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# Elimination of Automatic Judgment Liens in Missouri

By William H. Henning

The traditional automatic judgment lien on real property following rendition of a money judgment has been statutorily eliminated. Judgment liens are now dependent upon the filing of an abstract of the judgment

by the court clerk, but the implementing legislation contains ambiguities that raise issues regarding the scope of such liens.

**I**T HAS BECOME ALMOST AXIOMATIC to say that the money judgment<sup>1</sup> of a Missouri court of record is a lien on the judgment debtor's real property located in the county in which the court sits, but a recent enactment of the Missouri legislature appears to have abolished this automatic lien.<sup>2</sup> The new legislation is, however, ambiguous in several respects, and the purpose of this article is to examine the act in an attempt to resolve these ambiguities. In the process, the article will also deal with some other aspects of judgment liens not specifically within the scope of the new legislation.

In order to understand the new act it is necessary to place it in a historical context. Prior to the court reorganization that became effective January 2, 1979, Section 511.350, RSMo Supp. 1975, provided that judgments and decrees "rendered by the supreme court, by any United States district or circuit court held within this state, by any district of the court of appeals, and by any court of record, except judgments and decrees rendered by magistrate courts . . ." were liens on the judgment debt-

or's real property "situate in the county for which or in which the court is held."<sup>3</sup> Missouri courts of record were statutorily defined as the supreme court, the courts of appeals, the circuit courts, the magistrate courts, the probate courts



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**ABOUT THE AUTHOR.** *Mr. Henning, an Associate Professor of Law, University of Missouri-Columbia, is on leave during the spring semester of 1983 to the University of Illinois at Urbana-Champaign College of Law, where he is a Visiting Associate Professor of Law. Professor Henning received a B.A. degree in 1972 and a J.D. degree in 1976 from the University of Tennessee, and a LL.M. degree in 1982 from the University of Illinois.*

and the courts of common pleas.<sup>4</sup> The liens commenced on the day the judgment was rendered<sup>5</sup> and arose automatically in that no further action by the courts or their clerks was necessary to their existence.

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## **Exceptions to the automatic lien provisions**

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There were exceptions to the automatic lien provisions. For example, judgments rendered by courts in a city having over one hundred thousand inhabitants or in a county having over sixty thousand inhabitants did not become liens until an abstract of the judgment was entered in a book kept by the clerk of the circuit court having jurisdiction over civil actions in that city or county.<sup>6</sup> The clerks of the other courts of record within such a city or county were under an affirmative duty to furnish an abstract of judgments rendered in their courts to the circuit court clerk within five days following rendition, and the circuit court clerks were required to enter the abstracts at once.<sup>7</sup> In addition, the circuit court clerks were required to prepare and enter abstracts of judgments of their own courts within five days following rendition.<sup>8</sup> Finally, any party could furnish an abstract to the circuit court clerk, who was required to enter it immediately.<sup>9</sup> This last technique could be utilized by attorneys who did not want to wait up to five days to have their abstracts entered and as a vehicle to create liens from federal district court judgments in such cities or counties since the affirmative duty to provide abstracts did not extend to the clerks of federal courts.

Another important exception to the automatic judgment lien was a limitation on the effect of magistrate court judgments, which did not become liens until a certified transcript of the judgment was filed with the clerk of the circuit court of the county in which the

judgment was rendered.<sup>10</sup> However, since probate courts were defined as courts of record but were not subject to transcribing requirements like those imposed on the magistrate courts, their money judgments were automatic liens except in those populous cities and counties where courts of record were subjected to the abstracting requirements set out in the preceding paragraph. These liens created problems for title attorneys in rural areas, but the problems were minimal since the probate courts rarely rendered money judgments.<sup>11</sup>

Effective January 2, 1979, the court system in Missouri was restructured by revision of Article V of the Missouri Constitution and implementing legislation. As a result, the old inferior courts such as the magistrate courts, probate courts, courts of common pleas and municipal corporation courts were abolished as independent tribunals<sup>12</sup> and their jurisdictions were transferred to the circuit courts,<sup>13</sup> which now have jurisdiction over all civil and criminal matters.<sup>14</sup> Most of the jurisdiction of the old magistrate courts was transferred to associate circuit court judges, and practice and procedure in most cases heard in the new associate divisions is now governed by the Court Reform and Revision Act of 1978, the relevant provisions of which are codified at Chapter

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## **Most important aspect of this procedure for present purposes**

