

STORAGE NAME: h1833.sgc.doc
DATE: April 5, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1833
RELATING TO: Real Property Liens / Duration
SPONSOR(S): Committee on Judicial Oversight and Representative Crow
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Judgments, orders, and decrees of courts may be a lien on real property owned by the non-prevailing party in a lawsuit for up to twenty years from when the judgment was entered, if the judgment, order or decree is recorded in the public records. Until last year, judgments had to be rerecorded twice in order to utilize the full twenty years, by rerecording every 7 years. Chapter 2000-258, Laws of Florida, intended to change that provision to provide that a judgment need only be rerecorded once, at the ten year point.

However, due to an error or oversight, only a portion of the section on judgments was amended by Chapter 2000-258, Laws of Florida. The effect of the error or oversight is that the initial recording of a judgment creates a lien for seven years, and there is only one allowed rerecording for ten years. The result is uneven, difficult to deal with, and leaves a three year gap during which time a judgment is effective, but cannot be a lien on property.

This bill corrects the glitch to provide that the initial filing of a judgment, order, or decree creates a lien for ten years, and a rerecording extends the lien for ten years. This bill further extends current seven year duration judgment liens to ten years.

This bill does not appear to have a fiscal impact on state government. The fiscal impact on local governments appears minimal.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 55.081, F.S., provides that judgments, orders, and decrees of courts may be a lien on real property owned by the non-prevailing party in a lawsuit for up to twenty years from when the judgment, order, or decree was entered. A judgment, order, or decree must be recorded in the public records in order to become a lien. Section 55.10, F.S., provides for recording and for the effective life of the lien. The lien of a judgment, order, or decree recorded prior to July 1, 1987 is effective for up to twenty years from when the judgment, order, or decree was entered, and thus must only be recorded once. Until last year, a judgment, order or decree recorded after July 1, 1987, had to be recorded a total of three times in order to utilize the full twenty years, by rerecording every seven years. Chapter 2000-258, Laws of Florida, intended to change that provision to provide that a judgment, order or decree need only be recorded twice to utilize the full twenty years, once initially and once at the ten-year point.

However, due to an error or oversight, only a portion of the section on judgments was amended by Chapter 2000-258, Laws of Florida. The effect of the error or oversight is that the initial recording of a judgment creates a lien for seven years, and there is only one allowed rerecording for ten years. The result is uneven, difficult to deal with, and limits the duration of judgment liens to seventeen years.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 55.10(1), F.S., to correct a glitch in last year's law that failed to revise the initial recording period for a judgment lien on real property from 7 to 10 years to conform with the revision of the statutory judgment recording scheme. This change does not extend or limit the 20-year period in which a judgment is valid under existing law.

This bill also amends s. 55.10(2), F.S., to allow a second rerecording. Thus, lienholders who were caught in the "7+10 gap" may elect to rerecord again in order to protect the final three years of their lien right.

This bill amends s. 55.10(3), F.S., to re-state current law presumed but not specifically stated, that a judgment lien expires when the obligor satisfies the underlying judgment, order or decree.

Finally, this bill amends s. 55.10(4), F.S., to specify that the new ten-year lien recording periods apply to existing valid liens created before the date of this new act and to prevent the unintended revival of an expired lien by operation of this new act. Also, grammar and style changes are made.

The effective date of this bill is July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Clerks of Court charge a recording fee of \$6.00 for the first page, and \$4.50 for each subsequent page, for recording any document, including a re-recording of a judgment. This bill extends the effective length of judgments, and thus will result in a small loss of revenue in the category of recording fees.

2. Expenditures:

This bill slightly reduces the number of documents filed in the public records, and thus will result in a corresponding reduction in recording, indexing, and storage costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Re-recording of judgments costs private sector significantly more than just a clerk's recording fee. An affidavit is required to be prepared, signed, and notarized. Judgments must be indexed and calendared years in advance. The failure to timely re-record judgments can result in loss of ability to collect on a judgment, order, or decree. Judgment holders in the private sector will receive a financial benefit in cost savings.

D. FISCAL COMMENTS:

Recording fees are roughly equal to costs for recording, indexing, and storage of recorded documents; thus, it is estimated that there should be little to no net fiscal impact on local government as a result of this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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