

 <p>INDIANA DEPARTMENT OF CHILD SERVICES</p>	<p style="text-align: center;">INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</p>
<p>Chapter 12: Enforcement</p>	<p>Effective Date: 07/28/2021</p>
<p>Section 5.4: Real and Personal Property Liens</p>	<p>Version: 1.1 Revision Date: 07/28/2021</p>

BACKGROUND

States must have in effect and use procedures for the imposition of liens against the real and personal property of an obligor who owes overdue support, and who resides or owns property in the State.¹ Any unpaid installment of support under any child support order is a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced.²

There are two (2) types of property subject to a lien arising from delinquent child support:

1. Real property; and
2. Personal property.

Personal property is any type of property, other than real estate. For example, personal property may include, but is not limited to, appliances, jewelry, or artwork.

Real property may include land, property, or anything attached to the land. This may include, but is not limited to, a shed, barn, or other storage structure located on the property.

POLICY

A payment that is required under a support order and delinquent shall be treated as a judgment against the obligor for the delinquent amount.³ For the purposes of real and/or personal property liens for unpaid child support, delinquent refers to an obligor who is in arrears in the payment of child support ordered by a Court in Indiana or another State that has jurisdiction over the support order.⁴

There is no arrearage threshold for a lien to be placed against an obligor's real and/or personal property.

All final judgments, including judgments adjudicating arrears, constitute a lien upon real estate and chattels real liable to execution in the county where the judgment has been duly entered and indexed in the judgment docket as provided by law.⁵

¹ 45 C.F.R. § 302.70(a)(4)

² 42 U.S.C. § 666(a)(9)(A)

³ IC 31-16-16-3

⁴ IC 31-9-2-36(b)

⁵ Chattel real is defined as "A real-property interest that is less than a freehold or fee, such as a leasehold estate. The most important chattel real is an estate for years in land, which is considered a chattel because it lacks the indefiniteness of time essential to real property." Black's Law Dictionary (11th ed. 2019); IC 34-55-9-2

REFERENCES

- [**IC 31-9-2-36**](#): Delinquent
- [**IC 31-16-16-3**](#): Judgement as Lien; priority; perfection
- [**IC 31-16-16-4**](#): Mode of enforcement; disputed amount
- [**IC 32-28-1-2**](#): Forfeiture; commissioner to release and satisfy lien
- [**IC 33-32-3-2**](#): Judgment dockets
- [**IC 34-55-1-2**](#): Issuance after lapse of ten year
- [**IC 34-55-1-3**](#): Three kinds of executions
- [**IC 34-55-2-8**](#): Praeclipe and fee bill
- [**IC 34-55-6-2**](#): Manner of Sale
- [**IC 34-55-6-3**](#): Auctions
- [**IC 34-55-6-8**](#): Real estate; sale at public auction
- [**IC 34-55-6-11**](#): Personal property; sale at public auction
- [**IC 34-55-9-2**](#): Liens upon real estate and chattels real
- [**IC 36-2-11-15**](#): Instruments that may be received for record or filing; name of person or governmental agency that prepared instrument
- [**Ind. Trial Rule 69**](#): Execution, proceedings supplemental to execution, foreclosure sales
- [**42 U.S.C. § 654**](#): State Plan for Child Support and Spousal Support
- [**42 U.S.C. § 666**](#): Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
- [**45 C.F.R. § 302.70**](#): Required state laws, procedures for the imposition of liens against the real and personal property of non-custodial parents who owe overdue support

PROCEDURE

1. Record of Adjudicated Child Support Judgment in Judgment Docket

The Clerk of Courts is the official keeper of the county's circuit court judgment docket which must contain all civil judgments in which a party owes money to another party, including any court costs awarded to a judgment creditor.⁶ The judgment docket will not contain record of a judgment for delinquent child support created as a matter of law.

When the obligor's real and/or personal property is located in another Indiana county, the Title IV-D Prosecutor's Office is strongly encouraged to file with that circuit court's judgment docket a verified copy of the arrears balance adjudication that is certified under the seal of the Court that rendered the judgment.⁷

2. Notice of Lien

The Notice of Lien document is a federal form created by the Office of Management and Budget (OMB), and serves to provide documented notice of the existence of a lien. It identifies the existence of a delinquent child support obligation at the point in time it is filed and serves as notice that further child support obligations not paid when due

⁶ IC 33-32-3-2(b)

⁷ IC 33-32-3-2(f)(2)

constitute judgments to be added to the lien amount. Finally, the Notice of Lien also serves to specifically identify real and/or personal property to which the lien attaches.

Federal law mandates that the Notice of Lien form be utilized in interstate child support cases in the imposition of liens.⁸ For intrastate child support cases, the Title IV-D Prosecutor's Office is strongly encouraged to also utilize the Notice of Lien in the imposition of liens. Therefore, the Title IV-D Prosecutor's Office shall in interstate cases, and is strongly encouraged in intrastate cases, prepare and submit the Notice of Lien to the Recorder's Office in the county where the obligor's real and/or property is located. The Notice of Lien includes instructions on how to complete the form, how to remit payment when real and/or personal property is sold, how to release the lien if satisfied, and specifying what type of property, real and/or personal, is subject to the lien, and also fulfills the requirements set forth governing instruments that may be filed with the local county Recorder's Office.⁹ If real property is included in the lien, then a specific description of the property must be completed on the Notice of Lien.