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517, RSMo 1978.<sup>15</sup> The most important aspect of this procedure for present purposes is a transcribing requirement similar to that applicable to the old magistrate courts. Sections 517.770 and 517.780, RSMo 1978, which have not been revised by the recent legislation, provide that every judgment of the associate division in a case within the scope of Chapter 517 operates as a lien on the real estate of the judgment debt-

or from the time a certified transcript of the judgment is filed with the clerk of the circuit court of the county in which the judgment is rendered. The transcripts are available upon demand (there is no affirmative duty placed on the clerks to prepare them as was the case with abstracts of judgments rendered by courts of record in populous cities and counties), and the clerk of the circuit court is required to file the transcript, record it in a book to be kept for that purpose, and enter it in his permanent record of circuit court judgments.<sup>16</sup> In other cases within the jurisdiction of the associate divisions but outside the scope of Chapter 517,<sup>17</sup> the transcribing requirements are inapplicable and, prior to the new legislation, apparently operated as automatic liens except in areas where the courts were subject to abstracting requirements.<sup>18</sup> The effect of the new act on such judgments is explored below.

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## Effect of new act on such judgments

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The court reorganization failed to resolve some problems for title attorneys and created others. Since Chapter 517 does not apply to practice and procedure in the probate divisions,<sup>19</sup> money judgments rendered in such divisions had the same effect as money judgments in the old probate courts and were automatic liens except in populous cities and counties. In addition, municipal courts became divisions of the circuit court<sup>20</sup> and were, therefore, elevated to the status of courts of record, the definition of which was revised by the Court Reform and Revision Act of 1978 to include the supreme court, courts of appeal and circuit courts.<sup>21</sup> There was concern in the real estate bar that a judgment rendered in the municipal division regarding such a minor matter as a parking fine was technically a lien on the defendant's real estate and therefore operated as a cloud on this title.<sup>22</sup> Coupled with the same problem arising from money judgments

rendered in the probate divisions and in the associate divisions in cases not governed by Chapter 517, there was a potentially significant number of judgments operating as liens on real estate and yet not subject to abstracting or transcribing requirements.

The problem was compounded by the fact that Supreme Court Administrative Rule 4, which established a uniform record keeping system in the circuit courts<sup>23</sup> and required the maintenance of an alphabetical card file index of all civil judgments,<sup>24</sup> has not been applied to the divisions of the circuit courts. Accordingly, it was virtually impossible for title examiners in rural areas to find all the judgments that might operate as automatic liens on real estate.<sup>25</sup>

The new legislation enacted by the Missouri General Assembly in 1982 is designed to correct the deficiencies in the present system by eliminating the automatic judgment lien in all cases. The act repeals existing Sections 511.350 and 511.500 and replaces them with two new statutes bearing the same numerical designation. New Section 511.350 contains three subsections, the first of which states as follows:

"Judgments and decrees rendered by the supreme court, by any United States district or circuit court held within this state, by any district of the court of appeals, by any circuit court and any probate division of the circuit court, except judgments and decrees rendered by associate, small claims and municipal divisions of the circuit courts, shall be liens on the real estate of the person against whom they are rendered, situate in the county for which or in which the court is held."<sup>26</sup>

New Section 511.350(2) provides that judgments rendered in the associate divisions are not liens until they "are filed with the clerk of the circuit court pursuant to sections 517.770 and 517.780, RSMo." There are two possible constructions for this provision. The first construction is that the statute extends the transcribing requirements of Chapter 517 to all money judgments rendered in the associate division regard-

less of whether such judgments stem from cases within the scope of that chapter.<sup>27</sup> The second possible construction is that the statute continues the prior practice of allowing judgments to become liens in cases within the scope of Chapter 517 but is silent as to the effect of money judgments rendered in other cases. The second construction, read in conjunction with the "except" clause of new Section 511.350(1), would lead to the conclusion that judgments in cases outside the scope of Chapter 517 cannot become liens under any circumstances.<sup>28</sup>

