

# THE DAILY RECORD

Tuesday, October 01, 2019 / Volume III / Number 190 / \$2.00 • Western New York's trusted source for legal and real estate news

## Real Estate LAW

### Lien on Me: Clean Titles Are Key to Real Estate Deals

Some people may think of title examiners as having personalities similar to some of the characters on the show “The Big Bang Theory,” however, having a good title is one of the most important aspects of any real estate transaction. Examination and clearance of real estate titles is interesting because it involves having a familiarity with a broad range of practice areas beyond real estate.

When examining an abstract of title or a title report it is important to know relevant lien periods to decide whether the lien is valid or if it has expired.

A mechanic's lien is a claim by a contractor or materialman for labor or materials performed or furnished in connection with the construction of an improvement on the premises. A notice of lien may be filed up to four months after the work is completed on a single-family residence or up to eight months after the work is completed on other types of real property. It is important that deeds and mortgages contain a Section 13 Lien Law covenant, which provides that the seller or mortgagor will receive the consideration as a trust fund to first pay for the cost of the improvement. This covenant provides protection against subsequently filed mechanic's liens which attach to the trust fund rather than to the real estate. A mechanic's lien is valid for one year unless a foreclosure of the lien has been commenced or the lien is renewed or extended.

A money judgment docketed with the county clerk creates a lien against all of the real property of the judgment debt-



By **DONALD E. SNYDER JR.**  
Daily Record  
Columnist

or in that county for a period of 10 years. The 10-year period begins when the judgment is perfected and runs from the date of perfection rather than from the docketed date. It may be extended for an additional 10 years by an extension recorded prior to the expiration of the initial 10-year period, but if a judgment lien has not expired, it must generally be disposed of by a recorded release or satisfaction or a court order vacating the judgment. In certain cases, the judgment debtor may be able to have the judgment avoided as a lien against the debtor's homestead by bringing a successful section 522(f) motion in a bankruptcy proceeding. Purchase money mortgages enjoy lien priority over the lien of a prior in time money judgment against the mortgagor.

A federal tax lien properly filed with the county clerk creates a lien against all of the taxpayer's real property in that county for a period of 10 years and 30 days from the date of assessment. The additional 30-day period allows the IRS extra time to renew its lien.

If due, New York estate taxes create a lien on the decedent's real property for a period of 15 years from the date of death and Federal estate taxes create a lien on the decedent's real property for a period

of 10 years from the date of death. Estate taxes against a deceased tenant by the entirety or a deceased joint tenant may be disregarded on a deed from the surviving tenant to a bona fide purchaser for value.

A business corporation in New York pays a tax on its franchise. There is a minimum tax due each year, even if the corporation has no income. Unpaid franchise taxes become a lien against the corporation's real property 2 ½ months after the close of the corporation's fiscal year. Unpaid franchise taxes remain a lien for a period of 10 years from the date the tax was due and payable.

A UCC-1 financing statement filed in the county records against the real property is effective for five years unless continued. A UCC-1 financing statement filed against a co-op unit is effective indefinitely.

A mortgage creates a specific lien against the property and does not expire by lapse of time. A title company may insure over a so-called small ancient mortgage with an affidavit. There are procedures available under section 1921 of the Real Property Actions and Proceedings Law where a mortgage can be discharged by court order or by an attorney affidavit. Real Property Law Section 321 provides who may properly execute a satisfaction of mortgage.

With all of the potential pitfalls, it's easy to see why you should have good counsel you can lean on when closing any real estate transaction.

*Donald E. Snyder Jr. is senior counsel in the Real Estate practice at Harter Secrest & Emery LLP. He can be reached at dsnyder@hslaw.com.*