

SHORT TITLE: Liens; providing for filing of certain notice to extend judgment lien; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 441

By: Smith

AS INTRODUCED

An Act relating to liens; amending 12 O.S. 1991, Sections 706, as amended by Section 13, Chapter 351, O.S.L. 1993, 735 and 759 (12 O.S. Supp. 1996, Section 706), which relate to judgments and executions; clarifying that judgment lien attaches to homestead; providing for filing of certain notice to extend judgment lien; amending 28 O.S. 1991, Section 152, as amended by Section 9, Chapter 286, O.S.L. 1995 (28 O.S. Supp. 1996, Section 152), which relates to court costs and filing fees; specifying fee for filing certain notice; amending Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1996, Section 49), which relates to ambulance service provider liens; clarifying when certain action may be brought; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 706, as amended by Section 13, Chapter 351, O.S.L. 1993 (12 O.S. Supp. 1996, Section 706), is amended to read as follows:

Section 706. A. Scope. This section applies to all judgments of courts of record of this state, and judgments of courts of record of the United States not subject to the registration procedures of

the Uniform Federal Lien Registration Act, Section 3401 et seq. of Title 68 of the Oklahoma Statutes, which award the payment of money, regardless of whether such judgments also include other orders or relief.

~~A.~~ B. Creation of Lien. A judgment to which this section applies shall be a lien on the real estate of the judgment debtor within a county only from and after a Statement of Judgment made by the judgment creditor or ~~his~~ the judgment creditor's attorney, substantially in the form prescribed by the Administrative Director of the Courts, has been filed in the office of the county clerk in that county.

1. Presentation of ~~such~~ a Statement of Judgment and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

2. A lien created pursuant to this section shall ~~only~~ affect ~~the~~ and attach to all real estate property, including the homestead, of judgment debtors whose names appear in the Statement of Judgment; however, judgment liens on a homestead are exempt from forced sale pursuant to Section 1 of Title 31 of the Oklahoma Statutes and Section 2 of Article XII of the Oklahoma Constitution.

~~B.~~ C. Judgment Index. A judgment index shall be kept by each county clerk in which the name of each person named as a judgment debtor in a Statement of Judgment filed with ~~such~~ the county clerk shall appear in alphabetical order.

1. It shall be the duty of the county clerk, immediately after the filing of the Statement of Judgment, to make in the judgment index a separate entry in alphabetical order of the name of each judgment debtor named therein, which entry shall also contain the name(s) of the judgment creditor(s), the name of the court which granted the judgment, the number and style of the case in which ~~such~~ the judgment was filed, the amount of the judgment, ~~(including~~ interest, costs and attorney's fees if shown on the Statement of

Judgment), the date of the filing of the judgment with the court clerk of the court which granted it, and the date of filing of the Statement of Judgment with the county clerk.

2. It shall also be the duty of the county clerk, immediately after the filing of a Release of Judgment Lien, to make a notation in each entry ~~made~~ in ~~said~~ the judgment index made when any Statement of Judgment was filed with respect to the judgment being released, of the date of filing of ~~such~~ the Release with the county clerk, the name of the judgment creditor on whose behalf the Release is filed, and whether ~~such~~ the Release states that it is only a partial Release.

~~C.~~ D. Execution of Judgment. Execution shall be issued only from the court which granted the judgment being enforced.

~~D.~~ E. Release of Lien of Judgment. The lien of a judgment upon the real estate of judgment debtor in any county, which has not become unenforceable by operation of law, is released only upon the filing in the office of the county clerk in that county of a Release of Judgment Lien, or a copy thereof certified by the court clerk of the court which granted the judgment.

1. A judgment lien may be released, in whole or in part, by ~~the~~ filing ~~with the county clerk of~~ a Release of Judgment Lien ~~made~~ with the county clerk by the judgment creditor or his or her attorney.

a. A Release of Judgment Lien shall either recite the name of the court which granted the judgment, the number and style of the case, the name of each judgment debtor with respect to whom the lien is being released, the name of each judgment creditor in favor of whom the lien was created, or otherwise adequately identify the judgment lien being released and the judgment ~~debtor(s)~~ debtor against whom the lien is indexed. The Administrative Director of the Courts

shall prescribe a form of Release of Judgment which may be used at the option of the judgment creditor.

