



## Michigan Supreme Court

State Court Administrative Office

### Friend of the Court Bureau

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Steven D. Capps  
Director

### MEMORANDUM

DATE: November 22, 2017

TO: Chief Circuit and Probate Judges  
Presiding Family Division Judges

cc: Friends of the Court  
Circuit Court Administrators  
Family Division Administrators

FROM: Steven D. Capps

RE: SCAO Administrative Memorandum 2017-03  
Liens for Past Due Support

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The State Court Administrative Office's (SCAO) Friend of the Court Bureau (FOCB), develops guidelines for the conduct, operations, and procedures of all the friend of the court (FOC) offices. MCL 552.519(3)(j)(i) directs the FOCB to develop guidelines for imposing liens. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau. [MCL 552.503(7).]

The Support and Parenting Time Enforcement Act (The Act) defines how to place liens on delinquent payers' property. The Act imposes liens on a payer's real and personal property by operation of law for any past due support. [MCL 552.625a](#). Procedures for perfecting and levying the lien are in [MCL 552.625b](#) through MCL 552.625i.

This memorandum explains when and how to administratively perfect and levy liens on delinquent payers' financial accounts and other property. This memorandum supersedes SCAO Administrative Memorandum 2000-11 and FAQ 2016-01.

Courts and friends of the court should contact Paul Gehm at [gehmp@courts.mi.gov](mailto:gehmp@courts.mi.gov) or 517-373-5975 with any questions.

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## ADMINISTRATIVE LIENS

### Recommended Policies and Procedures

#### A. General Overview

A lien is the right to use another person's property to satisfy that person's debt. Persons transferring or receiving property that is subject to a perfected lien may be liable to the lien holder in the amount of the lien. Once created, a lien may be perfected by giving notice to others as provided in state law that the property is subject to a lien. The law also determines how to sell the property to pay off the debt and creates an order of priority to enforce and collect on property that has more than one lien. In all states, a lien exists by operation of law for past due child support.

The Support and Parenting Time Enforcement Act authorizes a "IV-D agency," which includes friend of the court offices (FOCs), to place liens on delinquent payers' real and personal property.<sup>1</sup> FOCs have responsibility to perfect and enforce some liens, while other liens are centralized with the Office of Child Support (OCS) (e.g., financial institutions data match (FIDM) and insurance claims data match (ICDM) liens).<sup>2</sup> Other states may perfect and enforce their child support liens on a payer's property in Michigan so long as Michigan's notice and review requirements are met.<sup>3</sup> A support lien that arises after other perfected liens is subordinate to those prior perfected liens.<sup>4</sup>

#### B. Creation of Liens

##### 1. Creation and Duration

Support liens arise by operation of law.<sup>5</sup> The lien is created against the payer's real and personal property for past due support (arrears) in favor of the support recipient. The lien is effective immediately at the time that support is due and unpaid, and continues until the arrears are paid in full or the lien is terminated.

##### 2. Notice Requirements – Generally

Michigan statute requires that notice be given to a support payer that liens may arise by operation of law.<sup>6</sup> The notice must also inform the payer that his or her real and personal property can be encumbered (have a lien placed) or seized if an arrearage accrues that meets the statutory threshold. The statute requires that the payer have reasonable notice of the possibility of lien before perfecting the lien.<sup>7</sup>

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<sup>1</sup> MCL 552.27 (Revised Statutes, Divorce) and [MCL 552.625a](#) (Support and Parenting Time Enforcement Act).

<sup>2</sup> When a payer's arrearage exceeds twice the monthly payment amount, the IV-D agency is required to notify the Child Support Lien Network.

<sup>3</sup> [MCL 552.625a\(2\)](#); see [MCL 552.625b](#) and 552.625c for the conditions of notice and review.

<sup>4</sup> [MCL 552.625a\(3\)](#). Priority of a lien helps in determining whether to perfect or levy on a lien. See section C.1 (Considerations Before Perfecting) for a discussion on choosing a case for enforcement.

<sup>5</sup> [MCL 552.625a](#).

<sup>6</sup> [MCL 552.625a\(4\)](#).

<sup>7</sup> [MCL 552.625b](#).

Notice is provided in several forms including the support order, forms about arrearages, or mailed to the payer at any time. Currently, the Uniform Child Support Order (UCSO) includes the required notice – the Friend of the Court Handbook is sufficient if there is proof of service on the payer. If the case includes a Uniform Support Order (USO) prior to the required language, or there is any indication that the payer did not receive notice, the worker should want to review the file to ensure notice was provided.<sup>8</sup>

Notice requirements specific to the steps in the lien process will be described in further detail in the relevant sections.

