Liens – And How to Get Rid of Them

• Webinar March 2005
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The purpose of this seminar is to review the most common types of liens on real property, and tips and solutions for eliminating them.
Voluntary Liens

- Deed of Trust (includes Home Equity, Mechanic’s Lien Contracts, and Vendor’s Lien)
  - Obtain and Record Release
    - Current – obtain pay-off statement in writing (confirm $$ conform to lien shown on commitment) obtain release and record (use www.ffiec.gov to track changes in lender entities, or google search the name, or try the Texas Comptroller’s office for corporate information www.window.state.tx.us or try www.wolffirm.com)
    - Old, but same owner - inquire and obtain original or duplicate original release and record – or, if sure proper payoff was made, can do Affidavit as Release of Lien (Texas Property Code Sec. 12.017) – barred if more than 4 years after date of maturity – look for renewal and extensions, be aware of subrogation argument
More on releases

- Old, but previous owner - if sure proper payoff was made, can do Affidavit as Release of Lien (Texas Property Code Sec. 12.017) – or, (if you find a release, but not by then-current holder of the note, executed as part of an insured real estate transaction, and more than 5 years old, do not need to locate a correct assignment of that lien) – barred if more than 4 years after date of maturity – be aware of subrogation argument
Tax liens

• Ad Valorem Deed of Trusts – lenders loan money so owners can pay taxes, and that lender obtains an assignment of the Tax Lien. BEWARE, as this takes priority over a vendor’s lien. Obtain pay-off, require release. Just because the tax office says the taxes are paid, does not mean the tax lien is gone. If there has been a foreclosure, call underwriting counsel.
MLA’s

• Mechanic’s Lien Affidavits – not a lien yet, only an affidavit. They have a narrow window (3 to 4 months or so) to file the affidavit, and a narrow window to file suit to enforce that affidavit (1 or 2 years), which would then create the lien. See Texas Property Code, Sections 53.052 and 53.158 for the specific requirements. Be aware that “residential” has a strict definition, to be construction performed for the owner for residential use. Does not apply to “spec house”.

UCC-1s

- Financing Statements – barred after 5 years, may be released by the release of the accompanying Deed of Trust
these, be careful of the identity of your owner(s). If they do an affidavit, be certain it is completely filled out. Make copies of their identification(s).
AJ’s

– Abstract of Judgment – barred if more than 10 years from abstracting and recording, can be extended by obtaining a new Abstract of Judgment and filing within that 10 year period (USA judgments are good for 20 years.) Strict requirements for indexing, and what must be on the judgment.

– If it is your current owner, show or take exception. Tarrant Bank vs. Miller, 833 SW2d 666 requires creditor release lien if the property is homestead. (awarded damages against the creditor for failing to do so)
What if you missed an AJ?

- If it is a previous owner, creditor has only 3 years to enforce lien once the property is sold, see Shaw vs. Ball, 23 SW2d 291 (beware if sale was to family member); Jones vs. Harrison, 773 S.W.2d 759 (Tex.App. – San Antonio 1989)
- If it is a person with similar name to your owner, get specific information for the affidavit, as this is an issue that will come back
Government liens

– Federal Tax Liens – read closely, does it provide for an automatic release (see column (e))? Is it your owner? Previous owner, when was it filed? Previous owner, how far (or long) back in the chain? Barred after 10 years and 30 days.

– Sales, Excise & Use Tax (Texas Tax Code Sec. 151.607) – barred after 3 years.
State Tax Liens

• Texas Unemployment Tax, Personal State Tax Lien (Texas Tax Code Sec. 113.105) – good forever, but only 3 years within which to bring suit for collection (Texas Tax Code Sec. 111.202)
Hospital Liens

- Hospital Liens – although recorded in real property records, these are meant to attach to payments recovered by an injured debtor in an accident, and do not attach to real property
Barring tax liens

• Ad Valorem Taxes –not barred for 20 years. Watch out for assignment of the tax lien, which indicates lien still outstanding, despite tax office’s statement that no taxes are due. If suit filed, be sure costs are paid and suit is dismissed.
City Liens

• Paving Liens, Weed Liens – never barred. Double check legal description, be certain it is identifiable against the right property. If old, obtain prior closing information, to see if paid but not released.

• After 1999, paving lien must contain actual legal description of land under search to be valid
Bankruptcy

- Bankruptcy – see Virtual Underwriter. Judgments and bankruptcies prior to ’93 still required a release of that judgment. Post ’93, they are automatically discharged, if they are “dischargeable debt.” Warning! Many judgments are NOT “dischargeable debt.” May require review of the bankruptcy proceeding to see who was given notice, and the type of judgment (tax, fraud, and child support are NOT dischargeable
Other useful information

- If a note has been sold in the commercial market, that buyer can rely on the documents of record, and the property owner is prevented from claiming fraud, or homestead rights, in seeking to avoid that debt. See In re Smith, 966 F2d 973. (homeowner claimed MLC ineffective against homestead (work not completed), but note sold in commercial market. Court found lien valid, foreclosable)
What is not on here – Estate Tax Lien?