- b. If the release is only partial, it shall also contain a description of the lands then being released from the judgment lien or identify the particular judgment debtors, if less than all, with respect to whom the lien is then being released, or both, as the case may be.
- c. A Release of Judgment Lien may also be filed with the court clerk of the court which granted the judgment but ~~such~~ filing with the court clerk does not release any judgment lien created pursuant to this section.

2. The lien of any judgment which has been satisfied by payment or otherwise discharged and which has not been released by the judgment creditor shall be released by the court upon written motion.

- a. The motion shall be accompanied by an affidavit stating the grounds for the motion, and shall contain or be accompanied by a notice to the judgment creditor that, if the judgment creditor does not file with the court a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion to the judgment creditor, the court will order the judgment lien released.
- b. A copy of the motion shall be mailed by certified mail by the party seeking release of the lien to the judgment creditor at the last-known address of the judgment creditor, and to the attorney of record of the judgment creditor, if any. There shall be attached to the filed motion, and to each copy of the motion to be mailed, a Certificate of Mailing showing to whom copies of the motion were mailed, the

addresses to which they were mailed, and the date of mailing.

- c. If the judgment creditor does not file a response or objection to the motion within fifteen (15) days after the mailing of a copy of the motion, the court shall order the judgment lien released.
- d. When a judgment lien is ordered released by the court, the court shall cause a Release of Judgment Lien, in the form provided by the Administrative Director of the Courts, to be prepared. Instructions shall be printed on such form advising the judgment debtor to file the Release in the office of the county clerk of the county in which the real estate is situated in order to obtain the release of the lien of the judgment upon the real estate of the judgment debtor in such county.
- e. The party filing the motion for release shall pay all costs of the proceeding and any recording fees.

~~F.~~ F. Effect of Filing or Recording a Judgment. The filing or recording of a judgment itself in the office of a county clerk on or after October 1, 1993, shall not be effective to create a general money judgment lien upon real estate, but a certified copy of a judgment may be recorded in such office for the purpose of giving notice of its contents, whether or not recording is required by law.

~~F.~~ G. Acceptance by County Clerk. The county clerk shall accept for filing and file any Statement of Judgment or Release of Judgment Lien without requiring any formalities of execution other than those provided in this section.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 735, is amended to read as follows:

Section 735. If execution is not issued by the court clerk and filed with the county clerk as provided in Section 759 of this

title, or a notice of renewal of judgment substantially in the form prescribed by the Administrative Director of the Courts is not filed with the court clerk, or a garnishment summons is not issued by the court clerk within five (5) years after the date of any judgment that now is or may hereafter be rendered in any court of record in this state, or if more than five (5) years has ~~intervened between~~ passed from the date that the last execution on ~~such~~ the judgment was filed with the county clerk, or the last notice of renewal of judgment was filed with the court clerk, or the date that the last garnishment summons was issued ~~as provided by Section 759 of this title,~~ and the date that writ of execution was filed or a garnishment summons was issued ~~as also provided in Section 759 of this title,~~ such the judgment shall become unenforceable and of no effect, ~~and shall cease to operate as a lien on the real estate of the judgment debtor.~~ Provided; provided, that this section shall not apply to judgments against municipalities.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 759, is amended to read as follows:

Section 759. A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of ~~such~~ the execution shall be filed in the office of the county clerk of the county whose sheriff holds ~~such~~ the execution and shall be indexed in the same manner as judgments.

B. If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property ~~so~~ levied on, upon actual view; and ~~such~~ the disinterested persons shall return to the officer their signed estimate of the real value of ~~said~~ the property.