In addition to the Notice of Lien, the Title IV-D Prosecutor's Office is strongly encouraged to submit a certified copy of the arrears judgment from the child support order county to the Recorder's Office in the county where the obligor's real and/or property is located. If an obligor has a child support order in one county in the State, but owns real and/or personal property in a separate county in the State that the Title IV-D Prosecutor's Office would like to enforce the lien upon, the Title IV-D Prosecutor's Office is strongly encouraged to contact the Recorder and Auditor's Offices where the real and/or personal property is located to ensure that all local rules and potential fees are followed.

3. Using a Lien to Secure Future Payment

The Title IV-D Prosecutor's Office may file the Notice of Lien at any point an arrearage develops, along with a certified copy of the arrearage judgment as previously described, regardless of whether there is identified real and/or personal property to attach.

The Title IV-D Prosecutor's Office is strongly encouraged to continuously work with the Court, the Recorder, and the obligee to determine if the obligor has obtained any real and/or personal property that can be attached for the payment of delinquent child support.

4. Lien Perfection

The Title IV-D Prosecutor's Office is strongly encouraged to adjudicate the arrears balance prior to the perfection of a lien. A person holding a lien created by a judgment that is based on delinquent child support which has not been adjudicated has the priority of an unperfected secured creditor in any enforcement proceeding instituted against the property and may perfect the lien in the same manner as liens arising from other civil judgments are perfected.¹⁰

⁸ 42 U.S.C. § 654 (9)(E)

⁹ IC 36-2-11-15

¹⁰ IC 31-16-16-3

Perfecting a lien allows the Title IV-D Prosecutor's Office to ensure priority as a lien holder, as compared to other perfected liens against the obligor's real and/or personal property. An unperfected lien would be subordinate to any other prior perfected liens and would not preserve the lien with respect to a good faith purchaser who had no knowledge of the unperfected lien.

5. Execution of Lien; Real Property

The Title IV-D Prosecutor's Office is strongly encouraged to consider the financial costs as well as the expense of time and effort that will be expended to determine whether to proceed with the execution of a lien against the obligor's real property. If the Title IV-D Prosecutor's Office wishes to execute a lien against the obligor's real property, the Title IV-D Prosecutor's Office shall prepare and file a praecipe with the Clerk of Courts.¹¹ The Clerk of Courts will use the praecipe to prepare and issue a writ of execution to the county Sheriff's Department where the judgment was entered. There are three (3) types of executions:

- a. Execution against the debtor's property;
- b. Execution against the person of the debtor; and
- c. Execution for the delivery of the possession of real property.¹²

Once the Sheriff receives the writ of execution, the obligor's real property can be seized. Once seized, the obligor's property will be placed into foreclosure in order to force its sale at public auction.¹³ A sheriff shall sell property on execution that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale.¹⁴ Real estate shall not be sold until the elapse of six (6) months from the time the judgment becomes a lien on the property.¹⁵ Money from the sale will be forwarded to the county Clerk of Courts, and may then be applied as a payment toward the obligor's child support obligation. The Title IV-D Prosecutor's Office is strongly encouraged to contact the Recorder's Office where the real property is located to ensure that all local rules are followed.

6. Execution of Lien; Personal Property

The Title IV-D Prosecutor's Office is strongly encouraged to consider the financial costs as well as the expense of time and effort that will be expended to determine whether to proceed with the execution of a lien against the obligor's personal property. If the Title IV-D Prosecutor's Office wishes to execute a lien against the obligor's personal property, the Title IV-D Prosecutor's Office shall prepare and file a praecipe with the Clerk of Courts.¹⁶ The Clerk of Courts will use the praecipe to prepare and issue a writ of execution to the county Sheriff's Department where the judgment was entered. There are three (3) types of executions:

- a. Execution against the debtor's property;
- b. Execution against the person of the debtor; and

¹¹ IC 34-55-2-8

¹² IC 34-55-1-3

¹³ IC 34-55-6-8

¹⁴ IC 34-55-6-2

¹⁵ Ind. Trial Rule 69

¹⁶ IC 34-55-2-8

c. Execution for the delivery of the possession of personal property.¹⁷

Once the Sheriff receives the writ of execution, the obligor's personal property can be seized. Once seized, the obligor's property will be sold at public auction.¹⁸ A sheriff shall sell property on execution that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale.¹⁹ Money from the sale will be forwarded to the county Clerk of Courts, and may then be applied as a payment toward the obligor's child support obligation. The Title IV-D Prosecutor's Office is strongly encouraged to contact the Recorder's Office where the personal property is located to ensure that all local rules are followed.

7. Satisfaction of Judgment; Release of Lien

If an obligor discovers there is a lien on his or her real and/or personal property without a sale being forced by the county Sheriff's Department, the obligor may contact the Title IV-D Prosecutor's Office to discuss payment arrangements. These could include, but are not limited to:

- a. The obligor selling the real and/or personal property and remitting payment of the total arrearage;
- b. Establishing a payment plan by providing employment information and activating an income withholding order; or
- c. Making arrangements to pay a portion of the arrearage.