One problem with the second construction is that Section 511.350(3) goes on to make explicit what is implied by the "except" clause of Section 511.350(1) with regard to judgments rendered by small claims and municipal divisions by providing that they "shall not constitute liens against the real estate of the person against whom they are rendered." There is no similar provision regarding associate division judgments in cases outside the scope of Chapter 517, and this gives rise to an implication that this class of cases was intended to come within the ambit of Section 511.350(2). In fact, of course, the legislature may simply have overlooked these cases in formulating the statute. However, since transcripts under Chapter 517 are not prepared as a matter of course by the associate division clerks but are available only upon the request of the judgment creditors, construing the statute in such a way as to extend the transcripting requirement to all cases heard in the associate division would not significantly increase the clerks' obligations. Further, since such judgments will not become liens until the transcript is filed, extending the transcripting requirement should present no problems for title examiners. Accordingly, the first construction set out above may be preferable; and if it is adopted any money judgment rendered in the associate division, whether in a case governed by Chapter 517 or otherwise, will operate as a lien on the judg-

ment debtor's real estate if the procedures of Sections 517.770 and 517.780 are followed.

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## Other problems with the new legislation

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There are other problems with the new legislation. New Section 511.350(1) specifically provides that judgments of the circuit courts and probate divisions are liens, and Section 511.360, which has not been altered, states in part that "Such liens shall commence on the day of the rendition of the judgment. . . ." Without more, such judgments would continue to be automatic liens, but new Section 511.500, which is the heart of the act, negates this result by providing in part as follows:

No judgment hereafter rendered by any court shall be a lien on real estate situate in such counties or city not within a county, until an abstract of said judgment shall be entered in a book to be kept by the clerk of the circuit court having jurisdiction of civil causes within a county or a city not within a county. . . ."

This latter provision replaces the prior statute providing for abstracting in populous cities and counties, and since the new statute does not contain population limitations it apparently applies to the money judgments of all circuit courts and probate divisions within the state. This result is not absolutely clear because the statute's use of the word "such" to modify "counties or city not within a county" gives the impression that its impact is limited to certain counties, but this impression is probably misleading. The statute in large measure tracks the language of the prior provision limiting the abstracting requirement to "such cities or counties" as qualified for coverage by population, and the word "such" in the new statute is no doubt vestigial. As a result, new Section 511.500 directly contradicts Section

511.360. In this situation, the later of the two repugnant statutes should be enforced; and the quoted portion of Section 511.360 should be considered implicitly repealed.<sup>29</sup>

Another problem is that Section 511.360 also provides that judgment liens continue for a period of three years from the date the judgment is rendered subject to revival,<sup>30</sup> but this provision was enacted in conjunction with the automatic lien provision which has now been implicitly repealed. Presumably, the implicit repeal only extends to those portions of Section 511.360 that are inconsistent with the new legislation and the three year limitation continues to be applicable; but when does the three years commence? Arguably, it still commences on the day the judgment is rendered; but such an interpretation is at odds with the overall thrust of the new scheme and should be rejected. A better interpretation is that the provision for the durational period has been amended by implication to commence on the date the lien commences, which is now the date the abstract is entered. From the point of view of the judgment creditor who wants the lien extended beyond the three years, the safe working presumption should be that the critical date is the date the judgment was rendered, not

that "The liens of all judgments entered in said book, as herein provided for, shall have priority according to the period of time of their respective entries into said book. . . ."

These statements are not irreconcilable. The language of new Section 511.500, which tracks the prior statutory provision relating to practice in populous cities and counties, should be viewed as providing for the date of entry as the priority date in contests between a judgment lienor and such parties as real estate mortgagees, fixture financiers and the bankruptcy trustee but as silent on the issue of priorities between judgment lienors. Under this construction, Section 511.360 would still control priorities between creditors with judgments rendered at the same term of court,<sup>31</sup> and under prior case law the first party to levy execution would attain priority.<sup>32</sup> Further, since new Section 511.500 retains much of the language of its predecessor, it is logical to resolve the issue by reference to cases interpreting priority rights in populous cities and counties; and the cases hold that in such areas there was no priority among judgments rendered at the same term.<sup>33</sup> This construction should now apply to all money judgments rendered in any circuit court or probate division during the same term.

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## **Contradictory provisions created between old scheme and new legislation**

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the later date. There is another apparent problem created by contradictory provisions between the old scheme and the new legislation. Section 511.360 goes on to state that "when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered." New Section 511.500, however, states

The new legislation does not affect Section 511.510, and thus all clerks of the probate divisions will have an affirmative duty to furnish an abstract to the appropriate circuit court clerk within five days of a judgment's rendition; and all circuit court clerks will have an affirmative duty to prepare and enter abstracts of judgments rendered in their own courts within five days. Section 511.510 contains language limiting its impact to "such city or county" and before the recent enactment that language referred to populous cities and counties. As with the similar language in new Section 511.500, use of the word "such" is now irrelevant and should be ignored.