C. To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period,

one of the following shall be filed and indexed in the same manner as judgments in the office of the county clerk in the county in which the statement of judgment ~~was rendered and in the office of the county clerk in each county in which the judgment~~ was filed and the lien thereof is sought to be retained:

1. A certified copy of a general execution upon the judgment;
- ~~or~~
2. A certified copy of a notice of renewal of judgment; or
3. A certified copy of a garnishment summons issued against the judgment debtor.

SECTION 4. AMENDATORY 28 O.S. 1991, Section 152, as amended by Section 9, Chapter 286, O.S.L. 1995 (28 O.S. Supp. 1996, Section 152), is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support \$72.00
2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support \$30.00
3. Probate and guardianship ..... \$72.00
4. Annual guardianship report ..... \$20.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship \$30.00
6. Any proceeding to revoke the probate of a will \$30.00
7. Judicial determination of death ..... \$45.00
8. Adoption ..... \$72.00
9. Civil actions and condemnation ..... \$72.00
10. Garnishment ..... \$10.00

- 11. Continuing wage garnishment ..... \$50.00
- 12. Any other proceeding after judgment ..... \$20.00
- 13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court \$72.00
- 14. Notice of renewal of judgment ..... \$10.00

B. Of the amounts collected pursuant to subsection A of this section, the sum of Three Dollars (\$3.00) shall be deposited to the credit of the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 5. AMENDATORY Section 5, Chapter 194, O.S.L. 1995 (42 O.S. Supp. 1996, Section 49), is amended to read as follows:

Section 49. A. Every person, company, governmental entity, or trust authority operating an ambulance service within this state who performs ambulance services for any person injured as a result of the negligence or act of another shall, if the injured person asserts or maintains a claim against another person for damages on account of the injuries, have a lien for the amount due for the ambulance services upon any recovery or sum had or collected or to be collected by the injured person or the estate of the injured person in the event of the injured person's death, whether by judgment, settlement, or compromise. The lien shall be inferior to any lien or claim of any attorney handling the claim for or on behalf of the injured person. The lien shall not be applied or considered valid against any claim for amounts due pursuant to the provisions of Title 85 of the Oklahoma Statutes.

B. In addition to the lien provided for in subsection A of this section, every person, company, governmental entity, or trust authority operating an ambulance service within this state who performs ambulance services for any person injured as a result of the negligence or act of another shall have, if the injured person asserts or maintains a claim against an insurer, a lien for the amount due for the ambulance services upon any monies payable by the insurer to the injured person.

C. No lien which is provided for in this section shall be effective unless, before the payment of any monies to the injured person or the injured person's attorney or legal representative, as compensation for the injuries or death:

1. A written notice is sent setting forth an itemized statement of the amount claimed, identifying the insurance policy or policies against which the lien is asserted, if any, and containing the name and address of the person, company, governmental entity, or trust authority claiming the lien, the injured person, and the person, firm, or corporation against whom the claim is made, is filed on the

mechanic's and materialman's lien docket in the office of the county clerk of the county where the principal office of the claimant is located; and

2. The claimant sends, by registered or certified mail, postage prepaid, a copy of the notice with a statement of the date of filing thereof to the person, firm, or corporation against whom the claim is made and to the injured person. The claimant shall also send a copy of the notice to the attorney for the injured person, if the name and address of the attorney is known to the claimant.

D. ~~The liens provided for in~~ A lien created pursuant to this section may be enforced by in a civil action in the district court of the county where the lien was filed. An action shall be brought within one (1) year from the time of the filing of the lien with the county clerk after the person, company, governmental entity, or trust authority operating an ambulance service within this state becomes aware of final judgment, settlement, or compromise of the claim asserted or maintained by or on behalf of the injured person. The practice, pleading, and proceedings in the action shall conform to the rules prescribed by the Oklahoma Pleading Code, Section 2001 et seq. of Title 12 of the Oklahoma Statutes, to the extent applicable.

SECTION 6. This act shall become effective November 1, 1997.

46-1-0622

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