for the debt which is limited to the property or interest therein sold." Thus, a vendor's lien is not a recorded document. There is no formal statute of limitations.

Weed Cutting Lien (65 ILCS 5/11-20-7 for municipalities, 60 ILCS 1/105-15 for townships) A municipality or township can provide for the cutting of weeds when the owner of real estate fails to cut them. The cost of doing so is a lien on the real estate. There is no statute of limitations.



Liens, Equitable

In *Trustees of Zion Methodist Church v. Smith*, 335 Ill.App. 233 (1948) the court determined that a promissory note on which the landowner wrote, "This note is secured by a real estate mortgage on (legal description of the land)," was an equitable mortgage on the land, for it clearly expressed an intention that the land should act as security for the debt. For cases concerning equitable liens, see *First Bank of Roscoe v. Rinaldi*, 262 Ill.App.3d 179, 634 N.E.2d 1204, 199 Ill. Dec. 850 (2nd Dist. 1994); *LaSalle Bank v. Lopez*, 316 Ill.App.3d 515, 736 N.E.2d 619, 249 Ill.Dec. 425 (2000).

In *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 941 N.E.2d 329, 346 Ill. Dec. 771 (1st Dist. 2010), the appellate court determined that a deed absolute on its face was nonetheless an equitable mortgage. See also *Robinson v. Builders Supply & Lumber Co.*, 223 Ill.App.3d 1007 (1991). Both these cases concern people who unwittingly convey their homes to mortgage predators.

Liens, False

Some so-called "fringe" organizations have recorded "common law" liens against federal judges and other public officials. This practice was pioneered by the Posse Comitatus (from the Latin phrase meaning "force of the county"), a far right social movement that opposes the United States federal government. These liens, which have no factual or legal basis, are sometimes called false liens. The recording of these liens, or the filing of frivolous lawsuits with the intent to clog the court system, is sometimes called paper terrorism. The U.S. Congress has responded to the false lien problem by criminalizing the filing of false liens against certain parties; see 18 U.S.C. Sec. 1521. See also the Judicial Privacy Act (705 ILCS 90/2-1); the Unlawful Clouding of Title Act (720 ILCS 5/32-13); Erica Goode, "In Paper War, Floor of Liens is the Weapon," *New York Times*, August 23, 2013, p. A1.

Should any of these items appear on your Chicago Title commitment, do not hesitate to contact your Chicago Title representative for guidance in clearing them from title.