### 3. Property on Which a Lien is Placed

Liens arise against the payer's real and personal property<sup>9</sup> and specific other property which includes, but is not limited to: money to be paid as a distribution from a decedent's estate; result of a claim for negligence, personal injury, or death; an arbitration award; a settlement of or judgment issued in a civil action; compensation under a worker's compensation order, settlement, redemption order, or voluntary payment.<sup>10</sup>

Liens arise by operation of law against all personal property, including titled, tangible, and intangible personal property. Assets like clothing and household furnishings are examples of titled tangible personal property. Assets like land contracts, legal claims, annuities, stocks, shares, patents, and copyrights are all examples of intangible personal property.

Liens also arise against monies held in financial institutions and owed from insurance claims. Assets from a financial institution or insurance claim may be levied when an arrearage exceeds two months of periodic support. Financial Institution Data Match (FIDM) is the process OCS uses to match information on payers who owe support arrearages against records of their financial assets located in financial institutions. Insurance Claims Data Match (ICDM) is the process that OCS uses to match information on payers who owe support arrearages against records of insurance claims, including worker's compensation.<sup>11</sup>

Perfecting and levying liens against accounts identified by FIDM and ICDM functions are now centralized in the OCS pursuant to criteria developed jointly between SCAO and OCS.<sup>12</sup> For a further discussion of perfecting and levying liens on FIDM and ICDM, refer to the OCS FIDM

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<sup>8</sup> If a new notice is needed, the [Rights and Responsibilities \(FEN XXX\) letter](#) may be used for this purpose. Additionally, the Office of Child Support (OCS) performed a mass mailing to ensure every child support payer received the statutory notice and should be recorded in the file or system notes.

<sup>9</sup> See [MCL 552.625a\(6\)](#) for a list of property on which a lien does not arise.

<sup>10</sup> [MCL 552.625a\(1\)](#).

<sup>11</sup> The FOC has some responsibility when a FIDM/ICDM lien is placed or levied. The FOC caseworker will receive a MiCSES alert when the ADLV activity chain is started. The worker should review the case within seven days from the alert date and if appropriate, exclude it from lien and levy. OCS FIDM policy explains this in greater detail. Valid exclusion reasons include: full payment from the payer, pending or recently completed review and modification causing an adjustment to the arrearage amount, or an approved arrearage payment plan.

<sup>12</sup> This memorandum will discuss liens and levies against financial institutions that arise outside of the FIDM or ICDM process. FIDM and ICDM functions will not be discussed as those issues are covered in OCS policy.

policy (6.27).<sup>13</sup> To avoid duplication, the FOC should not perfect or levy a lien against a financial account or insurance claim that OCS is proceeding against. The FOC office may perfect and levy any assets from a financial institution or insurance claim against which OCS has not placed a lien, as well as non-IV-D cases.

### C. Perfecting a Lien

Perfecting a lien is the process that both provides notice to all interested persons that someone other than the owner has an interest in the property and fixes the claimant's rights to use the property to satisfy a debt. Until a lien is perfected, it is a right that can be divested without consequences.

#### 1. Considerations Before Perfecting

Before perfecting a lien the office should review the case to assure that it meets statutory requirements, that common obstacles in perfecting or enforcing the lien on property of the kind can be avoided, and that it will be worth the effort.

- a. Lien Arrearage Threshold. A lien may be perfected when arrears exceed two times current support due (two months of arrears).
- b. Other Remedies Ineffective in Collecting Past-due Support. Lien enforcement is discretionary. However, in order to meet its duty to initiate enforcement on delinquent support orders, the FOC should perfect a lien when other enforcement techniques are ineffective at obtaining payments and the statutory requirements to perfect the lien exist (i.e., the statutory threshold is met and payer assets are identified).
- c. Prior Notice About Liens. Liens can only be perfected when the payer has had notice, in writing, that liens can arise by operation of law based on his or her delinquency.<sup>14</sup> The notification can be included as part of another enforcement procedure.<sup>15</sup> Additionally, the Rights and Responsibilities (FEN XXX) may serve this purpose.
- d. Type of Property to Encumber. When considering whether to perfect a lien, it is important that the property is not exempt from levy.<sup>16</sup> Also, caution should be exercised so that the lien does not restrict the person's ability to earn income. For example, a possessory lien should not be placed on a payer's tools of trade, which will likely limit the payer's ability to work. If the levy and sale of a vehicle would interfere with the payer's ability to work, it is better to place a lien on recreational use vehicles such as show vehicles, ATVs, snowmobiles, boats, or other watercraft.
- e. Ownership. Liens may be imposed on real property solely owned by the payer or owned jointly. Liens may not be perfected on real property held as tenancy by the

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<sup>13</sup> This policy lays out all of the necessary information related to the entirety of the FIDM process.

