

Using Property Liens to Collect Past-Due Support



A Guide to Using Property Liens
to Collect
Past-Due Child Support

Friend of the Court Bureau
Michigan Supreme Court
<http://www.courts.michigan.gov/scao>

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(1) What is a lien?

A lien is one person's interest in another person's property that arises because of a debt. There are many types of liens, but they all have the same purpose: to guarantee that the property owner repays a debt owed to the lien-holder. Liens restrict a property owner's ability to sell the property until the debt has been paid.

Liens can be imposed voluntarily (for instance, a person borrows money and agrees that the lender can have a lien against the property to guarantee the debt's payment) or the lien can be imposed without the property owner's consent (such as a court judgment from a lawsuit). All liens require that the lien information is recorded with a state or local agency (called "perfecting" the lien) to assure that the lien can be used to pay the debt.

Michigan law allows the friend of the court (FOC) office to perfect an involuntary lien against the property of a person who owes child support.

The Q&A sections below explain how liens can be used to enforce court orders that require a person to pay support for a child or former spouse.

(2) How does a lien force someone to pay court-ordered support?

First, the lien itself makes it difficult for a property owner to transfer the property because the lien will remain attached to the property even after a transfer. Anyone who would otherwise want to buy or receive the property will know that someone besides the current owner has a claim to the property. When someone else is holding the property for its owner (e.g., money deposited in a bank), a lien may prevent the owner from using the property (e.g., withdraw money from the bank account). Also, anyone who transfers or receives property that is subject to a lien may be required to pay the lien-holder the amount of the lien.

Second, with a court's approval, a lien-holder may force a sale of the property and collect the amount owed from the sale proceeds.

(3) What kinds of property can a lien affect?

A lien can affect most types of property, including both real estate and personal property. The term "personal property" includes things like motor vehicles, boats, snowmobiles, bank accounts, livestock, furniture, trusts, stocks, and bonds.

There are certain types of personal property (e.g., pensions and IRAs) subject to special rules that make it more difficult to acquire and enforce a lien for child support. For those types of assets, courts use other legal procedures to make part of the money available to pay past-due support.

(4) When can I get a lien for past-due child or spousal support payments?

Anytime a support payer fails to pay support on time, the past-due amount automatically becomes a lien against the payer's real estate and personal property. However, the FOC office will actually "perfect" and enforce the lien only under certain conditions. (To "perfect" a lien means that formal notice has been given to the property owner and to the public that the property is subject to a lien.)

(5) How does the friend of the court perfect a lien?

The type of property determines exactly what steps an FOC office must take to perfect a lien. For money held by a financial institution, the FOC must send written notice to the financial institution. For other types of property, the FOC usually must send written notice to the government agency that registers titles and liens for that type of property. For example, the register of deeds in the county where real estate is located handles liens against buildings and vacant land, while the Secretary of State processes liens against motor vehicles.

(6) What information does the friend of the court office need to perfect a lien?

Before an FOC office can perfect a lien, it must have enough information to identify the property. For real estate, the office must know the county in which the property is located and, if possible, the address or legal description of the land. For motor vehicles, the FOC must know the year and make of the vehicle and, if possible, the "Vehicle Identification Number" (VIN) or license plate number.

(7) Does the law *require* the friend of the court to perfect a lien if the support payer fails to pay on time?

The FOC is not always required to perfect or enforce a lien. For example, the FOC may determine that the value of the property is too small to make the process worthwhile. Or, the FOC may conclude that other, simpler enforcement methods will collect the arrearage in a reasonable amount of time.

(8) Does a lien guarantee that past-due support will be paid?

No, perfecting a lien does not always result in payment of support. To actually convert the lien into cash requires additional legal procedures, which could include requiring that the property sold at a court-ordered sale. The FOC may determine that those actions are too costly in relationship to the amount of past-due support or the sale value of the property.

(9) When is a support lien removed?

Most commonly, the FOC removes a lien when the property owner pays all the past-due support.

As soon as an FOC office perfects a lien, it must give the support payer an opportunity to contest the lien's validity within the next 21 days. The FOC will remove the lien if, for example, it turns out that the support payer does not own the property, or if the support payments were less than two months past due when the FOC mailed the lien notice to the support payer.

(10) How does the friend of the court use a lien to actually collect enough money to pay the past-due support?

First, the FOC office must notify the support payer that it intends to "levy" the lien by actually taking money from the payer's financial institution or by selling other types of property for which a lien has been secured. Either method requires that the FOC receive authorization or assistance from the court, and often from law enforcement agencies. The amount that is actually collected and retained by the FOC may not exceed the amount of the support arrearage, and the FOC must return any extra money it may have received to the support payer.

(11) I owe past-due support and do not want the friend of the court to acquire a lien on my property. What can I do to prevent that?

Even though the law creates a lien automatically when support payments are more than two months past due, the FOC is not required to take further steps to perfect a lien and levy on it. If you expect to fall more than two months behind in making your support payments, you should contact your FOC office and discuss a plan to repay the past-due support. The FOC may agree to a payment plan and choose not to perfect the lien if you agree to comply with the payment plan.

(12) What if I am about to fall behind on my support payments because I have lost my job or my income declines for some other reason?

The court may reduce your support obligation at any time if, through no fault of your own, your income falls to a level that makes it difficult for you to pay the current support amount. If you wish to attempt to modify a support order, there are forms and instructions available at your friend of the court office. Those forms are also available online at <http://courts.michigan.gov/scao/courtforms/domesticrelations/drindex.htm>.