

**SUPERSEDES**

CS 507.1, Support Liens--Overview, September 13, 1999

**REFERENCES**

42 USC §§466(a)-(b)(4); MCA §§ 40-5-1056, 40-5-227, 40-5-248, 40-5-271, and 25-13-601 et seq.

**Introduction**

This section discusses the types and characteristics of liens available under Montana law, sets a policy for establishing liens in appropriate cases, and sets procedures for determining when lien establishment is appropriate. Following sections will discuss perfecting support liens, enforcing support liens and releasing support liens. These procedures do not apply to Lottery Liens. For specific instructions on Lottery Liens see CS 507.5.

Regulations at 45 CFR § 303.103 require that liens be imposed against real and personal property in all appropriate cases. Montana law at § 40-5-248 describes the creation of administrative support liens.

**Definitions**

**Lien:** a charge, security or encumbrance on property that prevents the sale or transfer of the property without the permission of the lienholder. Liens are not judgments; a judgment may give rise to a lien.

**Lien holder:** a creditor whose claim or debt is secured by a lien against a particular piece of property. Because of the lien, a lienholder has greater rights against a debtor than ordinary creditors.

**Real property:** land and things attached to the land, such as a house or timber. To be effective against real property, a notice of lien must be filed in the county or counties in which the real property is located. When a notice of lien is filed with a county or counties, it is known as Perfecting a Lien, see section CS 507.2 for further information.

**Personal property:** is defined as everything else which can be owned and which is not real property. Law, depending on the type of personal property, imposes different requirements for notice of lien.

**Exempt property:** property to which a lien cannot be attached. Montana law defines what property a debtor owns which may not be used to satisfy a judgment. This exempt property cannot be taken by writ of execution. Some examples of exempt property are welfare benefits, professionally prescribed health aids, burial plots, the debtor's interest in a motor vehicle (up to \$4,000), the debtor's interest in tools of the trade (up to \$4,500). See MCA Title 25, Chapter 13, Part 6 for a complete list of exempt property.

**Sum-Certain Amount:** an amount that has been adjudicated during the course of a CSSD establishment or CSSD enforcement contested case action that results in a determination of the amount of support debt owed. A contested case action is one in which the obligor had notice and an opportunity for a hearing to contest the alleged sum certain amount. Examples of contested case notices which may result in an action to adjudicate a debt amount are listed below:

- Notice and Order Concerning Support, NOCS, with a judgment amount
- Notice of Withholding, NOW
- Notice of Intent to Withhold, NOI
- Supplemental Notice of Intent to Withhold Income, SNOI
- Notice of Intent to Suspend License, NOISL
- A license suspension payment plan or an administrative contempt action

A debt computation worksheet may accompany these documents but alone is not considered a notification of a sum certain amount.

A sum certain amount may also be obtained through a district court action for enforcement. A contempt of court and a writ of execution are two such actions.

**Liens imposed by operation of law:** liens which are automatically created by entry of a final decision in a contested case which finds the obligor to owe a sum-certain debt, or by registration of a support order from another tribunal under MCA § 40-5-271, where that order includes a finding that the obligor owes a sum-certain amount of delinquent support.

Liens imposed by operation of law are also automatically created in the district court by accrual of unpaid support under a court-ordered support obligation or an abstracted administrative support order, an entry of a court-ordered money judgment, a filing of a writ of execution or filing of a consent order or abstracted administrative order establishing an arrearage.

**Consensual liens:** liens which are voluntarily given to the lienholder by the debtor. A mortgage on real property is an example of a consensual lien. Other consensual liens include UCC (Uniform Commercial Code) liens on personal property or vehicle liens (including mobile homes), which may only be obtained by noting the lien on the appropriate title document and mailing it and the required fee to the Registrar of Motor Vehicles. Consult a supervisor for updated fees and procedures.

Consensual liens are effective enforcement tools because they can be applied to exempt property, such as an obligor's tools or homestead. Obligors may be willing to grant the CSSD a voluntary lien in order to avoid the application of some other enforcement technique, such as a writ of execution, bonding or contempt proceedings. Also, as part of a bonding case, the court can order the obligor to encumber property to grant a lien as security for the payment of future support, see CS 508.5 Utilization of Bonding for Future Payments.

**Warrant for distraint:** an order issued by the department under seal, directed to a sheriff or other levying officer. The order commands the sheriff or levying officer to seize and sell non-exempt property belonging to an obligor in order to satisfy a support lien. A warrant for distraint has the same effect as a writ of execution, issued by the district court.

**Levying officer:** a registered process server who has posted a surety bond with the district court. This process enables a person who is not a law enforcement officer to serve writs and warrants for distraint for the enforcement of judgments. A levying officer may not levy on a judgment that exceeds the value of the posted bond.