<sup>14</sup> [MCL 552.625a\(4\)](#).

<sup>15</sup> The Rights and Responsibilities letter provides sufficient notice.

<sup>16</sup> [MCL 600.6023](#).

entirety.<sup>17</sup> Offices should prioritize placing liens where the payer solely owns the property.

- f. Levy Within an Appropriate Time. The FOC should perfect liens only on property the office is prepared to levy within a reasonable timeframe. A reasonable timeframe may depend on the type of property and value of the property.<sup>18</sup> The value of property (particularly motor vehicles) diminishes over time. Further, the longer the office waits to levy, the more likely it is that other creditors will compete for any equity in the property. Imposing a lien on personal property merely in the hope that there may be a recovery someday if the payer attempts to sell the property will likely not result in any useful collection amount. If the FOC is reluctant to levy in a short time because it may have to take possession of property that has little or no value, there is reason to question the value of perfecting the lien at all.

An exception to perfecting liens that the office would not levy quickly is property that the payer owns with high equity but the payer needs the property for some purpose that would justify not levying the lien (e.g., the property is necessary to aid the payer's custody or parenting time or for generating income), provided that the value will not depreciate quickly.

If a perfected lien is not acted on (levied or terminated) within a short time and when property is identified as having substantial value, the FOC should consider perfecting on that property for any increased arrears to obtain priority over as much of the value as possible. This will give the FOC the best chance to collect more of the arrearages.<sup>19</sup>

- g. Party Requested Liens. In instances when a party requests the office place a lien against the payer's property, the FOC may also require information from the parties showing that the value of the property is sufficient to make the placement of a lien cost effective.
- h. Bankruptcy. The bankruptcy code provides for stays of action against a person who has filed for bankruptcy. If the FOC is informed that the payer has filed for bankruptcy, it should not perfect a lien against that person's property until it determines that enforcement action is not stayed,<sup>20</sup> or that any existing stay has been removed. A lien which has been perfected before a bankruptcy proceeding may provide rights superior to those of other bankruptcy creditors. Rights pursuant to the lien will be determined by the bankruptcy court.
- i. Orders Affecting FOC Enforcement. MCR 3.209(A) allows a party to file a motion for suspension of enforcement. If the court has ordered suspension of

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<sup>17</sup> *Walters v Leech*, 279 Mich App 707 (2008). However, a lien could be placed against the payer's now owned or hereafter acquired interest in the property that would become valid should the co-owner die or the owners divorce.

<sup>18</sup> For example, a valuable primary residence may not be levied or collected on until sale of the residence whereas a second (or vacation) home may be levied much quicker if perfecting the lien does not induce payments or the payer entering a payment plan.

<sup>19</sup> Once a lien is perfected, the amount of that lien is set at the amount on the date of perfection. Because future arrears automatically create a lien, that amount must be perfected as well to ensure collection.

<sup>20</sup> At a minimum, the FOC should request proof of the bankruptcy.

enforcement in a case, a lien should not be perfected or levied.

The office should not perfect a lien when a payer is complying with a statutory repayment plan under [MCL 552.605e](#), especially when the payer is complying.

- j. Service Members. Action on cases where a party is a service member may also need closer attention. The Servicemembers Civil Relief Act provides certain protections for service members and their families, especially when deployed on active duty.<sup>21</sup> FOCs should carefully consider action on perfecting or levying a lien when a service member is deployed on active duty.
- k. Objective Case Selection. Also, the FOC must establish procedures so that all similarly situated cases are treated the same. The following are criteria that could be considered when determining which cases are to be selected:
- Have previous enforcement efforts failed to generate regular and consistent support payments?
  - Is the property a second home (vacation, cottage, cabin), rental property, additional vehicle?
  - Is the home clearly beyond the needs of the family that supporting and maintaining the home will, in effect, permanently transfer assets available for support out of reach of the payer's creditors unless a lien is perfected on it?
  - If the potential lien is on a financial account (that is identified outside of the FIDM/ICDM process) and more than one account has been identified, will liens on certain accounts be less harmful than on others? For example, a lien on a checking account could also harm a creditor accepting a check, whereas a lien on a savings account will likely only affect the support payer. Similarly, a lien on a joint account is more likely to harm an innocent party.
  - Does additional information need to be collected to assure that identified property actually belongs to a payer? For example, in a joint financial institution account (identified outside of the FIDM/ICDM process), what is the nature of the support payer's interest (which may be indicated by which person deposited the funds)?
  - Is the payer's real or personal property of sufficient value or equity to make perfection of the lien cost effective? When answering this question, consider any prior liens against the property which will reduce the amount available to be applied to past due support.
  - Does the FOC have sufficient information describing the property and value for it to perfect the lien?
  - Has a judgment or final order been entered (i.e., is the support arrearage subject to modification during the process of establishing the final order)?
  - Does Michigan have appropriate jurisdiction to enforce the support order?

