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The Virtual Clerk's Office: A Proposed Model Judgement Lien Act for the Computer Age

Charles Shafer
University of Baltimore School of Law, cshafer@ubalt.edu

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CLOUT Abstracts
Journal of Law and Commerce CISG Contracting States and Declarations Table

ARTICLES
Modern Analysis of the Legal Effect of Force Majeure Clauses in Situations of Commercial Impracticability ......................................... P.J.M. Declercq
Corporate Constituency Statutes: A Dialectical Interpretation .......... Timothy L. Fort
The Virtual Clerk’s Office: A Proposed Model Judgment Lien Act for the Computer Age ............................................... Charles Shafer

NOTES AND COMMENTS
CFTA-NAFTA Dispute Resolution on the Rocks?: The Softwood Lumber Case ......................................................... Zsolt K. Besskő
Monopolistic Tendencies of Brand-Name Drug Companies in the Pharmaceutical Industry ........................................ Melissa K. Davis
“Going Bare”: Insurance and the Pre-Existing Condition Problem ................................................ Theresa Williams

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THE VIRTUAL CLERK'S OFFICE: A PROPOSED MODEL
JUDGMENT LIEN ACT FOR THE COMPUTER AGE

Charles Shafer*

I. INTRODUCTION

Winning a money judgment is often just the beginning of the creditor's journey. The law places the burden on the judgment creditor to find and obtain sufficient assets to satisfy the judgment.¹ But in attempting to satisfy judgments, a creditor faces a thicket of statutes, court rules, and case law that have grown up over the last two centuries.² The basic rules arose when real property was the primary source of wealth and, without phones or automobiles, public records throughout the state were not easily accessible. Nevertheless, except for interest accruing at a fairly moderate rate,³ there is no penalty for a

* Professor of Law, University of Baltimore School of Law; Charles Shafer, Baltimore, MD. Thanks to Lisa Lenderman for valuable research assistance.


debtor's failure to pay a judgment creditor. For example, debtors do not have to fear imprisonment in the vast majority of cases.4

This article addresses one aspect of the law regarding the satisfaction of judgments: when a creditor is determined to have a lien on property of the debtor. The unnecessary cumbersomeness of the present system, which limits the ability of creditors to promptly obtain a legally cognizable interest in specific property, hampers creditors in preventing the debtor's use, sale, or hypothecation of property that could be used to satisfy their debts.5 This is particularly true of intangible property and property where federal law or the law of sister states controls transfers. Not only do judgment creditors face the risk that the debtor will voluntarily dissipate or transfer assets, but also the risk that they will be defeated by subsequent parties who deal with the debtor, become creditors, and are able to find assets. Possibly the most pernicious of those subsequent creditors are the federal and state taxing authorities. The tax lien, once filed, locks in all personal and real property of the debtor.6 Bankruptcy also presents a serious difficulty for the judgment creditor. If the debtor files for bankruptcy before the creditor can locate personal property of the debtor, the creditor (despite having obtained a judgment) has no greater priority than all of the unsecured creditors of the debtor.7

This article proposes that the computer systems currently being introduced to automate court systems around the country serve as the

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4. Most states, by constitution or statute, prohibit imprisonment for debt. See, e.g., Ala. Const. art. I, § 20; Cal. Civ. Proc. Code § 501 (West 1979). However, there are exceptions for support obligations or particular types of conduct such as fraud. See, e.g., Alaska Const. art. I, § 17 (civil arrest for absconding debtors); Ariz. Const. art. II, § 18 (fraud); Ark. Const. art. 2, § 16 (fraud); Md. Const. art. III, § 38 (support obligations); Nev. Const. art. 1, § 14 (fraud, libel or slander).

5. For example, a security interest in personal property is subject to a judicial lien. U.C.C. § 9-301(1)(b). The judicial lien might not arise until execution. See infra note 9.


7. Unless the creditor is an insider, a lien obtained within 90 days preceding the bankruptcy filing is an avoidable preference. 11 U.S.C. § 547(b)(4)(B) (1988).

vehicle for the implementation of major reforms in the substantive and procedural law regarding judicial liens. The most significant change would involve the creation of statewide judgment liens on virtually all of the property of the debtor. This article will explore how the proposed system might deal with various types of property and particular third parties, and how to solve some of the transitional problems involved in adopting such a system. The changes proposed are incorporated in a Model Judgment Lien Act (MJLA) which is set forth in the Appendix of this article. It is hoped that the MJLA makes clear precisely how the rules discussed in the article would operate.

II. The Present System

Although judgment creditors are entitled to have real property sold in order to satisfy their judgments, their priority vis-à-vis other creditors and purchasers is usually based upon the date when they obtained a lien on the specific piece of property. Since the creditor must do little more than actually obtain the judgment and (possibly) see that an appropriate filing is made, the lien is usually referred to as a judgment lien. In some states, the judgment creditor need do nothing at all to obtain the lien on all real property in the county in which the judgment was rendered. Often even in those states, only the judgments of certain courts automatically create liens. In other states, the creditor always may have to affirmatively file or docket the judgment with the court or in the land records to obtain a lien. In some jurisdictions, judgments from small claims courts may never become a lien on real property. Once the judgment creditor has obtained a judgment lien on property in the county in which the judgment was rendered, the creditor may obtain a lien on the debtor's property in other counties by recording the judgment in the appropriate office or court of those coun-

ties. The basis for the territorial limitation on judgment liens is no doubt that it would be unfair for someone buying land in one county to have to check the court records in other counties.

Although three states (Alabama, Georgia and Mississippi) do extend the judgment lien to personal property as well as real property, most states require more for the creditor to obtain a lien on the debtor’s personal property. The lien on personal property is typically called an execution lien because the creditor must initiate the execution process, that is the process involved in the seizure and sale of the property, to obtain a lien. The procedure consists of the following: (1) the creditor obtains a writ of execution from the court clerk and delivers that writ to the sheriff; (2) the sheriff then locates and either seizes the property or leaves it where located and attaches a notice on or near the property (and may take other steps to secure the property); (3) the sheriff then sells the property. States vary with regard to whether the lien is created as of the date of the delivery of the paperwork to the sheriff or as of the date of the seizure of the property, with the latter being the majority rule. Some states have recently instituted procedures whereby judgment creditors can secure

17. Ala. Code § 6-9-211 (1990), reads in part: “Every judgment, a certificate of which has been filed as provided in section 6-9-210, shall be a lien in the county where filed on all property of the defendant which is subject to levy and sale under execution . . . .” (Emphasis added.)
20. See Haig & Kahn, supra note 1, at 24-25.
21. Ill. Ann. Stat. ch. 735, ¶ 5/12-111 (Smith-Hurd 1992); Robinson v. Wright, 9 P.2d 618 (Colo. 1932). In states where the lien arises upon delivery of the writ to the sheriff, that lien only applies to property upon which the sheriff actually levies before the return date of the writ. First Nat’l Bank of Center v. Monte Vista Hardware Co., 226 P. 154, 156 (Colo. 1924).
liens on personal property by a filing similar to a filing to perfect a security interest under Article 9 of the Uniform Commercial Code.\textsuperscript{23}

The present system often makes the acquisition of an execution lien (and thus the ability to limit the debtor's ability to use, sell, or hypothecate the property or to protect the property through bankruptcy) dependent upon both the creditor's ability to locate the property and to convince the sheriff to seize the property. A sheriff may not be willing to do so if she cannot be sure of the debtor's title, or if seizure would be impractical or dangerous.\textsuperscript{24} In addition, the creditor may have to provide the funding necessary for maintaining or storing the seized property until it has been sold.\textsuperscript{25}

Moreover matters are complicated further when the property involved is intangible, such as stock, notes or intellectual property. Intangible property is not often the type of property on which a sheriff may execute. Therefore, even if state statutory schemes allow for the eventual sale of such property to satisfy the judgment creditor's claim, the creditor's priority may be based only on the date of the sale or court proceeding ordering the transfer of such property.\textsuperscript{26}

\section*{III. Proposed Model Judgment Lien Act: The Virtual Clerk's Office}

The proposed statute is based on the premise that it will soon be possible for everyone to go to one office to obtain information about the status of a party's interest in property. That one office will not exist in

\begin{itemize}
  \item California explicitly provides that the levying officer shall only demand delivery of the property of the judgment debtor and shall make no further effort to obtain custody. The judgment creditor must then apply to the court for an order directing the levying officer to "seize the property in the private place." Then if the property is not voluntarily delivered the levying officer may use force unless there is a substantial risk of serious bodily injury. \textit{Cal. Civ. Proc. Code} \textsection{699.030} (West 1987).
  \item See \textit{Haig & Kahn, supra} note 1, at 44-49. The following hypothetical illustrates one of the problems presented to judgment creditors: Judgment creditor \textit{A} obtained a judgment and writ of execution on January 1, but was unable to convince the sheriff to execute on Debtor's inventory. Creditor \textit{B} obtained a judgment on February 1, and was successful in convincing the sheriff to execute. Under the laws of Alabama, Georgia and Mississippi, \textit{A} would still be entitled to the proceeds of the property because he had priority under those states' laws. Alternatively, in other states, where a lien is created upon execution by the sheriff, \textit{B} would have priority.
\end{itemize}
any particular location but will exist in "cyberspace." The office will be a "virtual clerk's office." Many state and federal courts have already begun the process of making the records of each court's docket available to computer searches. Ideally these filing systems will con-

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28. "Virtual clerk's office" refers to an electronic service which performs tasks which to date have been performed in a clerk's office. For purposes of this article, I am referring to the service of making available records of court proceedings. Of course, other functions of clerks' offices can and will be available electronically:

The first element of the virtual courthouse is already a reality in some locations. A recent amendment to Rule 5 of the Federal Rules of Civil Procedure permits electronic filing of papers. Filing of scanned images of documents is already widespread and could become ubiquitous within a few years. Already in many federal and state courts, the docket is accessible by computer from beyond the courthouse doors. Courts of appeals and supreme court opinions are now available on-line in some courts without charge, and other innovations are on the horizon. Most steps to the virtual clerk's office have been accomplished with little controversy, because their efficiencies are plain and external costs are minimal.


