

Title Tip



A bankruptcy alone does not eliminate an abstract of judgment as a real property lien on our Preliminary Title Report.

One of the most commonly misunderstood facts about bankruptcy is the effect of discharge upon judgment liens. If the item appears on our Preliminary Title Report there are a few things you can do to get it removed otherwise the lien will be paid through the close of escrow.

Common Scenario:

Our Preliminary Title Report shows an abstract of judgment recorded against the Seller. He has previously recorded a homestead and filed a petition for bankruptcy. The seller has listed the judgment lien creditor in the bankruptcy and an order has been entered discharging the seller from his debts.

Immediately it is believed that the debt was discharged in the bankruptcy. We still show the lien on our Preliminary Title Report because the Seller's discharge in bankruptcy eliminates the Seller's personal liability for the judgment, but it does not extinguish the judgment lien from the property and can be enforced by execution sale.

Under the bankruptcy code, one course of action that may be taken in order to remove the lien from our Preliminary Title Report and the property is for the Seller to petition the court for an order "avoiding the judgment lien". If said order is granted, the judgment lien is avoided and the lien will not have to be paid through the transaction. We will then be able to remove the lien from our Preliminary Title Report and the transaction can close. If the lien is not removed the lien will have to be paid from the sale or we cannot close the transaction.