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<sup>21</sup> Michigan has similar provisions providing extra protection to service members and their family. MCL 32.501 *et seq.*

- Will the support arrearage likely remain unpaid for an unreasonable period of time if the lien is not perfected?
  - Is the party an actively deployed service member? If yes, consider delaying action (see section C.1.j for more information).
- l. Determining Whether Arrearage Exceeds the Threshold. Support arrears must exceed two times the payer's current monthly support payments due under the support order (two months of arrears).

Determine the threshold by adding all of the payer's periodic support charges under the support order in effect, and multiplying that sum by two. If there are not any current periodic support charges, use the last nonzero support obligation in effect.<sup>22</sup>

Determine the amount of past due support (arrears) by adding all past due balances of the payer's support debts and subtracting any monies on hold.<sup>23</sup> If the support order includes periodic lump sum support, only the unpaid periodic payments should be included in calculating the arrearage threshold.

Statute limits what may be considered an arrearage. If a payer presents "evidence that money has been withheld from the payer's income in an amount equal to or greater than the amount required under the payer's support order," then that amount is not included in the arrearage amount. This documentary evidence includes, but is not limited to, pay stubs, wage statements, or other written income information produced by the payer's employer.<sup>24</sup>

When presented with proof of payments, the FOC should delay perfecting a lien if the amount withheld, but not received, brings the arrearage below the statutory threshold.

- m. Amount of Lien. The amount of the lien should include all past due amounts for the support categories listed in MCL 552.502a(h) and MCL 552.602(ff) (or successor statutes).<sup>25</sup> The total of lump sum amounts that have been ordered should not be counted as arrearage; rather, only that portion which is overdue should be counted. For example, if an individual is ordered to pay \$2000 in birthing costs (formerly known as confinement expenses) at the rate of \$20 per month, only the arrearage which accrued at the rate of \$20 per month should be included. However, when an individual is ordered to pay a lump sum, and the

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<sup>22</sup> [MCL 552.625b\(2\)](#).

<sup>23</sup> The past due amounts that may be included have to meet the definition of support in MCL 552.602(ff). Support includes money owed for a spouse or a child, including amounts ordered for categories such as child support, spousal support, medical, dental, other health care, child care, or education expenses, birth expenses, and genetic testing costs. Support does not include amounts owed for things such as attorney fees, bench warrant or court costs, or fees.

<sup>24</sup> MCL 552.607a.

<sup>25</sup> Support is defined to mean all of the following: (i) the payment of money for a child or spouse ordered by the circuit court, including medical, dental and other health care expenses, child care expenses, and educational expenses; (ii) the payment of money ordered by the circuit court under the paternity act for necessary confinement expenses or for repayment of genetic testing expenses; (iii) a surcharge accumulated on past due support. MCL 552.502a(h).



intent of the order is that the lump sum be paid immediately, the lump sum may be included in the amount of the lien. The amount of the lien should also include any surcharge, if ordered by the court.<sup>26</sup>

## 2. How to Perfect

An office perfects a lien by following the statute for perfecting the lien before or at the same time that notice is sent to the payer that a lien may be perfected ([FOC 90](#)). In order to perfect a lien against real property or titled personal property, the office may need to obtain the property's description and the nature of the payer's interest. If the recipient requests a lien, the FOC office may ask the recipient to supply any necessary documentation.

Statute requires that a support lien be perfected in the same manner as other liens for the type of property being liened. Liens against real property held in Michigan must be filed in the county where the property is located. See MCL 565.25. Liens against motor vehicles, watercraft, and other personal property normally must be filed with the Secretary of State (SOS). MCL 440.9401.

When known, the documentation for real property should include (a) a legal description of the property and (b) the type of payer's ownership interest. However, in some cases a lien may be imposed without that information. The federal form (incorporated into SCAO's Notice of Lien form [[FOC-90](#)]), includes a general lien against all property located within an area covered by the recording agency or that may be perfected by recording within the agency receiving the lien. Liens may be imposed on real property solely owned by the payer or owned jointly.<sup>27</sup> When using the [FOC-90](#) to perfect on real property, the form will need to be notarized (to match the same manner in which liens are recorded on real property).

