



www.QGTLaw.com

The Differing Durations of Judgments and Judgment Liens

November 2015

By: Daniel D. Boland

Contact:

Daniel D. Boland
501.379.1710
dboland@QGTLaw.com

There are a variety of means by which a judgment may be enforced against a judgment debtor in Arkansas. Among the most common are writs of execution, where the sheriff is directed to seize the debtor's property for the purpose of having it sold to satisfy the judgment, and writs of garnishment, where the debtor's employer or bank is required to withhold wages or bank deposits and pay them to the judgment creditor. Another potential aid in collecting a judgment is the judgment lien, which attaches to all real estate owned by the judgment debtor in the county where the judgment was rendered. It often goes unrecognized that the period during which a judgment is generally enforceable against the debtor and the duration of the judgment lien do not necessarily coincide. They are governed by different statutes and different rules of common law. A statutory amendment adopted in the 2015 Arkansas legislative session highlights and reinforces this distinction.

The period during which a judgment is generally enforceable against the debtor is governed by Arkansas Code § 16-56-114 - the statute of limitations applicable to judgments. It provides for a ten year limitation period after which, unless the period has been extended, further enforcement action is barred. However, if the debtor makes a payment on the judgment debt, or if the creditor causes the issuance of process or execution, including a writ of garnishment, to attempt to collect the judgment before it is barred, the statute of limitations will be tolled and a new ten year period for enforcing the judgment will commence. See, e.g., *Primus Automotive Financial Services vs. Wilburn*, 2013 Ark. 258, 428 S.W.3d 480 (2013).

The judgment lien, on the other hand, is governed by Arkansas Code § 16-65-117. Under that section, the duration of the lien is also ten years from the date of the judgment, but, unlike the statutory period for general enforcement of the judgment, a judgment lien will not be extended by payments made by the debtor or the issuance of process or execution to collect the judgment. A judgment lien on real estate may be extended only by suing out a *scire facias* using the procedure set forth in Arkansas Code § 16-65-501, which involves having a writ issued in the action in which the judgment was rendered. Act 1113 of the 2015 legislative session amended

Arkansas Code § 16-65-117(d)(1) to state more explicitly that suing out a *scire facias* is the exclusive means by which the duration of a judgment lien may be extended.

Judgment creditors should be aware that, even if it has been more than ten years since a judgment was rendered and no *scire facias* has been sued out, the judgment may nevertheless remain enforceable by virtue of some earlier payment by the debtor or effort by the creditor to collect the judgment, any of which may have extended the life of the judgment. Conversely, title examiners can take comfort in the fact that none of those actions will extend the duration of the judgment lien. An examiner can conclusively determine whether an old judgment remains a lien simply by reviewing the court file for the case in which the judgment was rendered to see if a *scire facias* was ever sued out.