**Policy**

While the CSSD may always rely on general judgment liens imposed by law, the CSSD will take steps to impose liens on an obligor's non-exempt property as follows:

1. Administrative support liens are automatically imposed by operation of law against all real and personal property belonging to an obligor whenever:
  - a) The CSSD enters a final decision in a contested case which includes a finding that the obligor owes a sum-certain debt
  - or
  - b) An order which includes a finding that the obligor owes a sum-certain amount of delinquent support is registered with the CSSD under MCA § 40-5-271

Administrative support liens are in addition to any other lien created by law.

2. General judgment liens are automatically imposed by operation of law on all support arrears accrued under the terms of:
  - a) Montana district court judgments or orders
  - b) Judgments and orders of other states registered with the district courts pursuant to MCA § 40-5-185
  - c) Administrative judgments and orders abstracted to district courts pursuant to MCA § 40-5-227
3. Consensual liens shall be imposed in all appropriate cases on an obligor's property in accordance with law whenever a support obligor executes the necessary documents.
4. Transcripts of docket or CS 507.2, Lien Notice to Clerk of Court shall be filed in all appropriate cases in accordance with law in each and every Montana county in which an obligor owns non-exempt real property, except those counties with an existing general judgment lien.

**APPROPRIATE CASES**

For the purposes of this section, an appropriate case is a case meeting all of the following:

- Existence of a support order or judgment
- An outstanding delinquency greater than \$150.00
- The order is unenforceable by income withholding. The term unenforceable by income withholding is defined as a case in which the obligor either receives no income, or receives income from a source not qualifying as a payor, or a case in which income withholding is in place, but the case record indicates that arrears will not be paid-in-full within two years.
- The obligor owns non-exempt property with a value exceeding the costs of levy and execution, and any prior, superior liens.

- In the case of a motor vehicle (defined as any item for which the Department of Justice issues a certificate of ownership) the estimated net value of the vehicle (total value less \$4,000, for a primary vehicle) not only exceeds the above costs, but also represents a significant collection in the particular case; also, one or both of the following conditions apply: (1) there is a good likelihood the obligor will sell the vehicle while its value to the CSSD still attains; or (2) the obligor has some income, so there is some possibility of obtaining support payments in response to the lien incentive.

**NOTE:**

**Estimating Value and Likelihood of Sale of Vehicle.** In estimating the value of a vehicle the caseworker may consider any of the following factors: (1) the value assigned by the industry (this is the dollar amount listed for the year and make of the vehicle in the National Automobile Dealers Association's bluebook or other equivalent resource), (2) the approximate value suggested by an automobile dealer or other knowledgeable party contacted informally, or (3) if applicable, any value the vehicle may have by collectors' standards as an antique or classic vehicle (listings are available). Factors affecting the likelihood of sale are case-specific, but **may** include whether the car is the obligor's primary means of transportation, whether a trade-in is feasible, or whether a financial emergency might force the sale of the car as a last resort.

## PROCEDURES

### Procedures for Caseworker

Determines if CSSD action is required to establish an administrative support lien or to extend an existing lien.

1. Reviews case record to determine if it is an appropriate case.
2. If so, reviews the case record to determine if the obligor owns any non-exempt real or personal property.
  - a. If the obligor owns non-exempt property in Montana, proceeds to step 3; or,
  - b. If the obligor owns property in Montana which is or may be claimed to be exempt, proceed to step 5; or,
  - c. If the case record reveals no non-exempt property owned by the obligor in Montana, but reveals the existence of non-exempt real or personal property in another state or in a foreign country with which Montana has a reciprocal support enforcement agreement, initiates appropriate interstate remedy as in to CS 507.2 Perfecting a Support Lien, or CS 508.15 Full IRS Collection Services.
  - d. If the case record reveals no non-exempt property owned by the obligor anywhere in the United States or in any foreign jurisdiction with which Montana has a reciprocal support enforcement agreement, take steps necessary to locate assets.

3. Reviews the case record to determine if:
  - The obligor's support arrearage has been reduced to a sum-certain debt under a final CSSD decision in a contested case under Title 40, chapter 5; or
  - A foreign support order with a finding of a sum-certain delinquency has been registered with the CSSD in accordance with MCA § 40-5-271.

If not, proceeds to establish a sum-certain debt by serving a contested case notice such as, a Notice of Withholding, or one of the notices listed in the definition of a sum-certain amount on page two of this section. If so, proceed to CS 507.2 Perfecting a Support Lien.

**NOTE: Federal income tax offset and Federal Administrative Offset proceedings are not contested cases under Title 40, chapter 5. Consequently, no lien results from an administrative decision on a federal income tax or administrative offset proceeding.**

4. If the obligor owns exempt real or personal property in Montana and the case record indicates that the obligor is likely to be cooperative, attempts to secure one or more of the following consensual liens UCC (Uniform Commercial Code) lien, mortgage on real property (first or subsequent), lien on motor vehicle. Consult a supervisor for instructions on securing consensual liens.