

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

SUPERSEDES

CS 507.4, Releasing a Support Lien, July 10, 2007

REFERENCES

45 CFR § 303.103; MCA §§ 40-5-185, 40-5-227, 40-5-248, 40-5-271, 25-13-6

Introduction

Whenever enforcement of a support lien results in the full collection of the amount due under the lien, the lien must be released. By releasing the lien, the CSED terminates the encumbrance on the property, allowing it to pass freely. With real property, a lien release clears the title, and allows a title insurance company to issue a warranty deed. Failure of a creditor to file satisfaction of judgment, or to release liens placed on real property may result in liability for slander of title.

Real property liens may be fully released which releases all of an obligor's real property in a county, or may be partially released, which releases a specific parcel of real property. To do a partial release, you must have the legal description of the particular parcel.

Generally, personal property liens are item specific. Thus, when one item is released, it is fully released. There may be times when only a portion of a personal property item should be released. Please consult your regional CSED staff attorney for appropriate forms.

Policy

Required Release

The CSED must release a support lien when enforcement of the lien results in the full collection of the amount due under the lien, or when the case is being closed.

Also, upon request by an appropriate party, the CSED must partially release a support lien when the lien includes "excess property;" excess property is property that is separable from the rest of the property subject to the lien, and is no longer needed to enforce the full amount owed by the obligor.

Excess property may come about when collection in the case decreases the amount the obligor owes, or when the subject property becomes divisible--or a dollar value is identified--after the lien is perfected.

CAUTION: This condition applies only when the value of the remaining, unreleased property is sufficient to cover the value of the original lien, less any collections, plus any additional support debt accrued since the lien was perfected.

NOTE:

Unrequested Partial Release. Where there is no request to partially release a lien, the CSED generally retains its lien against any excess property identified, to cover any future support debt accrued before the lien is finally enforced.

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

Discretionary Release

The CSED may release a support lien in an open case before it collects the full amount due under the lien, but will do so only if one of the following conditions applies:

- 1) The CSED determines the lien is unenforceable.

NOTE:

Repossessed Vehicles. In the case of a vehicle that is repossessed by a lender holding a superior lien, the CSED will release its lien if it does not expect the sale of the vehicle to produce sufficient funds to cover the superior lien(s) plus payment toward the support lien. This information can be requested from the superior lien holder.

- 2) There is good reason to believe release of the lien will facilitate collection of the support arrearage.

NOTE:

Subordination of Lien. Instead of releasing a lien, the CSED may agree to subordinate its lien on a property (that is, to accept a lower priority as a lien holder) if this action will facilitate collection of the support arrearage. (For example, in a situation where an obligor arranges refinancing to avoid foreclosure, and the new financing company demands first place as lien holder in order to agree to the arrangement, the CSED may agree to subordinate its interest to keep the property from being lost to the CSED altogether.) Consult the CSED staff attorney for preparation or review of any subordination agreement.

- 3) The CSED agrees to give up some or its entire claim on the property to allow payment to other lien holders in the action (for example, in an insurance settlement the CSED may agree to release amounts for medical and attorney fees). A release in this situation must include special terms clearly retaining any portion of the lien not released in the agreement.
- 4) In the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership), the CSED receives either of the following:
 - a. A request for release of lien from an automobile dealer (or from the financing agency having an interest in the status of the vehicle title), in which the requestor proves the dealer purchased the vehicle from the obligor in good faith. Good-faith purchase is presumed if, at the time of the transaction, the dealer consulted the Motor Vehicle Division's (MVD) latest list of support liens and found there to be no support liens filed against the vehicle. The request for release must be submitted on the CSED's form or its equivalent, and must contain a verifiable statement of good-faith purchase.
 - b. Payment of an amount pre-approved by the CSED for release of the lien, where the payor is the lender for the purchase of the vehicle. In this situation the seller (obligor) has agreed to accept the agreed purchase price less an amount to be paid directly to the CSED, in return for the ability to sell the vehicle. The lender's request for release of lien contains the particulars of the agreement and the date of the distribution to the CSED. The request must be submitted on the CSED's form or its equivalent, and must contain the signed agreements of the CSED investigator, the seller, and the lender.

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

The CSED will grant all requests to release vehicle liens where the conditions in (a) or (b) above apply.

Any decision to issue a discretionary release in (1) through (4) above requires a thorough examination of the individual facts and circumstances of the case.

Procedure

The release of full and partial liens asserted against real property and motor vehicles.

Caseworker

1. REAL PROPERTY: FULL RELEASE OF LIEN

Upon identifying a case where a support lien is fully satisfied, or is no longer appropriate (see POLICY), takes action as follows:

- a) Completes CS-507.4A Full Release of Support Lien, but does not sign. Doc Gen will automatically generate the Clerk of Court Praecept(s) (CS-503.7A) for filing the executed release in the existing cause number in each Montana County in which a lien was perfected against an obligor's real property.
- b) Submits to CSED staff attorney for approval. Upon approval, the staff attorney may sign the Full Release of Support Lien. If signature is obtained, proceeds to step 1f. If signature is not obtained proceeds to step 1c.
- c) Upon approval of the release of lien by the staff attorney, forwards to the Office of Fair Hearings (OFH) for judge's signature.
- d) Makes appropriate entry on the SEARCHS LIN screen, and documents in case notes.

Administrative Law Judge

- e) Reviews and if necessary signs Full Release of Support Lien. Forwards to hearings assistant.

Paralegal/Hearings Assistant

- f) Makes four copies of the original. Sends/Retains one copy to the OFH support lien registry, and one to the caseworker. Mails one to the obligor, and one to the obligee. In appropriate cases, it may also be necessary to send a copy to the new owner of the property.
- g) Mails original Full Release of Support Lien, and the Clerk of Court Praecept to district court(s).

