

White Paper by Business Law Section of Florida Bar, Bankruptcy/UCC Committee, on Clarifying
and Expanding the Scope of Florida's Judgment Lien on Personal Property

I. Background

When a plaintiff in a civil suit succeeds in obtaining a judgment, the next challenge is recovering money or property to satisfy it. If the debtor does not voluntarily pay it, the judgment holder must seek to satisfy the judgment from the debtor's nonexempt property. To assist in this effort, all states provide familiar creditor remedies, such as execution, garnishment, attachment, replevin, and proceedings supplementary to execution.

In addition, Florida has long permitted judgment creditors to obtain a judgment lien on the debtor's nonexempt real property by recording a certified copy of the judgment in the county in which the real property is located. Fla. Stat. s. 55.10(1). The chief benefit of a judgment lien is that the debtor can no longer easily transfer the property because any purchaser takes subject to the lien, which can be foreclosed upon despite the sale. Recording the judgment provides public notice of the lien, and prospective buyers are generally unwilling to buy property subject to a judgment lien. The ability of the judgment holder to foreclose on the judgment lien and the judgment debtor's inability to transfer the property may lead to the judgment debtor satisfying the judgment.

In 2000, the Florida legislature added a new judgment lien encumbering the judgment debtor's personal property. Fla. Stat. ss. 55.201 - 55.209. Upon recording a judgment lien certificate with the Florida Department of State, a judgment holder obtains a lien on all nonexempt leviable personal property in the state—that is, tangible personal property that can be taken into possession by the sheriff. The judgment lien holder can then search for the debtor's nonexempt personal property confident that the debtor will not be able to dispose of it before it can be found. If the debtor owns valuable personal property, such as works of art, construction equipment, a boat, or motor vehicles, this lien can be a significant boon.

In 2005, at the behest of used car dealers, the Florida Legislature modified the certificate of title statute to make clear that a judgment lien on motor vehicles and mobile homes, while enforceable against the owner, is not enforceable against creditors or subsequent purchasers for value unless noted on the certificate of title. Unfortunately, this permits judgment debtors to sell their titled motor vehicles free of a judgment lien. This not only undermines the value of the lien, but it also created an ambiguity in Florida's judgment lien statute. The statute implies that a judgment lien will be enforceable against all subsequent interest holders of the debtor's personal property, but this is no longer correct after the 2005 amendments as to motor vehicles and mobile homes unless noted on the certificate of title.

II. The Bill would clarify Fla. Stat. s. 55.205(5) and create a process whereby a judgment lien holder can obtain notation of the lien on a certificate of title.

The first objective of the proposed legislation (the “Bill”) is to eliminate the ambiguity, caused by the 2005 amendment and clarify the judgment lien statute by cross-referencing the certificate-of-title statute. The second objective of the Bill, in order to properly effectuate the judgment lien on titled property, is to create a process through which the lien holder can cause the Department of Highway Safety and Motor Vehicles (“DHSMV”) to note the lien on certificates of title.

There are two possible approaches to achieving this end and the Bill will facilitate both. First, it modifies the certificate-of-title statute creating a procedure through which a judgment lien holder obtains a statutory right to cause the DHSMV to note its lien on the certificate of title of a judgment debtor’s motor vehicle, mobile home or vessel. This is a procedure familiar to the DHSMV because the modification is adapted to the current procedure through which an owner voluntarily adds a lien or security interest to its certificate of title.

A second procedure through which a holder of a judgment lien can obtain notification of the lien on a certificate of title is to obtain a court order instructing the DHSMV to note the lien on the certificate of title. Numerous judgment lien holders have done this by bringing a lawsuit seeking such a court order. However, such a court order can also be obtained more simply by motion through proceedings supplementary to execution. The Bill will simplify this process by stating explicitly in the judgment lien statute that this procedure is available, and by amending proceedings supplementary to state that on presentation of a copy of a recorded judgment lien certificate, a court presiding over proceedings supplementary shall order the DHSMV to note the lien on the certificate of title. The DHSMV currently has in place a procedure for noting liens on certificates of title in response to a court order. The Bill merely proposes clarifying the judgment lien statute and streamlining a creditor’s ability to obtain the court order.

III. The Bill would expand the scope of Florida’s judgment lien to include certain intangible assets and clarify the means for enforcing the lien.