29. Information technology is on the rise in court systems across the country. It has been estimated that automation can cut time and financial resources spent on the lawsuit process enormously by allowing expedition of the litigation process, case management, and statistical reporting at the appellate level. *See* Robert Anderson et al., *The Impact of Information Technology on Judicial Administration: A Research Agenda for the Future,* 66 S. Cal. L. Rev. 1761, 1764 (1993). *See also* John G. Sakellaris, *Computerized Access to Court Information,* 23 Md. J. 35 (1990). Clearly, automating the court system is the most efficient means in which to handle the ever-expanding caseloads of the courts. *Id.*


Many states have already begun the process of automating all aspects of the court system, from charging a plaintiff with a cause of action, to recording a rendered judgment. *See* Kevin P. Kilpatrick, *Automation In Courts On the Rise,* 14 Nat'l L.J. 39 (1991). Often, court computer systems are accessible to anyone who has a personal computer, a standard modem and the appropriate software. Such communications software which provides access to LEXIS/NEXIS and/or Westlaw shall suffice to connect with many court computer systems. *See* Sakellaris, *supra,* at 36.

In the Maryland state court system, the Judicial Information System ("JIS") is a computerized service which allows attorneys to communicate with the court clerks, to file and receive motions and other documents which expedite the litigation process enormously, and to avoid unnecessary trips to the courthouse. *Id.* at 35, 41. Another function of JIS is to provide the user with information on judgments and liens in particular counties, given the debtor's name and other pertinent data. One may be connected to JIS at a modest initial fee of fifty dollars, plus twenty-five cents per minute of use. *Id.*

In the Massachusetts state court system, a new computer system has been implemented in the superior courts of the three most populated counties, which accounts for over half of the state's caseload. Telephone Interview with Richard Duggan, Director of Information Systems at the Office
tain a record of all suits filed, pre-judgment attachments, lis pendens notices, judgments and renewal of judgments from all state and federal

of the Chief Administrative Justice, Boston, Massachusetts (Sept. 29, 1994). Under this system, cases are processed from the filing of the first pleading to the recording of the judgment. Individuals may access lien information from terminals by searching for the person's name and/or docket number. *Id.*

Similarly, in the Mississippi state court system, the most densely populated counties, Harrison, Hines, Renken, Lauderdale and Jones Counties, have implemented a computer system which automatically records judgments. Telephone Interview with Ronald Simms, Data Processing Manager of the Mississippi Supreme Court, Jackson, Mississippi (Sept. 30, 1994). The advantage of Mississippi's computer system is that it is a common system used by the various counties, thus allowing cross-referencing throughout the state without the problems of conflicting systems. *Id.*

In the New York state court system, the more densely populated regions have a computer system which stores judgment liens in a database which can be accessed by anyone from the public-access terminals. Telephone Interview with Diane Thompson, Employee at the Data Processing Office of Court Administration, Troy, New York (Sept. 21, 1994).

Similarly, in the Iowa state court system, automation is currently being implemented throughout the state. Telephone Interview with Larry Murphy, Director of the Court Administrator's Office, Des Moines, Iowa (Sept. 21, 1994). Thus far, thirty of the ninety-nine counties have installed a database of judgment liens which may be accessed by credit unions, banks, attorneys, private citizens, etc. from public-access terminals. *Id.* Connection to personal computers, via modems, is also emerging. *Id.*

The Alabama state court system is also implementing a statewide database for case processing and management. Telephone Interview with John O'Sullivan, Director of the Judicial Data Center of the Administrative Office of the Courts, Montgomery, Alabama (Sept. 29, 1994). Thus far, all but four states have implemented the system. *Id.*

There are several state court systems, such as those in Maine and South Dakota, which have implemented statewide criminal docketing computer systems to manage the heavy caseloads, but have limited systems in the civil courts. Telephone Interview with Scott Clark, Purchasing Manager at the Administrative Office of the Courts, Portland, Maine (Sept. 30, 1994); Telephone Interview with Pamela R. Templeton, Planning and Systems Officer at the Unified Judicial System, Pierre, South Dakota (Sept. 30, 1994).

In California, automation is being developed at many stages of a lawsuit: police officers carrying hand-held computers from which they issue citations; individuals paying fines or fees on interactive kiosks; attorneys electronically filing motions and documents with the court; criminal offenders being arraigned through interaction between the court and the prison via video camera; and evidence being stored and re-shown on computer to save time in presenting the original evidence twice. *See Anderson et al., supra,* at 1761-69. However, in the area of judgment liens, the data is usually not recorded, despite the available technology. Telephone Interview with Peggy Hawkins, Superior Court Systems Specialist, Martinez, California (Sept. 30, 1994). In many of the less populated counties, there is no computer system at all and the information is stored manually. *Id.*

There are still some states, such as Georgia, which have nearly no automation in their court systems, and the case processing and data storage is performed manually. Telephone Interview with Eric John, Director at the Council of Juvenile Court Judges, Marietta, Georgia (Sept. 29, 1994). The most common problems which keep states from implementing any type of automation in the court systems are a lack of state funding and political opinions which oppose innovation. For these reasons, it is necessary for a state to create an agency which can organize the effort to create a common system and solicit the necessary allocation of funds.

Thus far, most court automation systems streamline the criminal systems and litigation process, and to some extent, the trial stage. This article merely suggests providing for a practical, effective method for the final stage of a lawsuit, the enforcement of a judgment.
courts throughout the state. It will not be necessary that these records all be stored in one place or all be contained in one database. Additional software could tie all the disparate systems together so that what may appear to be one search by the end user in fact will be a search of all databases throughout the state. Any person could search these records in any courthouse throughout the state, or from any personal computer with a modem and the appropriate software. Unofficial records of judgments and U.C.C. security interests already are available on LEXIS and Westlaw.

The availability of the virtual clerk’s office will permit a substantial revision of the rules regarding the priority of the claims of judgment creditors. The proposed MJLA, which is set forth in the Appendix, is designed to take advantage of that possibility and to illustrate how to deal with complications that may arise.

A. Treatment of Various Types of Property

1. Real Property

Establishment of the virtual clerk’s office would make it possible for a party to obtain judgment information by traveling to only one office and that office might very well be on her desk. Therefore, there no longer would be any justification for limiting the scope of liens to the county of the judgment. All liens on real property therefore should be statewide. This would eliminate the delay and expense caused by the

30. The fact that it may be necessary to harmonize different county and federal systems created prior to the adoption of the system proposed in this article will not present insurmountable technical problems. Fortunately, the user’s software can be designed to do all the work of searching each data base for the names requested and provide one report to the user. From the user’s point of view it will appear as if she is accessing one central database.


32. Westlaw carries a Prentice Hall service which provides civil judgments from California, Hawaii, Nevada, Oregon, Washington and Texas. Westlaw provides U.C.C. filings from Arkansas, California, Colorado, Iowa, Illinois, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New York, North Carolina, Oregon, Pennsylvania, Texas, Utah and Washington.

33. Since it would be unfair to require all citizens to have modems and computers, MJLA requires that a terminal be available in all courthouses in the state. MJLA § 11. Even where states choose not to make the court records accessible to “dial up” searches, the reforms envisioned in MJLA are still achievable where the terminal in each courthouse can access all counties of the state. MJLA § 11.
creditor's need to be sure liens are filed in all counties in which a debtor may have property.

2. "State Regulated" Tangible Personal Property

The MJLA's effect on personal property will be even more significant. First, as with liens on real property, judgment liens would attach to personal property throughout the state. As indicated previously, Alabama, Georgia, and Mississippi already provide for judgment liens to be liens on personal property in the county of the rendering court, and several states provide a mechanism for a statewide U.C.C.-type filing of judgments which create liens on particular types of property.

Second, MJLA would make the lien arise upon judgment, not upon execution or delivery of a writ to the sheriff, as is the case in the vast majority of states. This would have a profound effect on secured creditors, purchasers and other judgment lienors. Although this would constitute a reversal of fortunes for the secured creditor, it is not inequitable to expect secured creditors to check the court filing system, since they already must check Article 9 filings. Purchase money secured creditors who had advanced credit or money to enable the debtor to purchase property would be protected under MJLA, because the debtor would not own the property if it were not for the extension of credit which is secured by the property, and the judgment creditor has not relied on the debtor's ownership of the property. For the latter reason, the proposed protection of purchase money secured creditors is broader than that in the U.C.C. which requires prompt filing

Basing priority to personal property on the date of judgment significantly alters the relative rights of judgment creditors themselves by reversing the current rule in almost all states, which is to accord priority to the first creditor to execute on the property or the first creditor to

34. Execution, the procedure for the actual sale of personal property to satisfy the claims of judgment lien creditors, would remain the same. It is conceded that the actual execution process may still be as arduous as it currently is. On the other hand, there are many attractive features which ease the procedural onus that the creditor currently endures while enforcing the judgment, such as (1) automatic creation of the lien, thus eliminating the need to register the judgment with the clerk of the court; (2) development of a comprehensive lien on all property, thus eliminating the distinction in rules between real and personal property; and (3) establishment of immediate priority over subsequent creditors and purchasers.

35. See supra note 17.
36. See supra note 23.
37. MJLA § 4(a)(iii).
get the writ to the sheriff. Presumably, the current rule rewards diligence by creditors. It also rewards creditors who are more familiar with the whereabouts of the debtor's assets. Nevertheless, under the proposed statute the judgment creditor will still have an incentive to be diligent, for two reasons. First, postjudgment interest added to the debt does not sufficiently reward the creditor for the delay in collection. Second, the property might disappear or depreciate. Junior judgment creditors will also have an incentive to inform senior creditors of property because the junior judgment creditor then will be closer to satisfaction of her judgment. Moreover, this is supported by the U.C.C., which dictates a similar result for competing security interests.