Caseworker

2. REAL PROPERTY: PARTIAL RELEASE OF LIEN

Upon identifying a case where a partial release of support lien applies (see POLICY), takes action as follows:

- a) Completes CS-507.4B Partial Release of Support Lien, but does not sign. Doc Gen automatically generates CS-503.7A Clerk of Court Praecept for filing the executed release in the existing cause number in the Montana County in which a lien was perfected against identified real property belonging to an obligor's real property.

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

- b) Submits to CSED staff attorney for approval. Upon approval, the staff attorney may sign the Partial Release of Support Lien. If signature is obtained, proceeds to step 2f. If signature is not obtained proceeds to step 2c.
- c) Upon approval of the release of lien by the staff attorney, forwards to the OFH for judge's signature.
- d) Makes appropriate entry on the SEARCHS LIN screen, and documents in case notes.

Administrative Law Judge

- e) Reviews and if necessary signs Partial Release of Support Lien. Forwards to hearings assistant.

Paralegal/Hearings Assistant

- f) Makes four copies of the original. Sends/Retains one copy to the OFH support lien registry, and one to the caseworker. Mails one to the obligor, and one to the obligee. In appropriate cases, it may also be necessary to send a copy to the new owner of the property.
- g) Mails original Partial Release of Support Lien, and the praecipe to district court.

Caseworker

3. MOTOR VEHICLES and other items that have a certificate of ownership issued by the Department of Justice.
 - a) Upon identifying a case where a support lien is fully satisfied or is no longer appropriate (see POLICY), takes action beginning in step 3c. Upon identifying, a case where a release may apply based on a good-faith purchase, or on receipt of an agreed payment from a lender for a vehicle purchase, takes action beginning in step 3b.
 - b) Upon being contacted by affected party, explains procedures for requesting release of lien and takes action in i) or ii) below as applicable.
 - i. **Before purchase.** If vehicle purchase involving lending institution is intended but has not yet occurred, takes necessary information on lender, purchaser, and agreed purchase price from contacting party (must be lender except in unusual situations). Determines payment amount required to release lien. (At discretion of caseworker, amount may be less than full lien amount if reduction will be beneficial to disposition of case.)

Completes CS-507.4D, Agreement to Distribution of Loan Proceeds and Release of Lien, except for lender's distribution date. Marks lines still to be completed (seller's signature, distribution date, lender's signature), signs form, enters case note, and mails original to lender. Enters appropriate case note and sets tickler for return of form.

Upon return of properly completed form from lender, checks for receipt of indicated payment; if payment received, proceeds to step 3c to release lien.

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

NOTE:

“Before-Purchase” Form Appropriate for Lenders Only. The agreement form is designed for use when there is a direct cash loan for the purchase of the obligor’s vehicle. If a lender is not directly involved and the contacting party is a dealer, an individual purchaser, or the obligor, the obligor/seller must contact the CSED directly to discuss any release of the lien prior to sale.

- ii. **After Purchase.** If vehicle purchase has already occurred, obtains necessary information from party requesting release (requestor must be either automobile dealer or financing agency--if purchaser is individual, refers matter to CSED staff attorney). Prepares CS-507.4E Statement of Good-Faith Purchase and Request for Release of Lien, and mails to requestor for completion. Enters appropriate case note and sets tickler for return of form.

Expedites following actions to comply with four-day turnaround (see step 3c) for release requests:

Upon receipt of completed form from automobile dealer (or from financing agency if that agency now has interest in status of title), reviews form for satisfaction of good-faith purchase requirement, and verifies by checking applicable MVD list. Upon verification, submits to team supervisor for approval; upon approval enters case note and proceeds to step 3c to release lien.

If investigation shows dealer should have been able to discover lien from MVD list, submits request to team supervisor with recommendation to deny. Upon approval to deny, enters case note and submits to CSED staff attorney for final approval. Upon final approval, and within four days after receiving request for release, works with attorney to send letter to requestor explaining reason for denial; enters case note. Takes no further action unless new information received.

- a) Within four working days of receiving sufficient payment, or of receiving form in step 3d(ii) above, completes CS-507.4C Release of Support Lien, and submits to CSED staff attorney for expedited approval.
- b) Immediately upon approval by staff attorney, makes four copies of original. Sends the original to CSED Administrative Support Unit in Helena. Retains one copy for the file, sends one copy to the OFH support lien registry. Mails one copy to the obligor, one copy to the obligee. In appropriate cases, it may also be necessary to send a copy to the new owner or other interested parties.
- c) Makes appropriate entry on the SEARCHS LIN screen, and documents in case notes.
- d) Mails original to Department of Justice, Motor Vehicle Division in Deer Lodge. The MVD updates the liens on their web site. The MVD web site is for registered users such as automobile dealers and lending institutions.

Caseworker

4. PERSONAL PROPERTY

Upon identifying a case where a support lien is fully satisfied or is no longer appropriate, or where a partial release of the lien applies (see POLICY), takes action as follows:

ENFORCING A SUPPORT ORDER

Releasing a Support Lien

CS 507.4

- a) Completes CS-507.4C Release of Support Lien, modified as necessary if for partial release.
- b) Submits to CSED staff attorney for approval.
- c) Upon approval by staff attorney, makes four copies of original. Retains one copy for the file, sends one copy to the OFH support lien registry. Mails one copy to the obligor, and one copy to the obligee. In appropriate cases, it may also be necessary to send a copy to the new owner or other interested parties.
- d) Mails original release of lien to the holder of the original lien.
- e) Makes appropriate entry on the SEARCHS LIN screen, and documents in case notes.