The Bill proposes another improvement to the Florida judgment lien on personal property, which is to expand its scope to include certain intangible rights. As stated above, the reach of the current judgment lien extends only to “all personal property in this state subject to execution under s. 56.061.” That is, it extends only to tangible personal property that can be levied upon. Some judgment debtors, however own valuable intangible property such as royalty rights, rights to receive rents, or rights to receive payment for the sale of goods or services. There is no reason why a judgment lien should not attach to such property if it can be workably achieved. The Bill will expand the scope of the judgment lien to include “accounts” and “payment intangibles” as defined in Article 9 of the UCC of a judgment debtor that is located in Florida. In doing so, the Bill borrows the definition of “location” from Article 9. The limitation to the intangible property of a judgment debtor that is located in Florida is needed to minimize uncertainty as to jurisdiction and due process that would be created by attempting to enforce an involuntary lien across state lines.

The Bill proposes another amendment to the judgment lien statute to clarify that the means of enforcing the judgment lien are limited to judicial process, and that it may not be enforced through self-help repossession or replevin. Apparently, some judgment lien holders have attempted self-help repossession, which was never intended, and deprives the judgment debtor of the opportunity to claim that the property is exempt. By proceeding only through judicial process, the debtor will be provided an opportunity to make a claim that the property is fully or partially exempt.

IV. Interested Stakeholders

The Business Law Section believes two additional sections of the Florida Bar will be interested in this Bill. They are the Trial Lawyers Section and the Solo and Small Firm Section. Lawyers in these sections engage in litigation leading to civil judgments. The Florida Judgment lien on personal property is intended to assist in collecting a judgment. This Bill, which will clarify and expand the Florida judgment lien will therefore be of interest to these sections

One section of the Florida government that will be interested in this Bill is the Department of Highway Safety and Motor Vehicles (DHSMV). This department will be expected to adjust its procedures to accommodate the proposed amendments to Florida law. The Department of Revenue (DOR) will also be interested. The DOR files countless judgment liens, and there are special provisions in the judgment lien statute applicable to the DOR. The Department of State (DOS) keeps the judgment lien registry. The Bill does not directly affect the DOS, but the department will nevertheless want to be apprised of any amendments to the judgment lien law.

V. Financial impact.

The proposed amendments will have no financial impact on the State of Florida. The modifications to the certificate-of-title law will cause the DHSMV to modify its existing procedures somewhat, but the department currently charges a fee for any service it provides. See DHSMV Procedure TL-32. Any increase in DHSMV staffing costs will be covered by the increase in fees. Accordingly, there should be no financial impact on the state.

VI. Benefit to Florida citizens and businesses.

The Bill proposes a number of beneficial changes to existing law. First, it clarifies ambiguities created by conflicting provisions in the Florida certificate-of-title statute and the judgment lien statute. It also makes clear that the judgment lien may be enforced only through judicial process. These ambiguities cause confusion and misunderstandings that result in unmet expectations and unnecessary litigation. The benefit of clarification here is clear.

The Bill amends existing law to assist the holder of a valid Florida Judgment in obtaining payment from a judgment debtor that owns sufficient nonexempt assets that would permit the debtor to pay the judgment but chooses not to. By permitting the judgment debtor to obtain

notification of its lien on titled vehicles, mobile homes and vessels, the judgment debtor will no longer be able to sell these assets in order to avoid paying. By expanding the scope of the lien to reach intangible rights to payment, debtors who currently enjoy these types of valuable assets will no longer be able enjoy them while refusing to pay a valid judgment debt. These amendments will clearly benefit citizens and business that have brought suit on a civil obligation, obtained a judgment in a Florida court, and seek to obtain payment from a debtor that is able to pay and refuses to do so.

1 A bill to be entitled

2 An act amending s.319.24(2), (4), (5) and 319.241. F.S. to
3 permit the holder of a judgment lien on a motor vehicle,
4 mobile home, or vessel to request the Department of Highway
5 Safety and Motor Vehicles to note its judgment lien on the
6 motor vehicle's, mobile home's, or vessel's certificate of
7 title; to permit the owner to demand a satisfaction of lien
8 from the lienholder when the lien is satisfied or lapsed;
9 to permit the owner to apply to the department for removal
10 of the lien that has been filed with the department or
11 noted on the certificate of title for a period of 5 years
12 unless a second judgment certificate lien has been filed,
13 in which case the department shall remove notice of the
14 first lien and note the second lien at the end of all noted
15 liens; adding subsection (5) to s. 55.205 F.S. to clarify
16 the effect of a certificate of title on a judgment lien;
17 and informing a judgment lien holder that it may obtain a
18 court order instructing the department to note its lien on
19 the certificate of title through proceedings supplementary;
20 renumbering s. 56.29(6) F.S. as 56.29(6)(a) F.S. and adding
21 subsection 56.29(6)(b) making clear that on presentation of
22 a valid judgment lien certificate in proceedings
23 supplementary the court shall issue such order; amending
24 s.55.202(2) F.S. expanding the reach of a judgment lien to
25 include all payment intangibles and accounts of a judgment