Along with secured creditors and judgment creditors, third parties who may purchase or lease property from the debtor will also be effected by the creation of the judgment lien on personal property. When the law regarding liens on personal property developed, it may have been considered too onerous a burden on third parties to make their right to personal property depend on records in a courthouse in the county seat. But all states now impose that burden on third parties through the use of the U.C.C. filing system for personal property. Obviously there are situations where it would be unfair to third parties to require such a search.

Yet, the ability to make judgment lien searches easily available at the virtual clerk's office should be kept in mind in distinguishing those third parties who genuinely deserve protection and those who do not. For example, it will never be appropriate to expect a consumer purchaser to conduct a judgment lien search, but it would be appropriate for those engaging in large transactions and for business purchasers to do so. MJLA illustrates how those exceptions can be made. For example, any consumer purchase would be excluded. Also, all business

40. See supra note 3.
42. Although not a purchaser, in many states an "artisan" who retains possession of the debtor's property has priority over previously perfected security interests. It would be unfair to expect the repairer of equipment or the dry cleaner to conduct a search for a possible financing statement. Moreover, the repair presumably adds value to the property at least sufficient to cover the cost of repair. For these reasons, the proposed judgment lien on personal property also should be subject to artisan's liens. MJLA § 4(a)(vii).
43. HAWKLAND & LOISEAUX, supra note 39.
44. MJLA §§ 4(a)(ii) + 1(g)(v).
purchases for less than $5,000 would be protected. Where businesses make purchases of a greater amount, even if purchasing from a merchant who deals in goods of the kind, it is fair that they either check the records or take the risk that the property is subject to a lien. Similarly, the proposed statute provides protection for purchasers of property for which state law provides a filing system for all transfers (as opposed to the U.C.C. filing system which is only for security interests). The proposed statute distinguishes between consumer purchases of such property and business purchasers who are only protected where the purchase is for less than $5,000. Finally, because the proposed statute treats lessees of property as purchasers, it provides similar protections and risks for lessees. Despite making the above exceptions from the scope of the judgment lien, the lien would not be avoidable by the trustee or debtor in possession in bankruptcy since the lien is superior to subsequent judgment liens.

The creation of a judgment lien on personal property and the establishment of an easily accessible recording system would aid creditors in preventing debtors from selling and hypothecating property, and would reward the first creditors to proceed against the debtor. In addition, the proposed system helps those debtors who can overcome short term financial distress by making it easier for creditors who have judgments to negotiate with debtors while at the same time preserving their priority. Currently that is not possible: the creditor takes some risk if, to give the debtor a chance to satisfy the judgment voluntarily, the creditor does not have the property seized quickly. Where the creditor refrains from selling property, subsequent creditors may be able to strip

45. MJLA §§ 4(a)(ii) & 1(g)(i). Note that the protection provided the judgment lien creditor under my proposal is greater than that provided the secured creditor under U.C.C. § 9-307. This is only the case where the sale is a buyer in the ordinary course and a commercial purchase is involved. The reason for the difference is that the secured creditor who voluntarily deals with a merchant can be expected to monitor the merchant's sales and probably wants the merchant to be able to continue selling inventory. However, the judgment lien creditor may not be aware of the debtor's business and probably does not want the debtor to continue disposing of property. The judgment lien creditor wants to get the debtor's attention. If large commercial purchasers will not buy from the debtor, the debtor is more likely to pay to the judgment creditor.

46. MJLA §§ 4(a)(ii) & 1(g)(iii) & (iv).
47. MJLA §§ 4 & 1(g)(ii).
48. MJLA §§ 4(a)(ii) & 1(g)(iii).
49. The definition of "buy" includes leasing. MJLA § 1(a).
the original creditor of priority due to the failure to execute promptly.\textsuperscript{51} MJLA will allow judgment creditors to maintain priority to personal property in the same way that judgment lien creditors can for real property, and secured creditors can for both real and personal property.

3. \textit{Federally Regulated Tangible Personal Property: Aircraft}

Although the proposed statute purports to govern transfers of title of all tangible personal property, it cannot conflict with federal law to the extent that it controls title to such property. For example, with regard to airplanes, federal law provides:

Until a conveyance, lease, or instrument executed for security purposes that may be recorded under section 44107(a)(1) or (2) of this title is filed for recording, the conveyance, lease, or instrument is valid only against—

(1) the person making the conveyance, lease, or instrument;
(2) that person’s heirs and devisees; and
(3) a person having actual notice of the conveyance, lease, or instrument.\textsuperscript{52}

The United States Supreme Court has held that a similar provision prohibits all transfers of title to aircraft from having validity against third parties unless a written instrument memorialized the transfer and has been recorded with the Federal Aviation Administration.\textsuperscript{53} Nevertheless, once instruments are recorded, state law rules determine the priorities among competing recorded interests.\textsuperscript{54} This apparent contradiction can be understood by viewing the recording

\textsuperscript{51} HAWKLAND & LOISEAUX, \textit{supra} note 39; Century Pipe Supply Co. v. Empire Factors Corp., 153 N.E.2d 298, 302 (Ill. App. Ct. 1958); Robinson v. Wright, 9 P.2d 618 (Col. 1932); see Ill. Inc. v. Margolis, 296 A.2d 412 (Md. 1972), and the cases referred to therein.


\textsuperscript{53} Philko Aviation, Inc. v. Shacket, 402 U.S. 406 (1983). The prior statute read: “No conveyance or instrument ... shall be valid . . . against any person . . . until such conveyance or other instrument is filed for recordation in the office of the [Federal Aviation Administration].” 49 U.S.C. § 1403 (1988).

\textsuperscript{54} Philko, 402 U.S. at 412-13. (“We are inclined to agree with this . . . ); South Shore Bank v. Tony Mat, Inc., 712 F.2d 896 (3d Cir. 1983). “No conveyance or instrument . . . shall be valid . . . against any person . . . until such conveyance or other instrument is filed for recordation in the office of the [Federal Aviation Administration].” This rule appears to be more explicitly stated in the revised statute. 49 U.S.C. § 44108(c): The validity of a conveyance, lease, or instrument that may be recorded under § 44107 of this title is subject to the laws of the State, the District of Columbia, or the territory or possession of the United States at which the conveyance, lease, or instrument is delivered, regardless of the place at which the subject of the conveyance, lease, or instrument is located or delivered. If the conveyance, lease, or instrument specifies the place at which delivery is intended, it is presumed that the conveyance, lease, or instrument was delivered at the specified place.
system as a congressional reaction to the problems created by the highly mobile nature of aircraft. Absent a single filing location, purchasers and secured parties would need to file in many jurisdictions to perfect their interests and would need to make a title search in all states to be certain there was no prior recorded interest. Therefore, Congress created a central filing system, leaving the effect of the filing to the states.

The following hypothetical illustrates the consequences. \( C \) obtains a judgment against \( D \) on January 1. \( C \) has the writ of execution (or other appropriate document) delivered to the sheriff on January 15. On February 1, \( S \) obtains a security interest in \( D \)'s airplane and records the security interest with the FAA. On February 15, the sheriff seizes \( D \)'s airplane based on \( C \)'s writ. \( C \) subsequently has some documentation establishing the seizure filed with FAA.

In a state where the execution lien arises on the date that the writ is given to the sheriff, \( C \) will probably defeat \( S \). This result is not guaranteed. A court could hold that the federal filing system controls both recordation and priorities. In that case, the result would be the same as in the states where the execution lien arises upon attachment. But, assuming the priority is based on state law, the judgment creditor's priority is still dependent upon getting the writ to the sheriff and locating the plane prior to the expiration of the writ. Moreover, as a result of the delay in recordation, even if \( C \) eventually wins, others (such as \( S \)) may have dealt with \( D \) in reliance on the lack of any recordation. This is obviously bad for \( S \), but it is also bad for \( C \). \( C \)'s ability to convey good title is in question and \( C \) will incur expenses defending that title. In a state where the execution lien arises upon attachment, the answer is clearer: \( C \) will be defeated by \( S \). In those states which provide for the U.C.C.-type filing of judgment liens, the statutes do not provide for recording in federal filing systems and are expressly limited to the types of property for which state filings are appropriate.

The MJLA helps the judgment creditor. First, the lien arises upon judgment. It is not necessary first to locate a plane or the sheriff.

55. Gary Aircraft Corp. v. General Dynamics Corp., 681 F.2d 365, 370 (5th Cir. 1982).
56. \textit{Id.} at 372.
57. At least one case has held that the federal statute controls priorities. \textit{In re Cone}, 11 B.R. 925 (Bankr. D. Fla. 1981). That case was criticized in Gary Aircraft Corp. v. General Dynamics Corp., 681 F.2d 365, 369 n.3 (5th Cir. 1982). \textit{Cone} was decided prior to \textit{Philko}, 402 U.S. at 406; but note the rather weak language of \textit{Philko}.
Rather, the notice (in the above hypothetical) could be filed with the FAA as early as January 2. Despite the fact that the rules for transfer may require actions taken outside the state, the plane clearly is within the definition of property, and the proposed statute provides for a document which can be filed to record the transfer. Upon the Secretary’s receiving of the application for registration, the lien would become a valid transfer.

4. Intangible Property: Securities

Intangible personal property has always presented somewhat of a problem for judgment creditors. Although state statutes indicate that all personal property is subject to enforcement, it is not always clear how an executing officer seizes such property. Often creditors must resort to a supplementary procedure to obtain control over such property. Yet in contradistinction to the times when the law of judicial liens originated, intangible personal property is often the most signifi-

59. MJLA § (f).
60. MJLA § 9. The judgment creditor could request that this order be entered at the same time as the judgment.
62. Some intangibles (such as negotiable warehouse receipts, negotiable instruments, and securities) have become so identified with a writing that seizure of the paper itself has long constituted seizure of the obligation it memorializes. See, e.g., U.C.C. § 7-602 (warehouse receipts). With the exception of the treatment of some transfers of certificated securities, MJLA respects transfers of those documents despite the presence of the lien. MJLA § (g)(vii).

