

SUPERSEDES

CS 507.2, Perfecting a Support Lien, January 11, 2001

REFERENCES

MCA §§ 30-9-107, 30-9A-301, 40-5-247

Introduction

Liens do not, of themselves, give the CSSD authority to seize and sell an obligor's property. Nevertheless, liens are effective passive enforcement devices because the CSSD can often insist on full or partial payment of past due support in return for permission to sell encumbered property. Some or all of the proceeds of a sale can usually be directed to the CSSD as a part of the transaction. It is the sale itself, which creates the need to pay the lien, as well as the funds to do so.

Before a lien is effective as an encumbrance on property, persons must know that a lien exists. A support lien is perfected when persons with an interest in the property encumbered have notice that a lien against the property has been created. A Notice to Clerk of Court of Support Lien, CS-507.2A, filed with the proper body or recording agency, perfects a support lien.

Perfecting a lien may not always be necessary in order to achieve a lien effect. It may be enough for persons who hold an interest in the obligor's property to receive a notice of the lien. This notice may prompt them to notify the CSSD when the obligor's property is sold, and funds are available for execution.

Failing to perfect the lien **will prevent** the CSSD from asserting any remedies, which it might otherwise exercise against third parties who ignore the notice of lien. Therefore, it is important that CSSD perfects the lien. This allows it to be considered before any other creditors to the account or property. If for example, a lien on an account is not perfected, the lien is put in line behind automatic bank withdrawals, such as a mortgage company, a power company, cable TV or health club dues. In addition, the bank is not compelled to honor it and the account will not be frozen.

The CSSD may also serve CS-507.2B Notice of Support Lien, on any person, firm, corporation, association or political subdivision or department of the state which holds real or personal property that is due, owing or belonging to an obligor. Once notice is received, the entity holding the obligors' property may be liable for the entire amount of the support lien if it distributes or disposes of the property contrary to the notice. Personal property includes the obligor's share of an estate, workers' compensation benefits and any proceeds or potential proceeds due to an obligor from a lawsuit.

Once a support lien is perfected, it follows the encumbered property. If real property is sold or transferred without release of the lien, the CSSD may recover the lien amount (up to the value of the obligor's former interest in the property) from the new owner or the title insurance company. Liens also follow encumbered motor vehicles, or other property for which the Department of Justice issues a certificate of ownership. If an obligor sells other kinds of encumbered personal property, a good faith buyer of the property who has no knowledge of the support lien takes the property free of the lien.

Priority of Support Liens

From the date it is perfected, a support lien has priority over other encumbrances except:

- Any other liens or security interests, which were perfected before the support lien
- A mortgage, used by the obligor to purchase the real property encumbered by the mortgage
- Any perfected purchase money security interest. A purchase money security interest may arise if an obligor purchases a piece of personal property, and pledges the item purchased as collateral for the loan.

Policy

Perfecting a Support Lien against Real Property

To perfect a support lien against an obligor's real property, file CS-507.2A Notice to Clerk of Court of Support Lien with the Clerk of District Court in each county where an obligor owns an interest in real property. In addition, notices may be filed with the District Court in any county in which the obligor may acquire property in the future.

Perfecting a Support Lien against Motor Vehicles

To perfect a support lien against an obligor's motor vehicle (where motor vehicle or vehicle is defined as any item for which the Department of Justice issues a certificate of ownership), submit CS 507.2B Notice of Support Lien to be filed with the Department of Justice Motor Vehicle Division (MVD). The MVD will perfect the liens by entering them in the state database of motor vehicle liens, and collecting the fees for the liens from the trust fund established by the CSSD for that purpose. Regardless of the date listed on an individual Notice of Support Lien, the lien is not perfected until the MVD processes the lien and collects the fee.

A person calling the MVD during regular business hours with the title number or serial number of a vehicle can obtain current information about whether a child support lien has been asserted against that vehicle. The MVD also maintains a website to search for vehicles registered in the State of Montana. CSSD employees can use the DOJ MOTOR VEHICLE DIVISION CICS SYSTEMS.

