**CHILD SUPPORT LIENS**

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**COLLECTIONS IN GENERAL**

* Basic court remedies for judgment creditors include garnishments, interrogatories and sale of personal and real property.
* Creditors have the means to collect money judgments from debtors’ properties, real and personal, yet at the same time debtors have certain property protections. See **Va. Code** **§§ 8.01-96 – 8.01-113** (General Provisions for Judicial Sales); **Va. Code** **§§ 8.01-466 – 8.01-525** (Execution and Other Means of Recovery); and **Va. Code** **§§ 16.1-79 – 16.1-118.1** (Procedure in Civil Cases).
* Debtors’ protections derive from Virginia and federal statutes; many of these protections do not apply to the collection of child support. Basic exemptions and protections include:
* Poor debtor’s exemption – allows the debtor to claim certain items of property exempt from general creditors. **Va. Code** **§ 34-26**.
* Personal injury and wrongful death actions exemption – protects proceeds from personal injury settlements from general creditors. **Va. Code** **§ 34-28.1**.
* Wage and retirement exemptions – create a reserve of income which cannot be seized by creditors. **Va. Code** **§§ 34-29 – 34-34**.
* Homestead exemption allows the debtors, depending on their circumstances, to claim property exempt from creditors up to a certain amount of cash value; once the maximum amount of cash value is utilized, the homestead exemption cannot be used again. **Va. Code** **§§ 34‑4 ‑ 34-25**.
* Spendthrift provision. **Va. Code** **§ 64.2-743**.
* Marital protection – tenants by the entireties in real and personal property. **Va. Code** **§ 55.1-136**.
* Order in which debts of decedents to be paid. **Va. Code** **§ 64.1-157**.

**CHILD SUPPORT COLLECTIONS**

* The claim of the Division for a support debt, not paid when due, is a lien when docketed against all property of the debtor in the county or city where docketed with priority of a secured creditor. It takes priority over all other debts and creditors under state law of such debtor, except that the lien remains inferior to those liens created under **Va. Code** **§ 8.01-66.2** or **§ 8.01-66.9**, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. The lien of the Department remains subordinate to the lien of any prior mortgagee. **Va. Code § 63.2-1927**.
* A lien may be filed if arrears are equal to or greater than $500, or there is evidence the noncustodial parent (NCP) owns real or personal property located in Virginia.
* There is no requirement for DCSE to file multiple liens. The Division may only file one lien per ASO or support order against the NCP (one per DCSE case number) in each jurisdiction where the NCP may have assets or real property. If the NCP has real estate in one locality, one lien per ASO or support order should be filed in that locality.
* The Division has authority to negotiate settlements of liens; settlement does not affect the remaining support arrearages. **Va. Code** **§ 63.2-1927**.
* Federal law requires states to implement immediate income withholding and to seize lump sums from workers’ and unemployment compensation, lotteries, judgments, or settlements; attach assets in financial institutions and retirement funds; force the sale of property; and impose liens, which must arise by operation of law. **§ 42 U.S.C. § 666.** See also **Va. Code §§ 63.2-1923 – 1926** (administrative income withholding); **Va. Code** **§§ 63.2-1927 – 1941** (enforcement remedies); and **Va. Code** **§§ 20‑79.1 - 20-79.3** (court-ordered income withholding).
* Debtors’ exemptions from creditor levies on property do not apply to levies in collection of child support judgments. **Va. Code** **§ 34-5**.
* Debtor protections that apply to personal injury claims do not apply to child support judgments. **Va. Code** **§§ 34-28.1** and **63.2-1927**.
* A court can enter an order attaching present or future trust distributions for child support, even if it contains a spendthrift provision. **Va. Code § 64.2-744.**
* **Va. Code § 34-29** and the Consumer Credit Protection Act (CCPA) (**15 U.S.C. § 1601 *et seq.***) expand the amount of disposable income that can be withheld from 25% to 50% and beyond from a debtor’s wages for a child support income withholding order or garnishment.
* The Employee Retirement Income Security Act (ERISA) permits the alienation of retirement plan for the collection of child support through a qualified domestic relations order (QDRO). **29 U.S.C. § 1056**.