In California “all property of the judgment debtor is subject to enforcement of a money judgment.” CAL. CIV. PROC. CODE § 695.010 (West 1987). And “all property that is subject to enforcement of a money judgment . . . is subject to levy under a writ of execution.” CAL. CIV. PROC. CODE § 699.710 (West 1987). The judgment creditor may seek a court order requiring the judgment debtor to turn over “evidence of title to property.” CAL. CIV. PROC. CODE § 699.040 (West 1987). The judgment creditor may institute an examination proceeding. Id. § 708.110. Service upon the judgment debtor of the order to attend the procedure “creates a lien on the personal property of the judgment for a period of one year from the date of the order unless extended or sooner terminated by the court.” CAL. CIV. PROC. CODE § 708.110 (West 1987 & Supp. 1995). At the conclusion of the proceeding the judge may order that the judgment debtor’s interest in the property be applied toward the satisfaction of the judgment. “Such an order creates a lien on the property . . . .” CAL. CIV. PROC. CODE § 708.205 (West 1987). A judgment creditor may also move for the appointment of a receiver. CAL. CIV. PROC. CODE § 564 (West 1987 & Supp. 1995). The receiver’s powers include the power “to make transfers,” CAL. CIV. PROC. CODE § 568 (West 1987). Although the availability of other remedies does not, in and of itself, preclude the use of a receivership, the trial court “must consider the availability and efficacy of other remedies in determining the whether to employ the extraordinary remedy of a receivership.” City & County of San Francisco v. Daley, 20 Cal. Rptr. 2d 256, 263 (Ct. App. 1st Dist., 1993).
significant property which the judgment debtor owns. The major change
worked by the proposed statute is the complete separation of the proce­
dure for actually selling the property from the determination of the
priority of the various parties with interests in the property. The pro­
posed statute makes no change in the former, but, with regard to the
latter, the MJLA makes clear that the judgment creditor’s priority is
based on the date of judgment. Since intangible property is probably
the most difficult property to identify and to compel transfer, the pro­
posed judgment creditor’s lien would protect the creditor from the
debtor’s ability to transfer or hypothecate such property. Other parties
dealing with the debtor would know that their interests are at risk.
However, two types of property deserve special attention: investment
securities and intangible property governed by federal law.

Investment securities are “share[s], participation, or other inter­
est[s] in . . . property or an enterprise of an issuer” and the transfers
of securities are governed by Article 8 of the Uniform Commercial
Code. Corporate stock, for example, is an investment security gov­
erned by Article 8. Corporate securities can be either certificated or
uncertificated. Article 8 requires seizure of the stock certificate for cer­
tificated securities and legal process in the issuer’s office for uncertifi­
cated securities in order for creditors to obtain any interest in such
securities. In the MJLA, I propose leaving the current rule in place
with regard to conflicts between buyers of securities and judgment lien
creditors. With regard to conflicts between parties claiming a security
interest in securities and judgment lien creditors, I propose that the
statewide filing system be given effect for uncertificated securities.
With regard to conflicts between various judgment lien creditors, I pro­
pose that the filing system be given effect for both certificated and un­
certificated securities.


65. The vast majority of states, including the leading corporate states of Delaware, New York
and California have adopted the revised version of Article 8 which is discussed in this article. See 2C
UNIFORM LAWS ANNOTATED 278-79 (1991). In 1994, the National Conference of Commissioners on
364 (West); 1995 Ind. Legis. Serv. 152-1986 (West) (effective July 1, 1996); 1995 La. Sess. Law
Law Serv. 962 (Vernon); 1995 Wash. Legis. Serv. 48 (West); W. Va. Code § 46-8-101 to -511
(Supp. 1995).

Buyers. The rule requiring seizure of the stock certificate for certificated securities and legal process in the issuer's office for uncertificated securities, in order for judgment creditors to obtain any interest in such securities, is primarily designed for the protection of purchasers.67 The rule with regard to buyers is sound, particularly given the ease with which debtors and securities can cross state lines.68

Secured Creditors. With regard to the rights of secured parties, the current rule certainly seems justified in the case of certificated securities. Secured creditors must obtain possession69 or obtain a signed security agreement and give value70 in order to obtain a security interest in certificated securities; but for the security interest to be perfected they must ordinarily obtain possession.71 No filing is necessary to perfect the security interest.72 With regard to uncertificated securities there are a variety of ways to obtain a security interest including the "registered pledge," in which notice of the assignment is given to the issuer.73 The structure of the revised version of Article 8, particularly with respect to uncertificated securities, does not provide a great deal of protection for those who contemplate taking a security interest.74 Nevertheless, the lien creditor can only obtain a lien on the security by legal process at the issuer's chief executive office in the United States.75 If the judgment is in a state other than the one where that office is situated, then a legal proceeding must be instituted in the office state.

Therefore, with respect to certificated and uncertificated securities, the MJLA could revise priorities by making secured creditors subject to judgment liens which arise prior to the attachment of the security interest. Secured creditors certainly can be expected to search for such liens. As indicated previously, the primary purpose behind the restrictions placed on lien creditors was to protect purchasers, not secured creditors. Given that a better argument can be made for continuing the approach of Article 8 with regard to certificated securities rather than uncertificated securities, I am proposing that the MJLA retain the Ar-

68. The buyer is protected as a "protected purchaser" under MJLA §§ 1(g)(vii), 4(a)(ii).
ticle 8 approach for the former, 76 but substitute an approach similar to that used with regard to aircraft for uncertificated securities. Specifically, MJLA requires that for purposes of uncertificated securities, a judgment lien could defeat a secured creditor if the judgment lien is recorded in the statewide judgment lien filing system of the state of the principal office of the issuer. 77 It is not particularly burdensome to expect secured creditors, unlike buyers, to check state filing systems. Also the judgment lien creditor, unlike the secured creditor, is entitled to a lien on all securities in which the judgment debtor has an interest. The burden is then on the debtor to satisfy the judgment in order to maintain good title to all securities. In order to avoid difficulties caused by the fact that title to securities is controlled by the state of the issuer, the reform proposed in the MJLA is designed to be effective only for securities issued by corporations in states which have adopted the MJLA. 78

 Judgment Creditors. While the proposed MJLA makes changes only in the priorities of the judgment lien creditor vis-a-vis the secured creditor with regard to uncertificated securities, it changes the rules for priorities of the judgment lien creditor vis-a-vis other judgment lien creditors for both certificated and uncertificated securities. Unlike the purchaser or the secured creditor, the judgment lien creditor does not rely on the debtor owning specific securities when engaging in transactions with the debtor. The tort victim, for example, does not lie down in front of the debtor's truck because the debtor had Microsoft stock in her portfolio. Similarly, the supplier or unsecured lender does not rely on specific securities. Therefore, there is no need to ground their priority on the basis of which judgment creditor had given notice to the issuer of the securities or had possession of the securities.

 Basing the judgment lien creditor's priority on the date of judgment (or date of filing in the state system) has two significant additional advantages for the judgment lien creditor. First, the judgment lien creditor will be able to defeat a subsequent bankruptcy trustee or debtor in possession in bankruptcy. The MJLA judgment lien creditor would not be vulnerable to lien avoidance in bankruptcy because her

76. MJLA § 4(a)(ix).
77. MJLA § 4(a)(x). Section 9 provides the procedure for the judgment creditor to obtain the document to file. Note that although § 9(c) provides for a hearing to obtain the order that is filed in the sister state, such an order could be requested and issued with the judgment. The requirement of the order will allow the court, if requested at the time of judgment or at a later date, to specify specific securities of which the judgment creditor may be aware.
78. MJLA § 4(x)(B)(II).
lien could not be defeated by another judicial lien creditor. The second major advantage for the judicial lien on securities under MJLA is that a subsequently filed federal tax lien would be subject to the judgment lien creditor.

5. Intangible Property: Intellectual Property

Another financially significant form of intangible personal property is intellectual property: patents, trademarks and copyrights. Intellectual property is largely governed by federal law.

Originally, in the case of intellectual property, a court would not compel the execution of copyrights or patents because of the strong public policy favoring the promotion of artists' and inventors' ingenuity took precedence over creditors' rights. Patents and copyrights were also afforded "immunity" against creditors, because of their intangible nature. However, during the past century, courts have begun to consider creditors' rights more seriously and to compel involuntary transfers of intellectual property. Ownership rights must be transferred in

80. 26 U.S.C. § 6323 (a) (1988). For purposes of the tax lien act a judgment lien is not perfected (and therefore superior to the tax lien) unless the “identity of the lienor, the property subject to the lien, and the amount of the lien are established.” 26 C.F.R. § 301.6323(h) (1988). This restates the “choateness” doctrine which had been used to restrict the liens which had priority over the I.R.S. The MJLA lien clearly meets the first and third parts of the test but there could be a question regarding the second since the lien applies to all property of the debtor not just specific items of property. However, the one federal court which has dealt with this issue has concluded that such a lien is choate for these purposes. Asher v. United States, 436 F. Supp. 22, 26 (N.D. Ill. 1976), aff'd, 570 F.2d 682 (7th Cir. 1978). Moreover, the regulations support that conclusion. The regulations require that with regard to real property only that the judgment lien must be recorded so as to be superior to all third parties. But that requirement does not apply to personal property. The only part of the regulation relevant to personal property states that, “If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved.” 26 C.F.R. § 301.6323(h) (1988) (emphasis added). It might be argued that the term “lien” applies to secured creditors and hence the protection of secured creditors with regard to certificated securities would jeopardize the judgment lien's priority as to certificated securities. “Lien,” however, is not defined in the regulations, but also is not used to describe security interests.