The Title IV-D Prosecutor's Office maintains the discretion to release any recorded lien upon arrangements for payment terms with the obligor, and once payment terms have been arranged, the Title IV-D Prosecutor's Office is strongly encouraged ~~shall take steps~~ to release any recorded liens in exchange for the payment(s) towards the obligor's arrearage. The Title IV-D Prosecutor's Office is strongly encouraged to monitor its payment arrangements with the obligor to determine if the reattachment of the lien is necessary for its enforcement of the arrears balance. However once a lien has been released and the Title IV-D Prosecutor's Office initiates a subsequent reattachment of the lien, it becomes subordinate to other prior perfected liens.

When a court order exists adjudicating the obligor's child support arrears, and has been entered as a judgment on a judgment docket, and also upon verification of arrears payment in full, the Title IV-D Prosecutor's Office is strongly encouraged to prepare and file with the Court a proposed notice, as well as an order finding the obligor has satisfied the judgment on arrearage. After the order is issued by the Court, the Title IV-D Prosecutor's Office is strongly encouraged to prepare and file a copy of that order with the county Recorder's Office where the Notice of Lien and/or copy of the arrears judgment is filed.

In any case where a Notice of Lien has been filed with the county Recorder but the arrears adjudication order has not been subsequently entered on a judgment docket, upon verification of payment of arrears in full, or arrangements have been made by the obligor with the Title IV-D Prosecutor's Office towards payment of the arrearage, the

¹⁷ IC 34-55-1-3(f)(2)

¹⁸ IC 34-55-6-11

¹⁹ IC 34-55-6-2

Title IV-D Prosecutor's Office shall prepare and file with the county Recorder's Office an amended Notice of Lien with a completed Section VI: Release of Lien.

If an obligor's real and/or personal property is seized and sold but the amount is not enough to satisfy the total arrearage, or if the Title IV-D Prosecutor's Office negotiates alternative terms for obligor's payment toward the arrearage in exchange for the release of lien, then the Title IV-D Prosecutor's Office may file a notice and subsequent order finding the obligor has partially satisfied the judgment on arrearage with the Court.

If the Title IV-D Prosecutor's Office fails to release the lien upon the payment of arrears in full by the obligor and upon request by the obligor, the Title IV-D Prosecutor's Office will be liable in a sum not to exceed five hundred dollars (\$500.00) and also attorney's fees.²⁰

FORMS AND TOOLS

1. Notice of Lien (OMB [0970-0152](#))

FREQUENTLY ASKED QUESTIONS

1. Q. How long does a judgment lien last on a property?
 - A. A judgment lien is valid for ten (10) years. After the lapse of ten (10) years from the entry of a judgment or its execution, an execution for the lien can be issued only on leave of Court or upon a motion.²¹
2. Q. What happens if the obligor disputes the lien amount of unadjudicated arrears?
 - A. If the obligor disputes the lien amount based on unadjudicated arrears, the Title IV-D Prosecutor's Office is strongly encouraged to review and verify the arrears balance listed on the statewide child support system and communicate the results of this review to the obligor. If the obligor continues to dispute the amount of unadjudicated arrears, the obligor may petition the Court with jurisdiction over the enforcement proceeding for a hearing to determine the amount of delinquent support.²²
3. Q. Where is the property deed on file?
 - A. Property deeds are on file with the county's Recorder's Office in the county where the real property is located. The Recorder's Office can provide guidance on what county specific procedures are in place for the storage and maintenance of property deeds and claims.
4. Q. What if the obligor's property is located in a different State that has jurisdiction to enforce the child support order?

²⁰ IC 32-28-1-2(b)

²¹ IC 34-55-1-2

²² IC 31-16-16-4(b)

A. If the obligor possesses real and/or personal property that may be levied in another State, and the Title IV-D Prosecutor's Office determines to utilize the imposition of a lien, it must complete the Notice of Lien and forward it to the other State's central registry, and follow all its applicable State laws.²³ The Title IV-D Prosecutor's Office is also strongly encouraged to submit a certified copy of the arrears judgment from the child support order county to the other State's central registry.

5. Q. What happens if the cost of executing the lien is more than the value of the property to be seized?

A. Under these circumstances, the Title IV-D Prosecutor's Office may choose to not pursue the execution of the lien. The Title IV-D Prosecutor's Office is strongly encouraged to consider the financial costs as well as the expense of time and effort that will be expended to determine whether to proceed with the execution of a lien against the obligor's real and/or personal property.

RELATED INFORMATION

Chapter 12: Enforcement, Section 8: Statute of Limitations

REVISION HISTORY

Version	Date	Description of Revision
Version 1	05/13/2020	Final Approved Version
Version 1.1	07/28/2021	Updated hyperlinks. Reviewed for accuracy.

²³ 42 U.S.C. § 654 (9)(E)
DCS IV-D Policy Manual/Chapter 12: Enforcement
Section 5.4: Real and Personal Property Liens