

CAN I LOSE MY HOME?

If you have a home and fail to pay a debt to one of your unsecured creditors, the creditor does have the right to sue you and obtain a judgment. The creditor can then try to enforce this judgment by placing a lien on your property, foreclosing on your home and using any proceeds to pay off your debt.

In theory, this process seems simple. In practice, however, the procedural hurdles, exemptions and probable bankruptcy of the debtor, typically frustrate the most aggressive collection efforts. Although a judgment can be entered quickly and by default, enforcing the judgment against your home can be a difficult and tedious process. Thus, although this remedy could be fruitful for some creditors, for the reasons discussed below, there are many potential pitfalls to a judgment creditor that would prevent him from being successful in foreclosing on your property.

THE CREDITOR MUST HAVE A JUDGMENT

Judgment creditors enforce judgments against real estate by way of a real estate levy. A levy allows the judgment creditor to direct a court officer, usually the county sheriff, to seize the real estate assets belonging to you, the judgment debtor, sell them to the highest bidder, and satisfy the judgment out of the proceeds of the sale.

Obviously, the lawyer for the creditor cannot have a judgment lien to levy upon until he has an enforceable judgment. In other words, the creditor must sue you and obtain a judgment from the court before any action can be taken.

TIME CONSTRAINTS OF ENFORCING A JUDGMENT

A judgment lien will last for only seven years. To be enforceable against your property, the levy process must start no later than within one year after the expiration of the seven year period. Although the judgment is initially effective for seven years, it can, however, be revived for an additional seven-year period.

THE CREDITOR MUST PERFECT THE LIEN

After entering an enforceable judgment, a creditor's attorney must create a lien upon your real property by performing the relatively ministerial act of recording a certified copy, transcript, or memorandum of judgment in the county where you own real estate. The recorded judgment lien will attach to any real estate owned by you in the county where the recording occurred, and any interest in property acquired by you for seven years following the judgment.

THE JUDGMENT CREDITOR IS SECOND TO YOUR MORTGAGE

The rights of a judgment creditor will always be inferior to the rights of your mortgage company. In other words, your mortgage company's lien will always come first, any second mortgage will come next and then a judgment creditor will be last.

Therefore, it will only be beneficial for a creditor to force the sale of your home if your home is worth enough money to pay off your mortgages first.

SAFE HARBORS IF YOUR PROPERTY IS ATTACKED

1. **Tenancy by the Entirety.** Unlike real estate owned individually or as joint tenants, real estate owned in tenancy by the entirety cannot be the subject of a judgment levy. However, debtors who are husbands and wives are the only individuals who may take title to property as tenants by the entirety. Thus, as long as the husband and wife remained married and live together at the property, no judgment creditor of either the husband or the wife alone can acquire rights by sale of the land. This is because neither the husband nor the wife can independently sell his or her interest.

THEREFORE, WE WOULD SUGGEST THAT MARRIED COUPLES CHANGE THE TITLE ON THEIR PROPERTY TO TENANCY BY THE ENTIRETY IN ORDER TO AVOID JUDGMENT CREDITORS FROM LEVYING THEIR HOME.

2. **Homestead Exemptions.** Individuals are also entitled to a homestead exemption under state law. These exemptions range from none in some states such as Pennsylvania to complete exemption in other states such as Texas. The exemptions for each state is listed at the end of this discussion.

Most homestead exemption disputes will involve questions of occupancy or residency. The burden of proof will be on you, the person asserting the claimed exemption, to prove it exists. This homestead exemption continues beyond death. Thus, as the widow or widower, you can use the decedent's exemption until your youngest child reaches 18 years of age (or sooner if all of your children have moved out).

These safe harbors may not always prevent a judgment creditor from placing a lien on your property. However, the creditor will likely not begin foreclosure proceedings. Instead, the creditor will keep the lien on the property until the property is sold or refinanced and then be paid off from the proceeds of the sale or refinance.

3. **Redemption Rights.** Even if the judgment creditor decides to pursue his lien by foreclosing on your property, this does not prevent you from redeeming the real estate by payment to the sheriff of the amount of the bid plus interest. This must be done within 6 months of the sale. If you proceed in this manner, you will receive a certificate of redemption to record, which reflects the cancellation of the sale. The proceeds paid to the sheriff will be delivered to the judgment creditor and applied to the judgment balance.

If no redemption is made, the successful purchaser may request that a deed be issued any time within five years after the expiration of the redemption period. If the deed is not picked up within that time, the certificate of the purchaser is void.

If the judgment creditor decides to foreclose on the lien, the sheriff can only sell your property after publication of notice of the sale. Also note that the sheriff's deed only conveys your right to title and interest in and to the real estate. All prior encumbrances (mortgages) remain in effect and must be confronted by the purchaser who buys the property at the sheriff's sale.

The cost and time, combined with the possibility that the judgment creditor will be required to pay a homestead exemption in cash to the judgment debtor, makes the real estate levy a practical tool only to the most stouthearted creditor. Attorneys advising judgment creditors must advise their clients of the expenses they are likely to incur before placing a real estate levy and the extraordinary expense of collection effort. If costs, together with the aggregate of prior existing liens (i.e. mortgages), approach the fair market value of the real estate, attorneys might advise their clients not to proceed.

HOMESTEAD EXEMPTIONS BY STATE

	Individual	Joint		Individual	Joint
Alaska	\$64,800	\$64,800	Montana	\$60,000	\$120,000
Alabama	\$5,000	\$10,000	N. Carolina	\$10,000	\$10,000
Arkansas	\$2,500	\$5,000	N. Dakota	\$80,000	\$160,000
Arizona	\$100,000	\$100,000	Nebraska	\$12,500	\$25,000
California	\$125,000	\$125,000	New Hampshire	\$30,000	\$60,000
Colorado	\$45,000	\$45,000	New Jersey	NONE	NONE
Connecticut	\$75,000	\$75,000	New Mexico	\$30,000	\$60,000
DC	\$8,625	\$8,625	Nevada	\$125,000	\$125,000
Delaware	NONE	NONE	New York	\$10,000	\$20,000
Florida	100%	100%	Ohio	\$5,000	\$10,000
Georgia	\$10,000	\$20,000	Oklahoma	100%	100%
Hawaii	NONE	NONE	Oregon	\$25,000	\$33,000
Iowa	100%	100%	Pennsylvania	NONE	NONE
Idaho	\$50,000	\$50,000	Puerto Rico	100%	100%
Illinois	\$7,500	\$15,000	Rhode Island	\$100,000	\$100,000
Indiana	\$7,500	\$15,000	S. Carolina	\$5,000	\$10,000
Kansas	100%	100%	S. Dakota	\$10,000	\$20,000
Kentucky	\$5,000	\$10,000	Tennessee	\$5,000	\$7,500
Louisiana	\$25,000	\$50,000	Texas	100%	100%
Massachusetts	\$100,000	\$100,000	Utah	\$20,000	\$20,000
Maryland	NONE	NONE	Virginia	NONE	NONE
Maine	\$12,500	\$25,000	Vermont	\$75,000	\$75,000
Michigan	\$3,500	\$7,000	Washington	\$40,000	\$80,000
Minnesota	\$200,000	\$400,000	Wisconsin	\$40,000	\$40,000
Missouri	\$8,000	\$8,000	West Virginia	\$15,000	\$30,000
Mississippi	\$75,000	\$75,000	Wyoming	\$10,000	\$20,000