81. See Ager v. Murray, 105 U.S. 126 (1881) (holding property without body may not be executed upon by marshall or sheriff, but creditor may be able to reach property through a bill of equity).
82. Lieurance, supra note 26.
83. See Sanders v. Armour Fertilizer Works, 292 U.S. 190 (1934) (holding creditors may garnish choices in action and other intangibles). See also McClaskey v. Harbison-Walker Refractories Co., 138 F.2d 493 (3d Cir. 1943) (holding debtors' intellectual property could be transferred to creditors by means of fieri facias); Platt & Munk Co. v. Republic Graphics, Inc., 315 F.2d 847 (2d Cir. 1963) (holding the “first sale” that terminates the exclusive right of a patent or copyright holder
accordance with federal law in the case of copyrights,\textsuperscript{84} patents\textsuperscript{85} and trademarks.\textsuperscript{86} Federal law regarding the transfer of interests in such property would preempt state lien statutes.

The provision of the Copyright Act of 1976 which provides for transfers of ownership rights to a copyright does not explicitly authorize the creation of judicial liens on copyrights, but it does provide that interests in a copyright may be transferred by "operation of law."\textsuperscript{87} This indicates that copyrights are susceptible to the entire range of state creditor remedies.\textsuperscript{88}

The Patent Act provides only for transfer of ownership of a patent by the applicant, patentee, his assigns, or legal representatives by means of an "instrument in writing."\textsuperscript{89} However, the term "legal representatives" has been interpreted to include a court appointed officer.\textsuperscript{90} Further, like the transfer provision for copyrights, the patent transfer section also explicitly refers to patents as personal property,\textsuperscript{91} thus implying the applicability to state lien laws.

Trademarks,\textsuperscript{92} unlike patents and copyrights, hold no inherent value in and of themselves.\textsuperscript{93} Instead, the significance associated with a trademark is dependent upon the business, service, or product with which it is associated.\textsuperscript{94} Therefore, the provision dealing with the assignment of trademarks, § 1060 of the Lanham Act, the federal trademark statute, allows for the assignment of a trademark only "with the goodwill of the business in which the mark is used, or with that part of

\textsuperscript{84} 17 U.S.C. §§ 201, 205 (1988).  
\textsuperscript{87} 17 U.S.C. § 201(d) (1988).  

\textsuperscript{88} Also, because transfer by inheritance is explicitly referred to, the only other meaning that "operation of law" could have is transfer by bankruptcy or judicial lien. That section also refers to copyrights as personal property which under most state lien statutes, would be subject to execution. Moreover, § 201(a) deals with involuntary transfers through Title 11 bankruptcy proceedings which makes it apparent that the drafters of the Act considered the allowance of court-compelled transfers for the benefit of debtors.

\textsuperscript{90} McClaskey v. Harbison-Walker Refractories Co., 138 F.2d 493, 500 (3d Cir. 1943).  
\textsuperscript{91} 35 U.S.C. § 261.  
\textsuperscript{92} The discussion also includes "service marks."  

\textsuperscript{94} Id.
the goodwill of the business *connected with* the use of and symbolized by the *mark.*” 95 Most states also have enacted their own trademark laws. If there is conflict between the transfer provisions of the federal and state laws, federal law preempts the state law. As a result, the state transfer provisions are almost identical to the Lanham Act. 96 Like patents, the transfer of trademarks also must be by an “instrument in writing duly executed.” 97

Although most states provide that “all personal property” is subject to execution, the intangible nature of intellectual property renders it impossible for a sheriff to seize and sell. 98 Seizure and sale of the object (for example a book) does not constitute sale of the copyright or patent. 99 Therefore the primary method for obtaining a lien on personal property is not really available in the case of intellectual property. The judgment creditor must resort to a procedure whereby the court assists the creditor in obtaining control over the property. Such “supplementary procedures” may involve compelling the debtor to execute a transfer or appointing a receiver to execute such a transfer. 100 These may be difficult to obtain because of preliminary equitable requirements, personal jurisdictional requirements, and substantive additional requirements, such as proof of fraud.

The question is presented, therefore, whether a lien which arises on judgment alone, such as proposed in this article, could attach to federally established intellectual property, and whether such a lien could bind future purchasers, secured parties, and unsecured creditors. Although a sheriff can not seize the intellectual property, a court can convey the authority to do so to an appropriate officer. 101 Since under MJLA the judgment creates a lien on all personal property, the MJLA is therefore infusing in the money judgment a court ordered seizure of an interest in the debtor’s intellectual property. This, coupled with the

100. *See Farina,* 25 B.R. at 411.
101. *See Ager,* 105 U.S. at 132 (decree appointing trustee to execute assignment was within the chancery powers of the court).
copyright act’s provision for the transfer of the rights by “operation of law,” indicates that the judgment lien provided for in the MJLA undoubtedly encompasses any rights in copyright which the debtor has. Since the Patent Act only provides for transfers in writing, the argument for the applicability of the judgment lien is not as clear. Nevertheless, the statute’s explicit statement that patents have the attributes of “personal property” could be argued to indicate that they are also subject to personal property rules of the various states to the extent they do not conflict with the federal statute.\textsuperscript{102}

Trademarks present the most troublesome case for applicability of the judgment lien. The statute requires written assignments and does not contain the additional language, as does the patent statute, regarding trademarks having the attributes of property rights. The proposed treatment of intellectual property in the MJLA is as follows: Copyrights and patents would be treated differently than trademarks. With regard to copyrights and patents, the lien arises with the judgment. That lien, however, is subject to the priority rules contained in the relevant statutes\textsuperscript{103} and those statutes require a recordation of the transfers with the Register of Copyrights or Patent and Trademarks Office. Therefore, MJLA provides a mechanism for the judgment creditor to obtain a court order that can be filed in the appropriate office.\textsuperscript{104} This


\textsuperscript{103.} With regard to copyrights, the statute provides that:

\begin{quote}
Priority Between Conflicting Transfers—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.
\end{quote}

\textsuperscript{17} U.S.C. § 205(d) (1988).

With regard to patents, the statute provides that:

\begin{quote}
An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage. 35 U.S.C. § 261 (1988).
\end{quote}

\textsuperscript{104.} MJLA § 9. The requirements of a court order recognize the inherent differences between the intangible property involved and the tangible property governed by current state procedures. Since there is no point at which the debtor can actually see the property leaving her control and coming under the jurisdiction of the court, the procedure provides a way to be sure that the debtor has appropriate notice and an opportunity to contest the seizure. That order can be requested and issued along with the money judgment itself. See supra note 77. Moreover, the procedure provides the creditor with an appropriate document that can be filed in the proper federal office. Finally, the
order, combined with the fact that a lien arises on judgment, overcomes the dual problem of needing a transfer to record and needing a writing evidencing that transfer. To the extent that a creditor has priority under the federal statute, the creditor would have priority under MJLA. Essentially, once the order is filed, the judgment creditor would have priority over all subsequent purchasers and secured creditors. The result would be different with regard to judgment lien creditors depending upon whether a patent or copyright was involved. In the case of copyrights, the language of the copyright act that the filing requirement protects all "transferees" (since judgment lien creditors are transferees) means that the first judgment lien creditor to file would have priority.\textsuperscript{105} Since the relevant patent provision only protects purchasers and mortgagees,\textsuperscript{106} the lien established by MJLA on patents would have priority over all subsequent judgment lien creditors without recordation in the federal office.\textsuperscript{107}

The consequence of this is illustrated by the following hypothetical. \(D\) has a patent on a process for cold fusion. On January 1, \(X\) obtains a judgment against \(D\) in state \(A\) (which has a statute similar to MJLA). On January 2, \(Y\) obtains a judgment against \(D\) in state \(B\) (which has a statute similar to MJLA). On January 3, \(Y\) records at the patent office. On January 4, \(X\) records at the patent office. \(Y\)'s lien would have priority. But note that if \(Y\) sells \(D\)'s patent to \(Z\) at an execution sale, prior to the time \(X\) records, \(Z\) (as a purchaser) would prevail. Since the patent statute provides \(X\) a three month grace period from the date of conveyance, if the sale to \(Z\) took place on February 1 and \(X\) records her lien March 25, \(X\) would prevail.\textsuperscript{108}

Since a trademark has no real independent value, but is a symbol of a company's goodwill,\textsuperscript{109} and cannot be assigned "in gross,"\textsuperscript{110} the proposed statute provides that the lien does not arise until the trade-

\textsuperscript{105} 17 U.S.C. § 205(d), (e) (1988).
\textsuperscript{107} Note that MJLA § 4(a)(xii) only refers to purchasers and mortgagees.
\textsuperscript{108} MJLA § 4(a)(xii).
\textsuperscript{109} VISA, U.S.A., 696 F.2d at 1375.
\textsuperscript{110} Id. An assignment "in gross" is one where a trademark owner attempts to transfer his rights in the trademark in and of itself, without any transfer of the business which the trademark represents. However, an exception to this rule does exist. If the trademark is transferred to someone whose product and/or services are sufficiently similar to those of the trademark owner's business, and the use by the transferee will not mislead consumers of the established associations of the trademark, then the transfer will be upheld. Id. at 1375-76. See also Marshak v. Green, 746 F.2d 927 (2d Cir. 1984).
mark is sold at an execution sale.\textsuperscript{111} By adopting this procedure, MJLA provides the creditor with a practical method to satisfy its judgment where the debtor owns intellectual property. The statute nonetheless respects the vagaries of federal law which controls and affords purchasers and secured parties with appropriate notice.

