

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 12: Enforcement</b>	<b>Effective Date: 06/03/2020</b>
	<b>Section 5.4: Real and Personal Property Liens</b>	<b>Version: 1 Revision Date: 05/13/2020</b>

**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.<sup>1</sup> 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.<sup>2</sup>

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. 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.<sup>3</sup> 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.<sup>4</sup>

There is no arrearage threshold for a lien to be placed against an obligor’s real and/or personal property. There is no requirement that arrears be adjudicated in order to enforce a lien created as a result of delinquent child support owed pursuant to a child support order.

Although an unadjudicated delinquent child support obligation is to be treated as a judgment, the Indiana Court of Appeals has held that an action to enforce unadjudicated child support arrears must still be initiated within the ten (10) year timeframe required for child support obligations.<sup>5</sup>

<sup>1</sup> 45 C.F.R. § 302.70(a)(4)

<sup>2</sup> 42 U.S.C. § 666(a)(9)(A)

<sup>3</sup> IC 31-16-16-3

<sup>4</sup> IC 31-9-2-36(b)

<sup>5</sup> *Skolak v. Skolak*, 895 N.E. 2d 1241 (Ind. Ct. App. 2008)

Unadjudicated arrears are not considered a judgment for the purposes of the judgment statute of limitations and are therefore limited to the shorter timeframe for enforcement under the child support obligation enforcement statute of limitations.<sup>6</sup>

The Title IV-D Prosecutor's Office is strongly encouraged to petition the Court for an adjudication of an arrears balance prior to the expiration of this ten (10) year timeframe of the child support enforcement statute of limitations. A court ordered adjudication of arrears is a judgment for the purposes of the judgment statute of limitations and the timeframe for enforcement of that amount may be extended to 20 years after the date of adjudication.

Additionally, all final judgments (i.e., 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.<sup>7</sup>

## REFERENCES

- [IC 29-1-17-9](#): Specific devise; liens
- [IC 31-9-2-36](#): Delinquent
- [IC 31-16-16-3](#): Judgment as Lien; priority; perfection
- [IC 31-16-16-4](#): Mode of enforcement; disputed amount
- [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 34-55-9-2](#): Liens upon real estate and chattels real
- [Ind. Trial Rule 69](#): Execution, proceedings supplemental to execution, foreclosure sales
- [Skolak v. Skolak, 895 N.E.2d 1241 \(Ind. Ct. App. 2008\)](#)
- [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. The Clerk of Courts maintains a judgment docket, and the docket must contain all adjudicated civil judgments in which a party owes money to another party, including any court costs awarded to a judgment creditor.<sup>8</sup> The judgment docket will not contain record of a judgment for delinquent child support created as a matter of law.

### 2. Notice of Lien

<sup>6</sup> *Id.*

<sup>7</sup> 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 (11<sup>th</sup> ed. 2019); IC 34-55-9-2

<sup>8</sup> IC 33-32-3-2

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 eliminates the need to have child support arrears adjudicated and recorded in the judgment docket in order to provide notice of the judgment lien's existence. It also 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 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.

The Title IV-D Prosecutor's Office is strongly encouraged to prepare and submit the Notice of Lien with 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. 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 may file a verified copy of the child support order certified under the seal of the Court that rendered the judgment when the obligor's real and/or personal property is located in another Indiana county.<sup>9</sup> If a certified copy of the judgment from the child support order county is not presented in addition to the Notice of Lien, the lien from the Title IV-D Prosecutor's Office may not be honored. 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 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, regardless of whether there is identified real and/or personal property to attach. If, for example, a Notice of Lien has been recorded in a county and the obligor subsequently acquires real property in that county and attempts to sell, the obligor will be unable to sell the property unencumbered without contacting the Title IV-D Prosecutor's Office to satisfy the lien and have it removed by the county Recorder.<sup>10</sup>

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.

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<sup>9</sup> IC 33-32-3-2(f)(2)

<sup>10</sup> IC 29-1-17-9

#### 4. Lien Perfection

A person holding a lien created by a judgment that is based on delinquent child support 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.<sup>11</sup>

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

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. 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.<sup>12</sup>

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. Real estate shall not be sold until the elapse of six (6) months from the time the judgment becomes a lien on the property.<sup>13</sup> Money from the sale will be forwarded to the county Clerk of Courts, and may then be applied to the statewide child support system as a payment. 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 that all local rules are followed.

#### 6. Execution of Lien; 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. 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 personal property.<sup>14</sup>

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<sup>11</sup> IC 31-16-16-3

<sup>12</sup> IC 34-55-1-3

<sup>13</sup> Ind. Trial Rule 69

<sup>14</sup> IC 34-55-1-3(f)(2)

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 auction. Money from the sale will be forwarded to the county Clerk of Courts, and may then be applied to the statewide child support system as a payment. 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 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.

Once payment terms have been arranged, the Title IV-D Prosecutor's Office shall take steps to release any recorded liens in exchange for payment in full of the obligor's arrearage.

When a court order exists adjudicating the obligor's child support arrears, upon verification of arrears payment in full, the Title IV-D Prosecutor's Office prepares and files with the Court a proposed Order Finding Respondent Has Satisfied Judgment on Arrearage, located in the statewide child support system. After the order is issued by the Court, the Title IV-D Prosecutor's Office prepares and files a copy of the order with the county Recorder's Office where the Notice of Lien and/or copy of judgment is filed.

In any case where a Notice of Lien has been filed with the county Recorder, upon verification of payment of arrears in full, the Title IV-D Prosecutor's Office prepares and files with the county Recorder's Office an updated Notice of Lien with Section VI: Release of Lien completed. The Recorder's Office will then forward the Release of Lien to the Clerk of Courts, who will record in the judgment docket that the judgment has been satisfied, and the lien has been released from the obligor's real and/or personal property.

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 an Order Finding Respondent Has Partially Satisfied Judgment on Arrearage. However, the Title IV-D Prosecutor's Office shall not file an updated Notice of Lien with Section VI: Release of Lien completed until payment in full of all arrears has been verified in the statewide child support system.

## FORMS AND TOOLS

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

2. Praecipe for Execution-(ENFL0097)
3. Writ of Execution-(ENFL0098)
4. Order Finding Respondent Has Satisfied Judgment on Arrearage-(ENFL0029)

## 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.<sup>15</sup>
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 the arrearages 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.<sup>16</sup>
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?
  - A. If the obligor possesses real and/or personal property that may be levied in another State, the Title IV-D Prosecutor's Office is strongly encouraged to complete the Notice of Lien and forward it to the other State's central registry. The Title IV-D Prosecutor's Office is also strongly encouraged to contact the other State's central registry regarding the Notice of Lien and follow all applicable State laws.
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.

## RELATED INFORMATION

Chapter 12: Enforcement, Section 8: Statute of Limitations

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<sup>15</sup> IC 34-55-1-2

<sup>16</sup> IC 31-16-16-4(b)