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26 debtor located in this state; and adding subsection
27 55.205(6) making clear that a judgment lien may be enforced
28 only through judicial process, and may not be enforced
29 through self-help repossession or replevin without the
30 express consent of the judgment debtor.

31 Be it enacted by the Legislature of the State of Florida:

32 Section 1. This act may be cited as the "Judgment Lien
33 Improvement Act."

34 Section 2. Subsection 319.24(2) F.S. is amended to
35 read:

36 (2) A duly authorized person shall sign the original
37 certificate of title and each corrected certificate and, if
38 there are no liens or encumbrances on the motor vehicle or
39 mobile home, as shown in the records of the department or
40 as shown in the application, shall deliver the certificate
41 to the applicant or to another person as directed by the
42 applicant or person, agent, or attorney submitting such
43 application. The motor vehicle dealer license number must
44 be submitted to the department when a dealer applies for or
45 receives a duplicate title. The current odometer reading
46 must be submitted on an application for a duplicate title.
47 If there are one or more liens or encumbrances on the motor
48 vehicle or mobile home, the certificate shall be delivered
49 by the department to the first lienholder as shown by
50 department records or to the owner as indicated in the

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51 notice of lien filed by the first lienholder pursuant to
52 s.319.27. If the notice of lien filed by the first
53 lienholder indicates that the certificate should be
54 delivered to the first lienholder, the department shall
55 deliver to the first lienholder, along with the
56 certificate, a form to be subsequently used by the
57 lienholder as satisfaction. If the notice of lien filed by
58 the first lienholder directs the certificate of title to be
59 delivered to the owner, then, upon delivery of the
60 certificate of title by the department to the owner, the
61 department shall deliver to the first lienholder
62 confirmation of the receipt of the notice of lien and the
63 date the certificate of title was issued to the owner at
64 the owner's address shown on the notice of lien and a form
65 to be subsequently used by the lienholder as a
66 satisfaction. If the application for certificate shows the
67 name of a first lienholder different from the name of the
68 first lienholder as shown by the records of the department,
69 or if the application does not show the name of a judgment
70 lien holder as shown by the records of the department, the
71 certificate shall not be issued to any person until after
72 all parties who appear to hold a lien and the applicant for
73 the certificate have been notified of the conflict in
74 writing by the department by certified mail. If the parties
75 do not amicably resolve the conflict within 10 days from

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76 the date such notice was mailed, then the department shall
77 serve notice in writing by certified mail on all persons
78 appearing to hold liens on that particular vehicle,
79 including the applicant for the certificate, to show cause
80 within 15 days from the date the notice is mailed why it
81 should not issue and deliver the certificate to the person
82 indicated in the notice of lien filed by the lienholder
83 whose name appears in the application as the first
84 lienholder without showing any lien or liens as outstanding
85 other than those appearing in the application or those
86 which may have been filed subsequent to the filing of the
87 application for the certificate. If, within the 15-day
88 period, any person other than the lienholder shown in the
89 application or a party filing a subsequent lien, in answer
90 to such notice to show cause, appears in person or by a
91 representative, or responds in writing, and files a written
92 statement under oath that his or her lien on that
93 particular vehicle is still outstanding, the department
94 shall not issue the certificate to anyone until after such
95 conflict has been settled by the lien claimants involved or
96 by a court of competent jurisdiction. If the conflict is
97 not settled amicably within 10 days of the final date for
98 filing an answer to the notice to show cause, the
99 complaining party shall have 10 days to obtain a ruling, or
100 a stay order, from a court of competent jurisdiction; if no

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101 ruling or stay order is issued and served on the department
102 within the 10-day period, it shall issue the certificate
103 showing no liens except those shown in the application or
104 thereafter filed to the original applicant if there are no
105 liens shown in the application and none are thereafter
106 filed, or to the person indicated in the notice of lien
107 filed by the lienholder whose name appears in the
108 application as the first lienholder if there are liens
109 shown in the application or thereafter filed. A duplicate
110 certificate or corrected certificate shall only show such
111 lien or liens as were shown in the application and
112 subsequently filed liens that may be outstanding.