\textbf{B. Foreign Judgments}

\textit{The local federal court.} Judgments of the federal district courts sitting in the state will be subject to the proposed system only if the state law treats those judgments exactly like state court judgments.\textsuperscript{112} Two situations must be considered. The first is where the federal district court judgments are computer searchable in a way consistent with those of the state court. In such a case, MJLA need only provide that the federal court judgments be treated exactly like state court judgments.\textsuperscript{113} The second is where federal district court judgments are not searchable in a way consistent with the MJLA. The question arises as to what extent the state statute can make the lien of the federal court in some way dependent on the federal court clerk or the judgment creditor filing some notice of the judgment in the state system. Since MJLA requires the state clerk to enter the data into a searchable database,\textsuperscript{114} the requirement that the federal court clerk do the same would seem to fit within the statutory prescription that whenever a state court judgment must be recorded in a particular manner, a similar requirement applies to federal judgments if the state authorizes the

\textsuperscript{111} MJLA § 4(a)(xiii).

\textsuperscript{112} The United States Code provides that:

\begin{quote}
Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State.
\end{quote}


\textsuperscript{113} MJLA § 2(b) \textit{(Alternative A)}. Since the federal statute provides that judgments are liens "under the same conditions" and "cease to be a lien in the same manner and time" as state court judgments, all of the MJLA provisions regarding the requirements contained in MJLA § 3 would be applicable to federal court judgments. It should be noted that Federal Courts are rapidly automating and making docket searches available through the PACER system.

\textsuperscript{114} MJLA § 10(b).
recording.\textsuperscript{115} That "requirement" is contained in Alternative B of MJLA section 2(b).\textsuperscript{116}

\textbf{Sister state judgments.} States must give the judgments of the courts of sister states "full faith and credit."\textsuperscript{117} If the state which enacts MJLA recognizes the sister state judgment through the procedure of the judgment creditor suing on the judgment, the judgment creditor will obtain a lien by virtue of the judgment on the judgment.\textsuperscript{118} Many states have adopted the Uniform Enforcement of Foreign Judgments Act, which replaces the procedure of suing on the judgment with the procedure of merely recording judgments.\textsuperscript{119} In those states, the language of that statute to the effect that the "clerk shall treat the judgment in the same manner" as a judgment of the state court,\textsuperscript{120} requires that the clerk should record the foreign judgment in accordance with MJLA section 10. The language that the filed judgment has the same effect of a judgment of the state in which it is filed\textsuperscript{121} leads to the result that the lien provided for in MJLA section 2(a) arises. Nevertheless, since a state court judgment would never actually be rendered, section 8(b) is added to be sure that the intent is clear.

\textbf{Foreign country judgments.} Judgments of foreign countries are not entitled to full faith and credit. In some states, a judgment creditor with a judgment from a court in a foreign country must sue to obtain a judgment in the United States which can then be enforced. However,

\begin{itemize}
\item \textsuperscript{116} Strictly speaking, there is no requirement that the clerks take such action. The state law could not require action on the part of the federal clerks. It is, however, a requirement for a lien.
\item \textsuperscript{117} The United States Constitution provides that:
\begin{quotation}
\textit{Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.}
\end{quotation}
\textsuperscript{U.S. Const. art. IV, § 1.}
\item \textsuperscript{118} MJLA § 2(a).
\item \textsuperscript{120} \textit{Unif. Enforcement of Foreign Judgments Act} § 2, 13 U.L.A. 154 (1995).
\item \textsuperscript{121} The Uniform Act provides that, "A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a [District court of any city or county] of this state and be enforced or satisfied in like manner." \textit{Id.}
\end{itemize}
many states have adopted the Uniform Foreign Money-Judgments Recognition Act.\textsuperscript{122} That Act provides that judgments of foreign countries should be treated the same as judgments of sister states.\textsuperscript{123} Therefore, foreign country judgments simply can be recorded to create a lien. Although the statute explicitly denies this status to judgments rendered in countries that do not have impartial tribunals, where there was no personal or subject matter jurisdiction, or where there was procedural unfairness.\textsuperscript{124} There is currently no procedure explicit in the statute requiring court review of the foreign country judgment before recording. However, at least one court has held that recognizing foreign country judgments without such a court review is unconstitutional.\textsuperscript{125} Texas has modified the Act to include a procedure which may provide for constitutional safeguards while still giving the Act the force and effect which was intended by the drafters.\textsuperscript{126} MJLA makes allowance for a similar


\textsuperscript{123} Unif. Foreign Money-Judgments Recognition Act § 3 (1986).

\textsuperscript{124} Id. at § 4.


\textsuperscript{126} Texas has modified the Act to include a procedure which may provide for constitutional safeguards while still giving the Act the force and effect which was intended by the drafters. Tex. Civ. Prac. & Rem. Code Ann. §§ 36.002-004 (West 1981 & Supp. 1995). Texas does not automatically give full faith and credit to the foreign country judgment. Instead, a creditor must first file an authenticated judgment with the court clerk in the county where legal effect is sought. \textit{Id.} § 36.0041. Second, the creditor shall file with the clerk an affidavit showing the name and last known addresses of the judgment debtor and judgment creditor. \textit{Id.} § 36.0042. Third, either the clerk or the judgment creditor mails notice of the filing to the debtor. \textit{Id.} §§ 36.0042-0043. Fourth, the debtor is given an opportunity to contest the state’s recognition of the foreign country judgment, within thirty days of receiving the filing. \textit{Id.} § 36.0044(a). Fifth, the debtor shall file a motion of
procedure, but also explicitly provides an avenue right for the judgment debtor to have the lien notice removed if, for example, there was some defect in the foreign country procedure.\textsuperscript{127}

IV. JUDICIAL LIENS WHICH ARISE OTHER THAN BY JUDGMENT

Pre-judgment attachment is an extraordinary remedy through which the plaintiff may deprive the defendant of property before any court has found liability on any grounds. All states limit the availability to pre-judgment attachment to lawsuits based on particular grounds such as fraud,\textsuperscript{128} and to situations in which the plaintiff may be particularly vulnerable to a defendant’s secreting or dissipating assets, such as where the defendant has evaded service of process or is likely to abscond from the state.\textsuperscript{129} Pre-judgment attachment also provides the plaintiff with an advantage over other parties who may sue the debtor: the effective date of the judgment lien which the plaintiff eventually obtains will relate back to the date of the pre-judgment attachment.\textsuperscript{130} In addition to granting the plaintiff the security that the property will be available to satisfy the judgment, pre-judgment attachment provides the plaintiff with considerable leverage over the defendant. The defendant, while being denied the use of some essential item of his property, is more likely to settle on favorable terms with the plaintiff.

By incorporating pre-judgment attachment into the proposed system, increased flexibility is offered to the courts, plaintiffs, and the debtor. It would be possible to extend the scope of a pre-judgment attachment to all property that the defendant owns. But it would also be possible for the courts to grant the plaintiff a pre-judgment attachment without the sheriff actually taking possession of the property where specific property is to be bound by the attachment. In both cases, purchasers and secured creditors would have notice of the limitation of the title

\textsuperscript{127} See, e.g., M.J.L.A § 8(c)(ii).


\textsuperscript{130} See, e.g., State v. Friedman, 283 Md. 701, 393 A.2d 1356 (Md. App. 1978).
which the defendant can convey. Where the plaintiff can establish that this is not sufficient protection, the court could enjoin the defendant from conveying or misusing the property, or, if necessary, the court could authorize seizure of the property.

The doctrine of *lis pendens* functions similarly to a pre-judgment attachment of land. The doctrine provides that if the pleadings explicitly place title to land at issue, any interests in the land that arise after the initiation of the lawsuit are subject to the court’s decision in that lawsuit. This device provides constructive notice to purchasers of the land, thus, guaranteeing the creditor’s priority over such buyers. In many states, a notice must be filed in the land records to enforce the doctrine. In others, the filing of a notice is not necessary. Purchasers and mortgagees need to consult court dockets for pending lawsuits against their transferors. The doctrine would survive under the proposed system, but it may be necessary to continue to require that a specific notice be filed, unless all law suits in the state are searchable in the statewide system.

V. MISCELLANEOUS PROBLEMS

A. Transition to a New System

The duration of judgment liens is generally between eight and twelve years. Due process may require that creditors with liens that arose prior to legislation providing for the establishment of the MJLA system maintain their liens on real property for the balance of the

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131. MJLA § 6. Alternative A would be available in those systems in which the entire court docket is available for search and not just the judgments themselves.
133. Chrysler Corp. v. Fedders Corp., 670 F.2d 1316 (3d Cir. 1982).
136. MJLA § 7 (Alternative B).
137. *Id. (Alternative A).* Two counties are experimenting with systems in which the actual filing of documents can be done by modem from the lawyer's office. Other documents in those proceedings would be scanned electronically and available in a search of the court records. Arleen Jacouls, *Two More Courts Add Electronic Filing*, 81 A.B.A. J. 20 (Sept., 1955). In such a system, even Lis Pendens could operate without any additional notice filing.
judgments’ lives. Of course, those creditors will maintain their outstanding liens. However, after the effective date of the statute, all action must be taken in compliance with the statute. Moreover, the proposed statute provides for those judgment creditors who have obtained judgments prior to MJLA’s effective date to record their judgments in the new system in order to take advantage of the statewide and expanded property coverage of the new system.

B. Search Efficiency

The establishment of and reliance on a state-wide database will present problems of both “overinclusiveness” and “underinclusiveness.” The “overinclusiveness” involves two aspects. First, some names may be very common and thus a search by a prospective lender or buyer of property would turn up a large number of records. The inclusion of additional identifying information in the database at the time the judgment is rendered would be a partial solution to this problem. These include the debtor’s address, date of birth and social security or tax identification number. Such information already is included as a matter of course in some systems. With this additional information a person can easily eliminate many, if not all, of the extraneous results of the search. Where the identifying information is not included in the record of the judgment, the law could require judgment creditors to obtain and supply such information. MJLA includes such a requirement in section 3(a). It should be noted that the proposal requires that

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139. In the text I refer to protecting only those liens arising prior to the legislation and not the institution of the proposed system. Presumably, after the system is legislated but before it is in place, judgment creditors would be on notice as to the necessity of filing with the new system.