If a purchaser (dealer or individual) or lender discovers a child support lien on a vehicle, the purchaser or lender may decide not to proceed with an intended transaction involving the vehicle, or the parties may seek to obtain release of the lien as part of the purchase transaction. A lien that escapes the notice of the purchaser or lender despite efforts to discover it (possibly because of the timing of the transaction) remains in effect as an encumbrance on the vehicle. See CS 507.4 Releasing a Support Lien, for remedies available to affected parties.

Perfecting a Support Lien against Other Personal Property

Filing a support lien with the secretary of state's office perfects a support lien against non-licensed, non-titled personal property. Generally, this type of lien would be most useful against an obligor who owns non-exempt property, such as farm machinery or logging equipment. Sometimes, a determination of non-exempt status of such property will require an examination of recent case law decisions. Please consult a supervisor with questions regarding liens against personal property.

Procedures

The following procedures are used to perfect administrative support liens asserted by the CSSD, or to perfect liens registered with the CSSD lien registry pursuant to MCA § 40-5-263(7).

NOTE:

Prior to beginning the following procedures, an obligor's arrearage must have been reduced to a sum certain amount. The CSSD may then include the unpaid balance of the adjudicated debt in the support lien, see CS 507.1 Support Liens Overview.

Procedures for Caseworker

1. **REAL PROPERTY.** Upon a determination that the CSSD may exert a support lien against an obligor's real property, completes CS-507.2A Notice to Clerk of Court of Support Lien and documents in case notes.
 - Makes four copies of the original and retains one copy for the file. Mails one copy each to the obligor and the obligee. Forwards a copy to the Office of the Administrative Law Judge (OALJ) for the support lien registry. Enters a list of counties where filed on SEARCHS LIN screen.
 - For each Montana County in which the obligor owns non-exempt real property, prepares form CS-503.7A Praecipe (Clerk of Court). Mails duplicate originals of notice, along with praecipe, to the applicable district court(s).
2. **MOTOR VEHICLES or other items.** Motor vehicles or other items for which the Department of Justice issues a certificate of ownership. Upon a determination that the CSSD may exert a support lien against an obligor's motor vehicle(s):
 - Completes CS 507.2B Notice of Support Lien. Documents in case notes. For interstate liens registered under MCA § 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSSD.
 - Makes five copies of original. Retains one copy for file. Mails one copy to obligor, and one copy to obligee. Forwards one copy to the OALJ for the support lien registry. Mails original to the Department of Justice Motor Vehicle Division (MVD).

The MVD updates the liens on their web site. The MVD web site.

3. **PERSONAL PROPERTY.** Upon a determination that the CSSD may exert a support lien against an obligor's personal property, other than motor vehicles:
- a. Completes CS-507.2B, Notice of Support Lien. Documents in case notes. For interstate liens registered under MCA § 40-5-263 where the underlying order does not establish a sum-certain amount of delinquent support, determines lien amount using updated debt computation provided by initiating state, and subsequent payments reported to or collected by the CSSD.
 - b. Makes at four copies of original. Retains one copy for file. Mails one copy to obligor, one copy to obligee. Forwards one copy to the OALJ for the support lien registry. Enters list of counties where filed on SEARCHS LIN screen.
 - c. Consults with supervisor for appropriate place for filing of notice, in accordance with MCA § 30-9A-301.
 - d. Mails original and any required fee to the appropriate place for filing.
 - e. If the personal property is cash (for example, funds payable by an insurance company, or to an account in a financial institution), tracks payments received in the case to identify any unexpected collections that may be related to the support lien. If at any time the CSSD receives a direct payment from the property holder in response to the Notice of Support Lien--without benefit of any intervening seizure action by the CSSD--immediately proceeds in coordination with the regional legal unit in steps i) through v) below:
 - i. Places the **affected accounts on hold** to prevent disbursement of the collection.
 - ii. Informs the regional legal unit of the collection and related circumstances.

Procedure for Legal Unit

Based on the facts of the case, prepare a notice package containing a notice of seizure, a request for exemption hearing, and a certificate of mailing; send the package to the obligor by regular mail.

Procedure for Caseworker

- iii. Monitors for the obligor's response to the notice of seizure and takes action in section CS 507.3 Enforcing a Support Lien by Warrant for Distraint as applicable.
- iv. When due process has been satisfied, removes the hold on the accounts, sends instructions to TAPP for releasing the collection, and proceed as applicable in section CS 507.3.