

JUDGMENT LIEN REVIVAL

by Michael C. Payne, Partner at Coan, Payton & Payne, LLC



We are late into 2014, the holiday season is getting underway and, by all accounts, our local economy is relatively healthy. Better yet, economic indicators give us hope for a robust 2015. But...do you remember where you were six years ago?

In 2008, our economy had just dipped into recessionary waters, real estate values were plummeting and borrowers were increasingly defaulting on their loans. Those defaults frequently resulted in litigation, with the end result being a judgment in favor of the bank. Of course, many of those borrowers, turned judgment debtors, had few assets from which the bank could collect. Frequently, banks would simply record a transcript of judgment in the jurisdictions where the judgment debtor resided or owned real property and hope that someday that lien would allow the bank to recover a portion of the debt. Given the current economic climate, that “someday” may be just around the corner...if banks take the proper steps to ensure the viability of their state court issued judgment liens.

Pursuant to C.R.S. § 13-52-102(1), a recorded transcript of a state court issued judgment effects a lien upon all non-exempt real estate owned by a judgment debtor and upon any such after-acquired property. However, a judgment lien expires six years after the entry of judgment unless, prior thereto, the judgment is revived and a transcript of the revived judgment is recorded in the same counties in which the original transcript was recorded. If a bank takes the appropriate steps to revive a judgment and record the transcript of the revived judgment, the bank’s judgment lien will continue for an additional six years from the entry of the revived judgment. In fact, a judgment creditor can undergo this revival process a total of three times (although the third and final period is cut short because, pursuant to C.R.S. § 13-52-102(2)(a), a judgment is deemed satisfied in full after twenty years). This is frequently true even when a judgment debtor has filed for bankruptcy and received a discharge of its personal obligation to repay a debt because enforcement of a judgment lien is an action *in rem*, as opposed to an action *in personam* (which is prohibited following discharge).

If, however, a judgment creditor fails, prior to the expiration of the initial six-year judgment lien, to obtain an order from the court reviving the judgment and then record a transcript of said revived judgment, the judgment creditor’s judgment lien is lost forever. Therefore, it is imperative that a judgment creditor ensure that it is timely applying to the court for an order reviving its judgment. First and foremost, a bank that holds multiple judgments should adequately inventory all judgments and determine the absolute final dates upon which it will need to record transcripts of revived judgments in order to maintain its judgment liens. Frequently, banks will rely on the attorneys that assisted with procuring a judgment to identify these dates. With that in mind, it is a good idea to ensure that bank counsel has maintained suitable records and can assist the bank with calendaring the relevant deadlines (or that bank counsel is handling that process).

As a practical matter, a judgment creditor should typically commence judgment revival proceedings six months prior to the judgment lien expiration. This is recommended to allow for: (1) difficulties the judgment creditor may have in locating the judgment debtor(s) (who must be served with notice of the judgment creditor’s revival application); (2) litigating any mentdisputed issues with regard to the revival application; (3) delays the court may be experiencing in working through its docket or issuing certified transcripts of judgment; and (4) any other unforeseen hiccups in the process.

Once a judgment lien has been revived, a judgment creditor may be surprised to discover that a judgment debtor had been holding out off on a refinance or sale of real property until it was determined whether the judgment creditor would revive its judgment lien. In those circumstances, a judgment creditor will frequently be able to negotiate for a cash payment from the judgment debtor in exchange for net proceeds of the sale of real property (that has likely appreciated in value since the judgment lien was first recorded). Additionally, judgment debtors sometimes forget that a judgment lien has been effected against their interests in real property and they subsequently take title to real property (through purchase, inheritance, a friendly quitclaim, etc.). If that occurs, that title is immediately subjected to the judgment creditor’s judgment lien. Therefore, contemporaneous with judgment revival proceedings, a judgment creditor may wish to inspect relevant real property records to determine if its judgment lien has attached to any additional property upon which the judgment creditor could execute in order to satisfy its judgment. Simply put, so long as a judgment creditor takes the appropriate steps to maintain its judgment lien, it may be able to recover an otherwise uncollectable debt in the end.

Michael C. Payne is a Partner with Coan, Payton & Payne, LLC, where his practice is focused on assisting banks with loan documentation, collateral securitization and enforcement of creditors’ rights. He can be reached at mpayne@cp2law.com or 970-225-6700.