140. MJLA § 2(d).

141. For a discussion of search problems and potential solutions in the context of potential computerization of U.C.C. filings, see Lynn LoPucki, Computerization of the Article 9 Filing System, 55 L. & CONTEMP. PROB., 5, 19-29 (Summer 1992).

142. A search of California judgments in LEXIS turned up 388 debtors named Jim or James Jones. Fortunately only one appeared under Charles Shafer. The “All Judgments” file in LEXIS (which includes all of the states covered by LEXIS) turned up 573 John Smiths and only 27 Charles Shafers.

143. See CAL. CIV. PROC. CODE § 674 (West Supp. 1993). Filing of the abstract without such information and no explanation will invalidate the judgment lien, since the creditor has not “substantially complied with statutory formalities.” Id. See Keele v. Reich, 169 Cal. App. 3d 1129, 1133 (Cal. Ct. App. 1985) (holding strict compliance with statutory guidelines is required). See also McKnight v. Faber, 185 Cal. App. 3d 639 (Cal. Ct. App. 1986).

the judgment creditor supply such information within one year. Therefore any judgment older than one year for which such information is not available would not be protected by the lien. For those cases where the requirement of identifying information does not completely eliminate the problem that the prospective buyer or lender cannot be sure that her prospective transferor is not one of the parties against whom a lien is established, the proposed statute provides a mechanism for the lender or buyer to contact the judgment creditor. The creditor's cooperation is guaranteed by the available sanction of "suspending" the lien. 144

The problem of "underinclusiveness" is created where the search under the name of an individual or corporation does not turn up a relevant judgment. This could be caused by either changes in the name of the debtor or slight variations in spelling. The latter problem now can be easily solved since a reasonable search would include all likely spellings of the debtor's name. 145 However, in cases where the debtor changes her name after the judgment, the problem is more complicated. There are, however, a number of factors which will limit the problem. If the debtor is an individual and has legally changed her name, the judgment in such a case would be found by the computer search. If the debtor is a corporation that has changed its name, and if state corporate records were also searchable in the proposed system, such a name change would be located. If the debtor retains the same social security number or tax identification number, a search by social security number would locate appropriate judgments. Finally, where property is subject to a title recordation system (such as land and intellectual property), the lien against the debtor will often be revealed. For example, suppose A gets a judgment against D while D owns Blackacre or before D acquires Blackacre. Subsequently, D changes her name to Q and reconveys Blackacre to herself under the name of Q. The title search of Q will produce record of D's ownership and the judgment search of D will produce A's lien. This would not be true if D had acquired the property under the name of Q. There would be no way for a purchaser of real property to find D in the chain of title. Further-

144. MJLA §§ 3(a), (b), (c), (d).
145. My first name, Charles, could also be Chuck or Charlie. My last name is spelled by students as Shaffer, Schaefer, Schaeffer or Schafer. The search software could be easily constructed to search for all possible variations at once. In fact it could have a thesaurus of alternative spellings of many names. There is software already available that assists in searching for all words that sound like a particular word. Jacob R. Jacobs, Finding Words That Sound Alike: The Soundex Algorithm, BYTE, March, 1982 at 473.
more, if intellectual property were involved, there is a possibility that
the property could be owned by D at the time she was going under the
name of D but never recorded under that name. It is not necessary to
register a copyright in order to have a copyright.¹⁴⁶ Registration is per­
missive.¹⁴⁷ Therefore, if at the time A gets a judgment against D, D
had written a book entitled “The Three Faces of D,” A, by making the
appropriate filings, would have a lien against D’s copyright to that
book. But if D then changes her name to Q and registers the copyright
under the name Q, a potential buyer of that copyright could find no
record of A’s interest.

Therefore, in those situations where an appropriate search could
locate the judgment creditor’s interest, the judgment creditor should
not be defeated by the judgment debtor’s change of name. These in­
clude situations where the search will locate official name changes or
where a search by social security number would locate the lien. The
judgment creditor should also be protected where the debtor’s name is
included in a title search of property. In the remaining situations the
question is raised regarding how to allocate the risk of the change in
the debtor’s name. The U.C.C. provides that where the debtor materi­
ally changes her name, filing becomes ineffective with regard to collat­
eral acquired more than four months after the change.¹⁴⁸

The proposed system adopts this solution with the following excep­
tions.¹⁴⁹ First, where a search by tax identification number or social
security number would locate the judgment, the lien is retained. Sec­
ond, where the original name can be located in the chain of title for
real property or intellectual property, the lien is retained. Third, the
lien is only ineffective against those who obtain an interest in the prop­
erty before the judgment creditor eventually records the change of
name. Fourth, the protection only applies to secured creditors and pur­
chasers. Subsequent judgment liens against the debtor under her new
name would be subject to the prior recorded lien under the old name.¹⁵⁰

This deviation from the U.C.C. is based on the fact that judgment

¹⁴⁷ Id. § 108.
¹⁴⁹ MJLA § 4(a)(ix).
¹⁵⁰ Of course, the original judgment creditor would still take the risk that the property would
be seized and sold by the subsequent judgment creditor without anyone knowing that original judg­
ment creditor had an interest in the property. See MJLA § 1(g)(viii). If the original judgment
creditor intentionally allowed the debtor to operate under a new name and only later revealed her
interest after others had become creditors of the debtor, such conduct would be penalized under
MJLA § 4(a)(xv). Such conduct would be similar to a fraudulent conveyance buy would not be
creditors have not relied on the presence of clear title to specific property in the same way as secured creditors and purchasers have. Finally, the proposed statute does not distinguish between property acquired before and after the change of name as does the U.C.C. While a secured creditor's protection is specifically derived from the fact that she is allowing the debtor to retain specific property, the judgment creditor should be encouraged to locate and seize property in a diligent manner. The judgment creditor cannot claim to have placed reliance on the debtor owning specific property. Therefore, in this context, as opposed to the secured creditor context, it is not necessary to grant the original judgment creditor increased protection for property acquired prior to the change of name.

VI. CONCLUSION

Modern technology could be a useful vehicle for overhauling the system for the enforcement of judgments. This article has illustrated some of the advantages of such a system, the problems that would be encountered in attempting to bring about that overhaul, and how these problems might be resolved.

APPENDIX

PROPOSED MODEL JUDGMENT LIEN ACT

§ 1 Definition of Terms
As used in this statute
(a) **Buy** means to acquire an interest in property (other than a lien or security interest) for consideration in money or money's worth.
(b) **Debtor** means a party against whom a money judgment is rendered.
(c) **Investment Security** means a security under [STATE REFERENCE TO 8-102(c) of U.C.C.]
(d) **Judgment Creditor** means
   (I) a party in whose favor a money judgment is rendered, and
   (II) an assignee of the rights of a judgment creditor
(e) **Lien** means a right to have property sold in satisfaction of a judgment by any of the following procedures: [INSERT STATUTORY REFERENCES TO ALL STATE PROCEDURES]

voidable under the Uniform Fraudulent Transfers Act because the transfer (the lien) occurs prior to the fraudulent conduct. **Unif. Fraudulent Transfers Act** § 4.
(f) PROPERTY means all rights to property in this state or the situs of which is not in any particular state or country including (but not limited to) all real property, personal tangible and intangible property, intellectual property, choses in action, stock and other ownership interests, and accounts receivable whether or not the transfer of such property is governed by the laws of this state or depends on actions taken outside of this state.

(g) PROTECTED PURCHASER means

(i) A person who buys in the ordinary course of business and for less than $5,000 tangible personal property from a merchant who deals in goods of that kind.

(ii) A person who buys for personal, family or household use property the transfer of which must be recorded under the following statutes of this state: [INSERT STATUTES] where the lien provided for under this title has not been so recorded.

(iii) A person who buys for less than $5,000 property the transfer of which must be recorded under the following statutes of this state: [INSERT STATUTES] where the lien provided for under this title has not been so recorded.

(iv) A person who buys or obtains a security interest in property governed by federal law where such law provides a separate place for the filing or recording of transfers of such property and where under such law the buyer or secured creditor has priority over the holder of the lien provided for under this title.

(v) A person who buys personal property for personal, family or household use without knowledge of the lien created by this title other than property the transfer of which must be recorded under the following statutes of this state: [INSERT STATUTES] where the lien provided for under this title has not been so recorded.

(vi) A person who obtains an interest in property from a protected purchaser.

(vii) A bona fide purchaser of an investment security under [STATE REFERENCE TO 8-302 OF U.C.C.], a holder in due course of a negotiable instrument under [STATE REFERENCE TO 3-302 OF U.C.C.] and a holder to whom a negotiable document has been duly negotiated under [STATE REFERENCE TO 7-502 OF THE U.C.C.].

(viii) A purchaser at a properly conducted execution sale.

(h) Purchase Money Security Interest means a security interest of personal property or a mortgage of real property to the extent that it is
(i) taken or retained by the seller of the property to secure all or part of its price; or
(ii) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of the collateral if such value is in fact so used.

(i) Security Interest means any interest in property to secure payment of an obligation governed by: [INSERT STATUTORY REFERENCE TO ARTICLE 9 AND STATE REAL PROPERTY MORTGAGE LAW].

