

NONJUDICIAL LIENS

- **Lien:** A claim against a debtor's property that must be satisfied before other creditors may claim the property or its proceeds to satisfy the debtor's obligations to them.
- **Mechanic's Lien:** A lien on real property to ensure payment for work performed and materials furnished in the repair or improvement of real property.
- **Artisan's Lien:** A lien on personal property to ensure payment for services performed to repair, improve, or enhance the value of the personal property.
 - Unlike the mechanic's lien, the artisan's lien is typically *possessory* (*i.e.*, the lienholder possesses the liened property).
- **Foreclosure:** A statutory lienholder may, after the debtor defaults and after proper **notice**, sell liened property, in accordance with state law, to satisfy the unpaid debt (plus interest and costs).

JUDICIAL LIENS AND COMPOSITION AGREEMENTS

- **Judicial Lien:** A lien a creditor obtains by judicial order.
 - **Writ of Attachment:** A court order, issued before the creditor obtains a judgment against the debtor, directing the sheriff to seize and take into custody the debtor's nonexempt property.
 - **Writ of Execution:** A court order, issued after the creditor obtains a judgment against the debtor, directing the sheriff to seize and sell the debtor's nonexempt property to satisfy the judgment.
 - **Garnishment:** Legal process a creditor may use to seize the debtor's property (*e.g.*, wages) being held by a third-party *garnishee* (*e.g.*, the debtor's employer).
- **Exemptions:** Federal and state law exempt a substantial part of a debtor's **wages** or **salary** from attachment, execution, or garnishment. State law typically exempts other types of property from attachment, execution, or garnishment.
- **Composition Agreement:** An agreement between a debtor and his creditors by which the creditors agree to accept, in full satisfaction of a debt, a lesser sum than the debtor owes.

MORTGAGES

- **Mortgage:** A written instrument that gives the creditor an interest or lien on the debtor's real property as security for payment of a debt.
- **Fixed-Rate Mortgage:** Has an unchanging rate of interest, so payments remain the same for the duration of the loan.
- **Adjustable-Rate Mortgage:** Mortgage in which the rate of interest changes periodically.
- **Creditor Protection:** Creditors take a number of steps to protect their interest in a mortgage, including:
 - (1) Requiring mortgage insurance
 - (2) Recording the mortgage with the appropriate office in the county where the property is located
 - (3) Including contract provisions, such as a **prepayment penalty clause**

FORECLOSURE

- **Foreclosure:** The legal process by which the lender repossesses and auctions off the property that has secured a loan.

- **Ways to Avoid Foreclosure:**
 - **Forbearance:** A postponement of part or all of the payments on a loan for a limited time.

 - **Workout Agreement:** A contract that describes the respective rights of the borrower and the lender as they try to resolve the default without proceeding to foreclosure.

 - **Short Sale:** The sale of the property for less than the balance due on the mortgage loan. Typically the borrower has to show some hardship such as the loss of a job.

 - **Right of Redemption:** The right by which a defaulting borrower can redeem the property before the foreclosure sale by paying the full amount of the debt.

SURETYSHIP AND GUARANTY

- **Suretyship:** An express promise by a third party (the *surety*) to a creditor to be **primarily** responsible for the debtor's obligation to the creditor.
- **Guaranty:** An express promise by a third party (the *guarantor*) to a creditor to be **secondarily** responsible for the debtor's obligation to the creditor – that is, to pay the debt if, but only if, the debtor defaults.
- The **statute of frauds** requires a guarantor to sign a writing evidencing the guaranty agreement.
 - **“Main Purpose” Exception:** The statute of frauds does not mandate a signed writing if the guaranty agreement's main purpose is to *benefit the guarantor*.

DEFENSES OF SURETIES AND GUARANTORS

- **Material Modification:** Any material modification to the terms of the underlying agreement between the principal and its creditor not authorized by the surety or guarantor will discharge a guarantor or surety in part or in whole.
- **Surrender or Impairment of Collateral:** If the creditor surrenders or impairs the debtor's collateral without the guarantor or surety's authorization, the guarantor or surety is discharged to the extent of any loss due to the surrender or impairment.
- **Payment/Tender:** If the underlying debt is paid, or if payment is properly tendered but rejected by a creditor who knows of the guarantor's or surety's existence, the guarantor or surety is discharged.
- **Other Defenses:** Sureties and guarantors are entitled to assert the same defenses against payment as the debtor, except for
 - (1) the debtor's lack of capacity,
 - (2) the debtor's having filed bankruptcy, and
 - (3) the statute of limitations.

RIGHTS OF SURETIES AND GUARANTORS

- **Subrogation:** The right of a guarantor or surety to stand in the shoes of or be substituted for another party, typically the creditor, and assume all of that party's rights with respect to a particular transaction or series of transactions.
- **Reimbursement:** The right of a guarantor or surety to be restored, repaid, or indemnified for costs, expenses, or losses expended or incurred on behalf of the debtor.
- **Contribution:** The right of a *co-guarantor* or *co-surety* (where two or more persons are acting as surety or guarantor) to recover from his co-guarantor or co-surety any costs, expenses, or losses expended or incurred on behalf of the debtor greater than his proportionate share.

EXEMPT PROPERTY

- **Homestead Exemption:** Each state's law permits a debtor to retain his family home, either in its entirety or up to a specified dollar amount, *free from claims of unsecured creditors and trustees in bankruptcy*.
- **Personal Property Exemptions:** In addition to the homestead, state statutes typically protect
 - (1) **household furniture** up to a specified dollar value,
 - (2) **clothing** and certain **personal possessions**, such as family heirlooms,
 - (3) one or more **vehicle(s)** for transportation (at least up to a certain dollar value),
 - (4) certain classified **animals**, including pets, and
 - (5) **business or trade equipment** used by the debtor (up to a certain dollar value).