Liens against titled personal property registered with the SOS are addressed in Appendix 1. Titled property with the SOS includes, but is not limited to: vehicles, snowmobiles, motorcycles, and watercraft.

To perfect against personal property (including tangible and intangible property), statute does not provide a method for perfecting liens.<sup>28</sup> A lien must be perfected in the manner existing before the statute – i.e., for tangible property, the FOC must obtain a court order for a lien against the tangible property. However, because intangible property is normally held by a third party, and a third party is likely to comply with the court's orders, it may be desirable to obtain an order for a lien against intangible property, or use other forms of execution available at law (i.e. garnishment, using a sheriff or court officer).<sup>29</sup> If requested to pursue a lien against these types of property,

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<sup>26</sup> While surcharge is not mandatory, the court may still order it when a payer fails to pay support.

<sup>27</sup> *Walters v Leech*, 279 Mich App 707 (2008). A child support lien may not be imposed against property held as a tenancy by the entirety by a husband and a wife to satisfy a child support order that was entered against only the husband or the wife. (MCL 552.625a, 552.625b, 600.2807.)

<sup>28</sup> This policy will only address the most common types of property on which liens are perfected and levied.

<sup>29</sup> Following lien notice and notice of perfection, the FOC will ask for a "Request and Order to Seize Property"(MC 19) [formerly known as writ of execution] <http://www.courts.mi.gov/Administration/SCAO/Forms/courtforms/generalcivil/mc19.pdf>. The sheriff or court officer will seize any personal property that they can find and liquidate it. The fees are deducted from the sale – no cost to FOC.



the FOC may ask the recipient to provide it with documentation or specific information regarding the interest or asset.<sup>30</sup>

Perfecting against a financial institution or worker's compensation claim is built into the notice procedures. Offices should note that once this type of account is perfected, the office has only 120 days to levy or terminate the lien.

### 3. Notice Requirements

Statute requires that notice must be sent once the IV-D agency has perfected a lien. That notice must be sent no later than five business days after the financial institution, appropriate state or county office, or holder of the property has been notified of the lien in the manner required by this policy. For notices regarding liens on accounts with financial institutions, it is recommended that the notice to the payer be sent two business days after the financial institution was notified of the lien. Form [FOC-91](#) may be used to provide this notice. Notice must be sent by ordinary mail to the payer's last known address, and a copy of the notice must also go to the support recipient by ordinary mail. The following information must be included in the notice:

- The amount of the arrearage;
- That the lien is in effect on the real or personal property of the payer;
- The property is subject to seizure unless the payer responds by paying the arrearage or requesting a review within 21 days after the date of mailing of the notice;
- At the review, the payer may object to the lien and to the proposed action based on a mistake of fact concerning the overdue support amount of the payer's identity (see section 4, "Objections," below for more information on objections);
- If the payer believes the amount of support ordered should be modified because of a change in circumstances, the payer may file a petition with the court for modification of the support order.<sup>31</sup>

To fulfill these requirements, the office must send the Notice of Perfection of Lien ([FOC-91](#)) with a copy of the Notice of Lien form ([FOC-90](#)).

For liens being perfected against an account at a financial institution (outside of the FIDM/ICDM process), notice must be provided to the financial institution as well.<sup>32</sup> The notice may be provided before or at the same time a lien is perfected at that financial institution. This notice must also include the amount of periodic support arrearage for that payer. The notice must be sent by paper unless agreement is reached with the financial institution to send the notice by electronic data interface (EDI) or other automated means. [MCL 552.625b\(5\)](#). Federal form OMB Control # 0970-0153 (incorporated into form [FOC-90](#)) must be used to provide this notice to financial institutions.

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<sup>30</sup> Future work on this issue will create a new Appendix 2 for a discussion of perfecting on specific property types.

<sup>31</sup> Filing a petition for modification of the support order does not limit the IV-D agency's ability to move forward on the lien enforcement.

<sup>32</sup> For more on the FIDM/ICDM process, see OCS Manual Section 6.27.

The [FOC-91](#) provides the information required for perfecting liens and should be sent with the [FOC-90](#).