On the whole, the new enactment is salutary. By eliminating the automatic

lien and extending the abstracting requirement, it should make it easier for title examiners to locate liens. It also takes care of the troubling possibility that money judgments rendered in municipal courts could be liens on real estate. However, by dealing with only two of a series of interrelated statutes

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## Legislature created unnecessary ambiguities

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the legislature created unnecessary ambiguities. Section 511.360 should have been amended to make it clear that judgment liens no longer commence on the day of rendition and that the three year durational periods no longer commence on that date, and Section 511.500 should have deleted the word "such." Section 511.510 should have been amended to conform the duties of the clerks more closely to the expanded scope of Section 511.500; and new Section 511.350 should have dealt specifically with the problems created by money judgments rendered in the associate divisions in cases outside the scope of Chapter 517. These problems are, however, minimal; and they can be resolved by a careful judicial interpretation of the new legislative scheme.

More troubling from a practical standpoint is the extension of the abstracting requirement to the probate divisions. It makes little sense to have an abstracting scheme for probate division cases and a parallel transcribing scheme for associate division cases. A better solution would have been to apply the provisions of Sections 517.770 and 517.780 to probate division judgments. By doing so, the duties of the probate division clerks would not have been increased but judgment creditors would not have been prejudiced since a transcript could be obtained upon request. There is no real reason for distinguishing between associate division and probate division judgments with respect to their capacity

to become liens. Further legislation adopting such a scheme could also clean up the interpretive problems created by the recent enactment. □

## FOOTNOTES

<sup>1</sup> Missouri case law limits the statutory lien to judgments which are for a definite sum and which are capable of being collected by execution levied on the debtor's property. *Kelly v. City of Cape Girardeau*, 230 Mo. App. 137, 89 S.W.2d 693 (1936); *Taylor v. Taylor*, 367 S.W.2d 58 (Mo. App. 1963). Accordingly, this article is limited to liens created by money judgments, and the impact of other judgments and decrees on rights in real property is outside its scope.

<sup>2</sup> S.B. 484, Missouri Laws 1982, p. —, 1982 Mo. Legis. Serv. 502. The act repeals §§511.350 and 511.500, RSMo 1978, and replaces them with new sections bearing the same numerical designations.

<sup>3</sup> See also, Supreme Court Rule 74.34. This rule will need to be amended in light of the new legislation.

<sup>4</sup> §476.010, RSMo 1969. This statute was amended by the Court Reform and Revision Act of 1978, H.B. 1634, Missouri Laws 1978, p. 696. See, text accompanying fn. 21, *infra*.

<sup>5</sup> §511.360, RSMo 1978; Supreme Court Rule 74.35.

<sup>6</sup> §511.500, RSMo 1978, repealed by S.B. 484, Missouri Laws 1982, p. —, 1982 Mo. Legis. Serv. 502. The clerk's book was required to contain the names of the parties; the date; the nature of the judgment or decree; the amount of the debt, damages and costs; the book and page in which the judgment was entered; and a column for entering the satisfaction or other disposition. *Id.*; Supreme Court Rules 74.59-74.62.

The record keeping requirements are also the subject of Supreme Court Administrative Rule 4, which became effective on March 1, 1977. Administrative Rule 4.13 provides in part that "An alphabetical card file index of all civil judgments shall be maintained, filed under the name of each party against whom the judgment was rendered." Administrative Rule 4.14 gives a standard form for each card, but the form does not provide for all the information required by the statute and Rule 74.61. Thus, it is unclear whether the Administrative Rule supersedes or complements Rules 74.59-74.62, which have not been repealed. The recent legislation repealing and replacing §511.500 retains the prior statutory language requiring that the clerks maintain a book containing the specified information. See also, text accompanying fns. 23-25, *infra*.

<sup>7</sup> §511.510, RSMo 1978.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> §511.460 RSMo 1969, repealed by the Court Reform and Revision Act of 1978, H.B. 1634, Missouri Laws 1978, p. 696, §A. The cognate Supreme Court Rule (74.73) has yet to be repealed.

<sup>11</sup> Jurisdiction of the probate division since the court reorganization is established at §472.020, RSMo 1978.

<sup>12</sup> Mo. Const., art. V, §27(2).