**PRIORITY OF LIENS Va. Code § 63.2-1927**

* The Division’s liens take priority over all other debts and creditors with a few exceptions:
* Liens on real estate – the Division’s liens are subordinate to liens of prior mortgagees.
* Proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement – the Division’s liens are only inferior to:

(1) medical/Medicaid liens created under **Va. Code** **§§ 8.01-66.2** and **8.01-66.9**;

(2) any statutory right of subrogation accruing to a health insurance provider; and

(3) attorneys’ fees.

**PERSONAL PROPERTY**

* An action for distraint, seizure and sale of personal property subject to a support lien may be brought by the Commissioner in the jurisdiction where the lien is docketed and the property is located. **Va. Code § 63.2-1933**.

**REAL ESTATE**

* The judgment lien is the primary means that an otherwise unsecured creditor uses to collect a judgment from the debtor’s real property, it also provides some protection to the debtor.
* An administrative lien issued by the Division is recorded in the judgment docket book in the circuit court where the land is situated. It has the same legal effect as a judgment lien abstract filed from a court. The Division may file liens in multiple jurisdictions where the NCP has or may have an interest in real property. **Va. Code § 63.2-1927**.
* The Division is exempt from any filing fees charged by the clerk for filing of land records. **Va. Code** **§§ 17.1-258.3:1, 17.1-266, 63.2-1959**.
* When a lien is filed in the circuit court, the lien encumbers all real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time the judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated; the lien continues in existence for 20 years unless revived. **Va. Code** **§§ 8.01-458; 8.01-460**.
* The Division may release a specific piece of real property from the lien without releasing the judgment lien. The property is released using a Certificate of Partial Satisfaction. This may occur when the NCP is one of several owners of a piece of property. **Va. Code** **§ 63.2-1938**.
* The Commissioner may release a support lien on all or part of the property if the assurance of payment is adequate or if such action will facilitate collection of the debt. The Commissioner’s release will not prevent further action to collect from the same or other property. **Va. Code** **§ 63.2-1938**.
* The Division can only collect the actual interest of the NCP or judgment debtor.
* An action in foreclosure of lien upon real estate may be brought in the circuit court of the jurisdiction wherein the real estate is located and the lien has been filed. **Va. Code §§ 63.2-1934; 63.2-1935**.
* The judgment that is the basis of the lien is good for 20 years unless it is extended. *Adcock v. Dep't of Soc. Servs., Div. of Child Support ex rel. Houchens*, 282 Va. 383, 390-391, 719 S.E.2d 304, 308 (2011).

**WORKERS’ COMPENSATION AWARDS**

* Workers’ compensation benefits are included in the definition of income pursuant to **Va. Code § 20‑108.2(C)**.
* **Va. Code § 65.2-531(A)** makes benefits paid in compensation under **Va. Code §§ 65.2-500** and **65.2-502** subject to claims for spousal and child support. See also **Va. Code § 63.2-1941.**
* When the Division sends an Order to Withhold (OWD) or an Income Withholding Order (IWO), it must clearly state that it is for child or child and spousal support. **Va. Code §§ 62.2-1929; 63.2-1927.**

* The Division is limited in income withholdings to 60% of the disposable earnings for a given week. **Va. Code § 34-29(b1)(1)**. Further, if the debtor supports a spouse or dependent child other than those who are the subject of the income withholding, the Division is limited to 50% of the disposable earnings. The amounts change to 65% and 55% if the obligation is more than twelve weeks delinquent. **Va. Code § 34-29(b1)(2)**. Disposable earnings are defined as that part of the earnings of any individual remaining after the deduction of any amounts required by law to be withheld. **Va. Code § 34-29(d)(2)**.
* Should an injured NCP receive a lump sum payment and the Division issues an OWD, the Division can attach 100% of the settlement. The Workers’ Compensation Commission has no jurisdiction to rewrite an OWD. If the OWD is written for 100%, the carrier must turn over 100%. See *Minor v. Aramark,* 59 Va. App. 622, 721 S.E.2d 818 (2012). When the Division does not know what percentage of the settlement is attributable to lost earnings, the OWD should be written for 100%; the NCP can appeal the OWD through the administrative process to claim any exemptions under Va. Code § 34-29 and to request attorneys’ fees.