

BE AWARE WHEN DEALING WITH A SELLER & A BANKRUPTCY

A Judgment Lien Appearing on Your Prelim May Not Have Been Removed



Common Situation Explained:

A situation that arises fairly often when a title company is requested to insure a transaction is where an Abstract of Judgment has been recorded against the seller and the seller has subsequently received a discharge of the debt in bankruptcy. Unfortunately, the discharge of the debt itself does not eliminate the lien of the recorded Abstract. Once the Abstract has been recorded, the judgment lien can only be eliminated by a separate Bankruptcy Court order known as an “Order Avoiding Lien.”

Although the bankruptcy discharge may have relieved the debtor of personal liability, it does not eliminate the judgment lien. In other words, even though the creditor can no longer satisfy the judgment by attaching the debtor’s wages or other assets, a judgment that arose prior to the bankruptcy can still be enforced against the real property, even if it had been sold or transferred to a third party. For this reason, a title company will not “insure over” the lien without either a proper Order Avoiding Lien from the Bankruptcy Court or a release of the lien by the judgment creditor.

However, once the debtor has received a discharge in bankruptcy, the judgment lien will not attach to any property that the debtor acquires after the date of the discharge. In that case, the judgment lien may not be a concern to the title company.

If you are dealing with a seller who has had a bankruptcy, contact California Title Company for information on what is needed to close on their specific property.

Legal counsel should be consulted for advice in specific situations.

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