(j) A JUDGMENT is
(i) RENDERED when [REFER TO ACT OF COURT REQUIRED]
(ii) ENTERED when [REFER TO ACT OF CLERK REQUIRED]

§ 2 Creation of a Judgment Lien
(a) A lien on all property of the debtor, then owned or after acquired, to secure satisfaction of the judgment shall arise upon the rendition of a money judgment of the [LIST COURTS OF STATE] which is entered after [EFFECTIVE DATE OF STATUTE].
(b) ALTERNATIVE A: A lien on all property of the debtor, then owned or after acquired, to secure satisfaction of the judgment shall arise upon the rendition of a money judgment of the [FEDERAL COURTS SITTING IN THIS STATE] which is entered after [EFFECTIVE DATE OF STATUTE].
ALTERNATIVE B: A lien on all property of the debtor, then owned or after acquired, to secure satisfaction of the money judgment of the [FEDERAL COURTS SITTING IN THIS STATE] which is entered after [EFFECTIVE DATE OF STATUTE] shall arise upon the recording of a notice thereof in a database searchable through the software required by § 11 of this title.
(c) Notwithstanding any other statute of this state, no lien which arises by virtue of any court order, judgment, execution, or the filing of notice of a court order, judgment, or execution, and which would not be effective but for any act not taken before [EFFECTIVE DATE OF STATUTE], shall arise unless action is taken in compliance with this title.
(d) A person who has a money judgment from any court of this state or who has imported into this state a money judgment from any other state, country or federal court may obtain a lien on all property of the debtor within this state by filing a notice of said judgment in compliance with the rules set forth in § 3(a).
(c) A lien obtained by this statute shall be effective as of the date of rendition of the said judgment.
(f) A lien obtained by this title shall be effective against all after-acquired property of the debtor.
(g) No judgment lien, whether or not obtained under this title, may be renewed other than under this title.
(h) A lien which arises under this title shall expire when the statute of limitations has expired on the judgment upon which the lien is based, unless the judgment is revived prior to the expiration of the statute of limitations.

§ 3 Procedure for Creating & Maintaining a Judgment Lien
(a)(i) A lien obtained under § 2(a) of this title shall expire one year after the lien arises if the judgment creditor does not file a statement as set forth in subsection (b) of this section where the information is not contained therein is not already included in the database required by § 10 of this title.

(ii) A lien may not be obtained under any section of this title other than § 2(a) unless the judgment creditor files a statement as set forth in subsection (b).

(iii) A lien obtained under this title shall lapse if the creditor's address changes and notice of such change is not filed with the clerk of any Circuit Court within thirty (30) days.
(b) When required by this title, the judgment creditor shall file with [CLERKS OR OFFICES WITH WHICH INFORMATION MUST BE FILED] the following information, or a sworn statement indicating why such information is not available:

(i) Debtor's current name;
(ii) Debtor's Social Security Number or Tax I.D. Number;
(iii) Debtor's Date of Birth;
(iv) Debtor's last known address;
(v) Judgment creditor's name;
(vi) Creditor's current address; and
(vii) Sworn statement by the creditor that the judgment is valid, enforceable, and unsatisfied.
(c) The judgment creditor must respond within thirty (30) days to any person who seeks to determine whether a particular person is or is not the debtor.
(d) Any person may petition [NAME OF COURT] for an order declaring any lien created by this title suspended where the judgment
creditor has failed to respond as required by subsection (c) of this section.

(e) The judgment creditor may petition [NAME OF COURT] for an order reviving a lien suspended by subsection (d) of this section.

(f) Any person may petition [NAME OF COURT] for an order declaring a lien arising under this title void by reason of the satisfaction of the judgment, the expiration of the lien under § 2(g) or discharge in bankruptcy.

(g) The judgment creditor may petition [NAME OF COURT] for an order reviving a judgment.

(h) (i) Where the judgment debtor so changes his name that the lien under this title could not be discovered upon a reasonable search the judgment creditor must file a revised statement within four months of the date the debtor adopts the new name.

(ii) If the judgment creditor does not comply with the requirement subsection (h)(i), all property owned by the judgment debtor shall be deemed protected until the judgment creditor so complies.

(iii) The following property is not protected: All real property and intangible property subject to a federal recording system where the debtor’s ownership is recorded.

§ 4 Priority of Claims

(a) The lien provided for in this title shall be effective against the debtor, all creditor’s of the debtor and all parties who claim any interest in the property of the debtor except for

(i) Judgment creditors with liens which arose prior to the time of the lien in question;

(ii) A protected purchaser;

(iii) A purchase money security interest;

(iv) A person with regard to whom the judgment creditor has not responded as required by § 3(c) of this title and who’s interest in the property arose after the time for such response has past;

(v) A person who had a security interest in personal property under [STATE REFERENCE TO ARTICLE] which defeats a lien creditor;

(vi) A person who had a mortgage in real property under [STATE STATUTORY REFERENCE] which defeats a lien creditor prior to the date on which the lien in question arose;

(vii) A possessory lien created by [STATE STATUTORY REFERENCE];
(viii) Any interest in property acquired after the lien was suspended under § 3(d) of this title and before the lien was revived under § 3(e) of this title;

(ix) A person with a security interest in a certificated investment security who has priority over a lien creditor under 8-321 and Article 9 of the U.C.C.;

(x) A person with a security interest or a judgment lien in an investment security who has priority over a lien creditor under 8-321 or Article 9 of the U.C.C. unless

(A) The chief executive office of the issuer is in this state, or

(B) (I) The chief executive office of the issuer is in a state which provides for the filing of judgment liens, and

(II) The lien in the investment security has been filed prior to the time that the judgment lien in question was filed in that state.

(xi) A person with an interest in a copyright who has priority under 35 U.S.C. § 261;

(xii) A purchaser or mortgagee of a patent who has priority under 17 U.S.C. § 205(d);

(xiii) A person with an interest in a trademark which arises prior to the sale of the trademark at an execution sale or a judicial sale;

(xiv) A person who buys or obtains a security interest in property while it is protected by § 3(h) of this title;

(xv) A person who becomes a creditor of while the property is protected by § 3(h) of this title if the judgment creditor knows of the change of name.

§ 5 Statute of Limitations of a Judgment Lien

(a) [INCORPORATE STATE STATUTE OF LIMITATION]

(b) No renewal or revival of a judgment shall create a lien under this title unless the judgment creditor files a statement as forth in § 3(b) of this title.

§ 6 Pre-Judgment Attachment

(a) ALTERNATIVE A: For states where complete docket information is searchable: A person may obtain a lien under this title on all of the property of another person, or upon specific property by obtaining a pre-judgment attachment.

(b) ALTERNATIVE B: For states where complete docket information is not searchable:(i) A person may obtain a lien under this title on all of the property of another person, or upon specific property by ob-
taining a pre-judgment attachment and filing said order [INSERT WHERE FILING MUST BE MADE].

(ii) A pre-judgment lien shall be subject to the rules set forth [INSERT STATE STATUTORY REFERENCE].

§ 7 Lis Pendens Notices
(a) Where a plaintiff is entitled to protection of the doctrine of lis pendens, a lien shall be created under this title.

(i) ALTERNATIVE A: For states where complete docket information is searchable: as of the date of the commencement of the lawsuit.

(ii) ALTERNATIVE B: For states where complete docket information is not searchable: by filing notice thereof [INSERT WHERE FILING MUST BE MADE]

§ 8 Foreign Judgments
(a) Upon the filing [INSERT WHERE FILING MUST BE MADE] of an out-of-state federal court judgment a lien shall arise under this title.

(b) Upon the filing of a foreign state judgment [INSERT WHERE FILING MUST BE MADE] a lien under this title shall arise.

(c)(i) Upon the filing of a judgment of a foreign country [INSERT WHERE FILING MUST BE MADE] a lien under this title shall arise. However, the judgment creditor shall not be entitled to proceed against any property of the debtor until the creditor has complied with the provisions of [INSERT STATE STATUTE].

(ii) Any party in interest may move in [INSERT NAME OF COURT] for removal of the notice filed under subsection (c)(i) of this section for good cause.

§ 9 Property rights controlled or created by other jurisdictions
(a) Where federal law or the law of another state provides a separate place for the filing or recording of transfers of particular types of property, any creditor may obtain an order from the [STATE FILLS IN APPROPRIATE COURT] authorizing the creditor to file a notice of a lien created by this title. Such notice shall include a copy of the court order.

(b) The court shall issue such order only after a hearing upon notice to the party against whom the transfer is alleged.

(c) The order may specify the particular property in which the creditor claims an interest.
(d) The order shall authorize the sheriff to sell the debtor's interest in the property.

(e) To the extent that federal law governs the priority of interest in property such law shall govern the priority of liens established under this title.

(f) In the case of the execution of a state or federal trademark, the purchaser first must be:
   (i) in the business of sufficiently similar products and/or services; and
   (ii) transfer of such trademark must not lead to consumer confusion as to the established associations of the mark.

§ 10 Creation of Searchable Database

(a) The [INSERT NAME OF STATE OFFICE] shall create or otherwise obtain software which is capable of searching under the name of any person in all of the Databases provided for in this section and locating the following information about that person:
   (i) All judgments which create liens under § 2(a) of this title.
   (ii) All notices provided for under § 2(c) of this title.
   (iii) All notices provided for under § 3(b) of this title.
   (iv) ALTERNATIVE A: All court orders provided for under § 6(a) of this title.
   ALTERNATIVE B: All filings provided for under § 6(a) of this title.
   (v) ALTERNATIVE A: All pleadings which may establish a right to the doctrine of lis pendens.
   ALTERNATIVE B: All filings provided for under § 7(a) of this title.

(b) The [INSERT TITLES OF CLERKS OR OTHER OFFICERS] shall enter into a database all of the items specified in Subsection (a) of this section.

(c) The [INSERT TITLES OF CLERKS OR OTHER OFFICERS] shall remove from the database or shall identify as purged a record of a judgment where the lien has expired under § 3(a) of this title or has been declared void under § 3(f) of this title.

(d) The [INSERT TITLES OF CLERKS OR OTHER OFFICERS] shall remove from the database or shall identify as suspended a record of a judgment where there has been an order suspending the lien under § 3(d) of this title.
(e) The [INSERT TITLES OF CLERKS OR OTHER OFFICERS] shall enter into the database or shall identify as revived a record of a judgment where there has been an order reviving the lien under § 3(e) of this title.

§ 11 Availability of Software and Terminals
(a) [Provision that terminals for searching the databases required by § 10 should be available in courts of the state]
(b) [OPTIONAL: Provision that software should be made available so that any person can search the databases from a remote location, i.e. dial up by modem].