113 Section 3. Subsection 319.24(4) Florida Statutes is
114 amended to read:

115 (4) If the owner of the motor vehicle or mobile home,
116 as shown on the title certificate, or the director of the
117 state child support enforcement program, or the director's
118 designee, desires to place a second or subsequent lien or
119 encumbrance against the motor vehicle or mobile home when
120 the title certificate is in the possession of the first
121 lienholder, the owner shall send a written request to the
122 first lienholder by certified mail, and such first
123 lienholder shall forward the certificate to the department
124 for endorsement. If the title certificate is in the
125 possession of the owner, the owner shall forward the

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126 certificate to the department for endorsement. If the
127 holder of a judgment lien on personal property of the owner
128 acquired under s. 55.202(2) Florida Statutes desires to
129 place a lien on the motor vehicle, mobile home, or vessel,
130 the judgment lien holder shall send a written request to
131 the department together with a copy of the lien holder's
132 valid judgment lien certificate. The department shall add
133 the name of the judgment lien holder to the records of the
134 department. The judgment lien holder shall also send a
135 written request to the person in the possession of the
136 title certificate by certified mail and that person shall
137 forward the certificate to the department for endorsement.
138 The department shall return the certificate to either the
139 first lienholder or to the owner, as indicated in the
140 notice of lien filed by the first lienholder, after
141 endorsing the second or subsequent lien on the certificate
142 and on the duplicate. If the first lienholder or owner
143 fails, neglects, or refuses to forward the certificate of
144 title to the department within 10 days from the date of the
145 owners's, the judgment lien holder's, or the director's
146 designee's request, the department, on the written request
147 of the subsequent lienholder or an assignee thereof, shall
148 demand of the first lienholder or the owner the return of
149 such certificate for the notation of the second or
150 subsequent lien or encumbrance. If the first lien holder or

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151 owner fails, neglects, or refuses to return the certificate
152 to the department as requested, the department shall void
153 the certificate of title and issue a replacement
154 certificate showing the notation of the subsequent lien or
155 encumbrance.

156 Section 4. Subsections 319.24(5)(a) and (b) Florida
157 Statutes shall be amended to read:

158 (5)(a) Upon satisfaction of any first lien, judgment lien
159 or encumbrance recorded at the department, or upon lapse of
160 a judgment lien, the owner of the motor vehicle or mobile
161 home, as shown on the title certificate, or the person
162 satisfying the lien shall be entitled to demand and receive
163 from the lienholder a satisfaction of the lien. If the
164 lienholder, upon satisfaction of the lien and upon demand,
165 fails or refuses to furnish a satisfaction thereof within
166 30 days after demand, he or she shall be held liable for
167 all costs, damages, and expenses including reasonable
168 attorney's fees, lawfully incurred by the title owner or
169 person satisfying the lien in any suit brought in this
170 state for cancellation of the lien. A motor vehicle dealer
171 acquiring ownership of a motor vehicle with an outstanding
172 purchase money lien, shall pay and satisfy the outstanding
173 lien within 10 working days of acquiring ownership. The
174 lienholder receiving the final payment as defined in
175 s.674.215 shall mail or otherwise deliver a lien

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176 satisfaction and the certificate of title indicating the
177 satisfaction within 10 working days or receipt of such
178 final payment or notify the person satisfying the lien that
179 the title is not available within 10 working days of
180 receipt of such final payment. If the lienholder is unable
181 to provide the certificate of title and notifies the person
182 of such, the lienholder shall provide a lien satisfaction
183 and shall be responsible for the cost of a duplicate title,
184 including fast title charges as provided in s.319.323. The
185 provisions of this paragraph shall not apply to electronic
186 transactions pursuant to subsection (9).

187 (b) Following satisfaction of a lien, or upon satisfaction
188 or lapse of a judgment lien, the lienholder shall enter a
189 satisfaction thereof in the space provided on the face of
190 the certificate of title. If the certificate of title was
191 retained by the owner, the owner shall, within 5 days of
192 the satisfaction of a lien, deliver the certificate of the
193 title to the lienholder and lienholder shall enter a
194 satisfaction thereof in the space provided on the face of
195 the certificate of title. If there are no subsequent liens
196 shown thereon, the certificate shall be delivered by the
197 lienholder to the person satisfying the lien or encumbrance
198 and an executed satisfaction on a form provided by the
199 department shall be forwarded to the department by the
200 lienholder within 10 days of satisfaction of the lien.