#### 4. Objections

Statute allows a payer the opportunity to object to perfection of a lien by requesting a review within 21 days of the notice being sent. This review is limited to a mistake of fact – either a mistake as to the amount or the wrong person. If the payer timely requests a review, the office of the FOC shall schedule and conduct the review within 14 days after the date of the request.<sup>33</sup>

The statute does not address review procedures if a request for review is not made timely. In order to guarantee that accurate information is used to establish the amount levied, a review should be provided after the initial 21-day period for requesting a review if the payer provides information showing that the FOC's accounting may be inaccurate. The FOC should provide a review any other time that it believes principles of fairness require it.

In anticipation of requests for information or reviews, each office should:

- Designate an individual or individuals who will be prepared to respond to inquiries about the status of accounts and the review process.
- Determine how it will handle requests for account printouts and audits that may arise from these inquiries or reviews. The process must establish adequate access to records to enable the payer to assess whether the FOC account is accurate.
- Create a procedure establishing who will conduct reviews, and for setting up the review dates and times. The FOC must conduct the review within 14 days of the request.

Notice of the review must be given to the payer and the recipient. Notice of the review must provide the following information:

- the date and time of the review,
- who will conduct the review,
- any information required of the payer at the time of the review.

Service must be made in accordance with the requirements of MCR 3.203.

#### 5. Conducting the Review

The statute only requires that “the office” hold the review.<sup>34</sup> Because the review can be administrative in nature (similar to administrative reviews of tax offsets and credit reporting), each office must determine the procedure for conducting the review, and whether any further administrative or quasi-judicial reviews will be available if a party timely objects to the initial review determination.

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<sup>33</sup> MCL 552.525b(5).

<sup>34</sup> For FIDM/ICDM reviews, OCS Central Operations conducts the administrative reviews. See OCS Manual Section 6.27.

The payer may bring an attorney to the review. At or before the review,<sup>35</sup> the FOC should supply the payer with account information sufficient to establish the amount of support due and payments made during the disputed period. Although the review can be conducted in an informal manner, the payer must be provided a written determination at the conclusion of the review that states the outcome of the review. Form [FOC 70](#) is used for this purpose. The FOC must provide all parties with a copy of the determination.

Adjournments are appropriate when the payer needs time to provide additional information or the FOC needs time to audit the account. Adjournments may also be appropriate for other good cause. If the review is adjourned, the review should be conducted within an additional 14 days, unless extraordinary circumstances prevent the review within that time.

#### 6. Post-Review Actions

During a review, the FOC office must assess whether the lien is improper because of a mistake of fact or identity of the payer. If the conditions for perfecting the lien did not exist at the time of perfection, but do exist at the time of the hearing, the perfection is deemed to be proper. Once a lien is properly perfected, it is not terminated simply by reducing arrearages below the threshold at the time of hearing. However, if a payer reduced the arrearage to zero after the lien was perfected, the lien must be terminated.

A payer may wish to contest the FOC office's determination that a lien should not be terminated. The statute does not require the FOC to assist a payer in securing a judicial determination regarding perfection of a lien. Offices should implement the same policies and procedures for securing a judicial hearing currently used after other administrative reviews, such as tax offset. For liens on financial institution accounts, the process for levying the account (garnishment) will provide a way for the payer to obtain a judicial hearing if he or she objects to the garnishment.

If a referee hearing is held in accordance with MCR 3.215, the parties must be given notice of their right to file an objection and obtain a de novo hearing before a judge. Procedures used for obtaining judicial review should be the same as for any other referee hearing, taking care to normally have the matter heard by a judge within 21 days of when the written objection is filed. See MCR 3.215(F)(1). However, the person conducting an administrative review may be a referee and not follow MCR 3.215 if the person does not conduct the administrative review in the manner of a referee hearing.

### D. Intergovernmental Cases<sup>36</sup>

#### 1. Responding State Liens

The statute provides:

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<sup>35</sup> If the office wants to send out information before the review, it is recommended that the account information be sent with the notice of the hearing.

<sup>36</sup> For more information generally on intergovernmental liens, see the federal [PIQ-99-06](#).