<sup>13</sup> Mo. Const., art. V, §27(2) (a-d).

<sup>14</sup> Mo. Const., art. V, §14.

<sup>15</sup> The jurisdiction of the associate circuit judges is set out at §478.225, RSMo 1978. The procedures set out in Chapter 517 apply to most cases in which an associate circuit judge is likely to render a money judgment, specifically: all civil actions to recover money where the sum demanded, exclusive of interest and costs, does not exceed \$5,000 [§478.225(2)(1), RSMo 1978]; all actions against railroad companies for the killing of certain animals [§478.225(2)(2), RSMo 1978]; and all cases that could be decided by a magistrate judge without assignment as an acting circuit court judge under the law in effect on January 1, 1979 [§478.225(2)(8), RSMo 1978].

The provisions of Chapter 517 do not apply to cases heard by associate circuit judges in the probate divisions [§517.010(1), RSMo 1978] or to other cases within the jurisdiction of associate circuit judges as set out at §478.225, RSMo 1978.

<sup>16</sup> §517.770, RSMo 1978.

<sup>17</sup> *See*, §§478.225 (3-7, 9) [jurisdiction of associate circuit judges statewide]; 478.225(3) [additional jurisdiction in the city and county of St. Louis]. Most of the cases described in these provisions will not result in money judgments and the scope of the problem is thereby reduced. *See*, fn. 28, *infra*.

<sup>18</sup> This result flows from the fact that the associate division, as a division of the circuit court, is a court of record. *See*, fns. 20-21, *infra*.

<sup>19</sup> §517.010(1), RSMo 1978.

<sup>20</sup> Mo. Const., art. V, §27(2)(d).

<sup>21</sup> §476.010, RSMo 1978.

<sup>22</sup> *See*, Cole, *Non-Indexed Judgment Liens on Real Estate in Missouri*, 37 J. Mo. Bar 320 (1981).

<sup>23</sup> Supreme Court Administrative Rule 4.01. *See*, fn. 6, *supra*.

<sup>24</sup> Supreme Court Administrative Rule

4.13.

<sup>25</sup> *See*, Cole, *supra* fn. 22, 37 J. Mo. Bar 320, 325 (1981).

<sup>26</sup> The author has not explored the ramifications of the recent legislation as to conformity regarding liens of federal courts. Missouri Title Examination Standard No. 21, 23 V.A.M.S. Ch. 442 (app.), should be reviewed in light of the changes.

<sup>27</sup> *See*, fns. 15 and 17, *supra*.

<sup>28</sup> The cases in the associate division outside the scope of Chapter 517 that are the most likely to result in money judgments are such matters as uncontested dissolutions of marriage, legal separation or separate maintenance proceedings. §448.225(3)(1), RSMo 1978. These cases are within the jurisdiction of associate circuit judges in the city and county of St. Louis but are not within the statewide jurisdiction of associate circuit judges.

In any case involving a judgment or order to pay child support (whether in the associate division or otherwise), another recent piece of legislation specifically provides that such judgment or order "shall not be a lien on the real estate of the person against whom it is rendered until such judgment or order is filed in the judgment docket in the office of the circuit clerk of any county in this state in which such real estate is situated, and, upon the request of the person entitled to receive payments under the order, recorded in the book kept for such purposes by the clerk under section 511.450 or 511.500, RSMo." S.B. 468, §24, Missouri Laws 1982 p. —, 1982 Mo. Legis. Serv. 938, §24. *See also*, S.B. 468, §19, Missouri Laws 1982, p. —, 1982 Mo. Legis. Serv. 938, §19.

This lien of a properly docketed child support order extends for a period of ten years from the time it is recorded, subject to a right of revival for one additional ten year period. *Id.*

<sup>29</sup> State ex rel. McNary v. Stussie, 518 S.W.2d 630 (1974).

<sup>30</sup> *See*, §§511.370-511.430, RSMo 1978; Supreme Court Rules 74.36-74.42.

<sup>31</sup> Circuit courts are in continual session, but to the extent terms of court are still specified by any statute they are deemed to commence on the second Mondays in February, May, August and November. §478.250, RSMo 1978.

<sup>32</sup> City of St. Louis v. Wall, 235 Mo. App. 9, 124 S.W.2d 616 (1939).

<sup>33</sup> Dunscomb v. Maddox, 21 Mo. 144 (1855); Bruce v. Vogel, 38 Mo. 100 (1866).