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201 Section 5. Section 319.241 Florida Status shall be
202 amended to read: The owner of a motor vehicle or mobile
203 home upon which a lien has been filed with the department
204 or noted upon a certificate of title for a period of 5
205 years may apply to the department in writing for such lien
206 to be removed from the department files or from the
207 certificate of title. The application shall be accompanied
208 by evidence satisfactory to the department that the
209 applicant has notified the lienholder by certified mail,
210 not less than 20 days prior to the date of the application,
211 of his or her intention to apply to the department for
212 removal of the lien. Ten days after receipt of the
213 application, the department may remove the lien from its
214 files or from the certificate of title, as the case may be,
215 if no statement in writing protesting removal of the lien
216 is received by the department from the lienholder within
217 the 10-day period. If, however, the lienholder files with
218 the department within the 10-day period a written statement
219 that the lien is still outstanding, or that a second
220 judgment lien certificate has been filed with the
221 Department of State, the department shall not remove the
222 lien until the owner presents a satisfaction of lien to the
223 department. If a second judgment lien certificate has been
224 filed with the Department of State, the department shall
225 remove the notice of the first judgment lien certificate

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226 and note at the end of all noted liens notation of the
227 second judgment lien certificate. Ten days after the
228 receipt of an application for a derelict motor vehicle
229 certificate and notification to the lienholder, the
230 department may remove the lien from the derelict motor
231 vehicle record if a written statement protesting removal of
232 the lien is not received by the department from the
233 lienholder within the 10-day period.

234 Section 6. Subsection (5) shall be added to Section
235 55.205 Florida Statutes to Read:

236 (5)(a) Motor Vehicles, Mobile Homes and Vessels. If
237 the personal property of the judgment debtor, to the extent
238 not exempt from execution, includes a motor vehicle, mobile
239 home, or vessel for which a Florida certificate of title
240 has been issued, a judgment lien acquired under this
241 section on such property not yet noted on the certificate
242 of title is valid and enforceable against the judgment
243 debtor, but such a judgment lien is not enforceable against
244 creditors or subsequent purchasers of such property for
245 valuable consideration whose interests have been noted on
246 the certificate of title as provided in s. 319.27.

247 (b) A judgment lien holder may obtain an order
248 instructing the Department of Highway Safety and Motor
249 Vehicles to note the lien on the certificate of title

250 through a court of competent jurisdiction conducting
251 Proceedings Supplementary under s. 56.29(6) (b).

252 Section 7. Subsection 56.29(6), Florida Statutes,
253 shall be renumbered 56.29(6) (a) and Subsection 56.29(6) (b)
254 shall be added to read:

255 (b) If the personal property of the judgment debtor
256 includes a motor vehicle, a mobile home, or a vessel that
257 is to any extent nonexempt from execution and for which a
258 Florida certificate of title has been issued, on
259 presentation of a copy of a valid judgment lien certificate
260 acquired under s. 55.202 Florida Statutes, the court shall
261 order the Department of Highway Safety and Motor Vehicles
262 to note the liens of the judgment creditor on the
263 certificate of title and in the records of the department.

264 Section 8. Subsection 55.202(2), Florida Statutes,
265 shall be amended to read:

266 (2) A judgment lien may be acquired on a judgment
267 debtor's interest in all personal property in this state
268 subject to the execution under s. 56.061, as well as all
269 payment intangibles and accounts as defined in s. 679.1021,
270 Florida Statutes, of a judgment debtor that is located in
271 this state as defined in s. 679.3071, Florida Statutes,
272 other than fixtures, money, negotiable instruments, and
273 mortgages.

274 Section 9. Subsection (6) shall be added to Section
275 55.205 to read:
276 A judgment lien acquired under s. 55.202, Florida Statutes,
277 is to be enforced only through judicial process such as
278 attachment (Ch. 76), execution (Ch. 56), garnishment (Ch.
279 77), charging order (ss.605.503, 620.1703, and 620.8504),
280 and proceedings supplementary to execution (s. 56.29). A
281 judgment may not be enforced through self-help repossession
282 or replevin without the express consent of the judgment
283 debtor.