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“Liens that arise in other states shall be accorded full faith and credit when the requirements of section 25b are met.” [MCL 552.625a\(2\)](#).<sup>37</sup>

Section 25b requires two things before a lien is effective: (1) that, to perfect the lien, the arrearage exceeds the amount of periodic support payments payable for two months and (2) that, for cases where a support order was issued before August 10, 1998, the payer be sent notice of the imposition of liens by operation of law and that the payer’s real and personal property can be encumbered or seized if the threshold arrearage is reached.<sup>38</sup>

The intent of the legislation is that most liens will be sent directly to the agency responsible for regulating the property to be encumbered. However, when that agency is not readily identified by the other state’s IV-D agency, some liens will likely be sent to the Michigan Central Registry and forwarded to the FOC for assistance. In that case, the FOC must obtain certification from the other state that the two criteria have been met. There is no required form for providing this information. If the certification is provided, the FOC should make reasonable efforts to perfect the lien on behalf of the other state. However, if extensive work is necessary in order to perfect the lien, the FOC may return the lien to the other state with a request that the support order be registered for enforcement pursuant to the Uniform Interstate Family Support Act (UIFSA). As a general rule, the FOC office should assist another state in perfecting a lien to the extent the FOC office would expect the other state to assist in perfecting a lien originating from Michigan. When returning a lien to another state because the FOC is unable to perfect it, the FOC should inform the other state of missing information or procedural problems that prevent the FOC from perfecting the lien.

## 2. Initiating State Liens

Federal law requires every state to provide full faith and credit to liens originating from another state. When perfecting a lien in another state, federal form [OMB Control # 0970-0153](#) (incorporated into form [FOC 90](#)), or its successor, must be used. The form must be filed with the agency regulating the property, if known. If the appropriate agency is unknown, the lien should be conveyed to the IV-D agency in the other state with a request for assistance in perfecting it. Federal law does not prevent the assisting state from requiring the FOC to pay filing fees. If the agency regulating the property fails to honor the lien, the FOC should register the case for enforcement pursuant to UIFSA.

## E. Levying a Lien

### 1. Considerations Before Levying

The office may levy any time after a lien is perfected.<sup>39</sup> The office should ensure that once perfected, a lien is acted upon within a reasonable amount of time and not be left on the system (MiCSES and FOC records) for years without action. If the lien does not induce the payer to make payments or enter a statutory repayment plan, the FOC may levy the property (force the sale) or release the lien. This will require that the FOC

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<sup>37</sup> See also MCL 552.2507 (b).

<sup>38</sup> Offices should verify that the mass mailing notice is placed in a case file for an order prior to August 10, 1998. See footnote 7.

<sup>39</sup> [MCL 552.625b\(7\)](#).

receive authorization or assistance from the court, and often from law enforcement agencies.

a. Financial Institution Liens

When a lien against an account is perfected by notice to a financial institution (outside of the FIDM/ICDM process), the FOC normally should levy on the account as soon as possible after the earliest date allowed by the statute. If the office determines that levy is not appropriate and that the lien should be terminated, the FOC must notify the financial institution as soon as practical. Notwithstanding its desire to levy, if the FOC does not send a garnishment within 120 days of perfecting the lien, it must notify the financial institution that the lien is terminated.

b. Liens Against Other Property

Liens perfected against property other than financial institution accounts may be continued so long as the lien appears to be effective in collecting support.

However, if support is not collected for a period of more than one year, the FOC normally should initiate action to levy on the lien.

2. Notice Requirements

Before levying on a lien, the statute requires the following:

- The office of the FOC shall notify the payer at the review or by written notice of its intent to levy. [MCL 552.625b\(7\)](#).
- Form FOC 70 should be used to provide the notice when a review has been held. If a review is not held, form FOC 93 should be used.

3. How to Levy

a. Financial Institutions and Other Persons and Entities Owing Money to the Payer

The process for levying against accounts at financial institutions (outside of the FIDM/ICDM process) is nonperiodic garnishment, as provided in MCR 3.101. The verified statement, writ, and disclosure filed in a garnishment proceeding must be substantially in the form approved by the state court administrator. MCR 3.101(C). Form [MC 13](#) and form [MC 14](#) have been developed for this purpose.

A garnishment proceeding begins by requesting the court clerk to issue a writ of garnishment, not subject to a fee.<sup>40</sup> The information required to request the writ is contained within the SCAO-approved form [MC 13](#). MCR 3.101(D). Two copies of the writ of garnishment must be served on the financial institution, along with a copy of the disclosure form [MC 14](#), within 91 days after the date the writ was issued. Service must be in the manner provided in MCR 2.105 for service of a summons and complaint, i.e., delivering to the financial institution personally or by sending registered or certified mail, return receipt requested, with delivery

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<sup>40</sup> No fee should be assessed by the clerk of the court because the FOC is a part of the court, and the court should not assess a fee against itself.

restricted to the addressee. MCR 3.101(F)(1). The applicable fee of \$1.00 must be served with the writ. MCR 3.101(F)(1).<sup>41</sup>

The financial institution must deliver a copy of the writ of garnishment to the support payer within seven days of service. MCR 3.101(F)(2). Within 14 days of being served, the financial institution must mail or deliver (to the court, plaintiff, and defendant) a verified disclosure ([MC 14](#)). MCR 3.101(H).

If the financial institution is indebted to the payer, the institution must withhold an amount that does not exceed the unpaid judgment stated as due in the writ. MCR 3.101(I)(1). Unless the institution is notified that an objection has been filed, the financial institution must pay the withheld funds to the FOC 28 days after withholding the funds. MCR 3.101(J)(1).

The support payer must object within 14 days of service with the writ of garnishment to prevent the financial institution from paying (unless otherwise ordered by the court). MCR 3.101(K)(1). If an objection is filed, the payer must send notice of hearing within seven days of filing the objections. The notice must be sent to the plaintiff, the defendant, and the financial institution.<sup>42</sup> The hearing must be held within 21 days of the objections. MCR 3.101(K)(3). Objections must be based on reasons listed in the rule. See MCR 3.101(K)(2).<sup>43</sup>

b. Real Property

Real property must be sold “in the manner provided by law for the judicial foreclosure of mortgage liens; motion to the circuit court for an order to execute the judgment, to appoint a receiver of the real and personal property subject to the lien, and to order the property and its income to be applied to the amount of the judgment.”<sup>44</sup>

c. Personal Property

For personal property, such as a vehicle or boat, the FOC will need to move for an order to execute the judgment. ([MCL 552.625b\[8\]](#)). SCAO form MC 19 (Request and Order to Seize Property) must be used for this purpose.

## F. Terminating a Perfected Lien

1. Considerations

The FOC may terminate a lien at any time after perfection if it does not result in payment. If a perfected lien results in compliance, the lien is appropriately maintained. However, if the perfected lien does not induce payments and levying the property is

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<sup>41</sup> MCL 600.4011(8).

<sup>42</sup> On garnishment forms, party designation is different than the original case filing. The plaintiff is the garnishor (but may have been the defendant in the original case) and defendant is the garnishee.

<sup>43</sup> Those reasons include: the funds or property are exempt from garnishment by law; garnishment is precluded by the pendency of bankruptcy proceedings; garnishment is barred by an installment payment order; garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order; the judgment has been paid; or the garnishment was not properly issued or is otherwise invalid.

<sup>44</sup> [MCL 552.625b\(8\)](#).



impractical, the FOC should terminate the lien.

2. Process for Terminating a Perfected Lien

a. Lien Terminated by FOC

The statute provides:

“The lien . . . shall continue until the amount of past due support is paid in full or the lien is terminated by the support enforcement agency.” [MCL 552.625a\(1\)](#).

The FOC must notify the appropriate agency to terminate a lien when the amount of support is paid in full or if a mistake has occurred as to the identity of the property owner.<sup>45</sup> In addition, the FOC must notify the appropriate agency to terminate the lien pursuant to court order or if conditions specified in a local policy occur. For example, a local administrative order might provide that a lien be terminated if the payer shows evidence of a substantial hardship if the lien remains and an income withholding is collecting support. Notice should be provided as soon as possible after the FOC determines that the lien should be terminated, but in all cases within seven days. [MCL 552.625b\(9\)](#).

Notice should be provided to the appropriate agency by paper, unless the agency has agreed to receive the notice by EDI or other automated means. A Notice to Release Lien form [FOC 92](#) may be used to provide this notice. A copy of the Notice of Lien, form [FOC-90](#), should be provided to the agency along with form [FOC 92](#).

Even if a perfected lien has been terminated, a lien will automatically reoccur by operation of law if additional support becomes past due. The FOC should perfect this new lien only if the statutory requirements for perfecting a lien are met through subsequent arrearage,<sup>46</sup> and perfection would not be contrary to a court order or local administrative order.

b. Order Suspending Enforcement

MCR 3.209 (A) allows a party to file a motion for suspension of enforcement. Therefore, if a court has ordered suspension of enforcement, a lien should not be perfected or levied. If a lien has been perfected at the time an order suspending enforcement is entered, the FOC should terminate the lien unless the court’s order states otherwise.

c. Case Closure

Before an FOC case is closed, the FOC office must terminate any perfected liens existing because of the FOC’s actions by sending notice to the appropriate agencies.

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<sup>45</sup> The need to terminate a lien can be as a result of an objection, or as otherwise brought to the attention of the FOC office.

<sup>46</sup> Because the FOC may terminate the lien in cases where support is not paid in full, there may be cases where unpaid support remains that are not subject to a lien. However, any additional failure to pay current support would create a new lien by operation of law. If appropriate to perfect that lien, it also appears appropriate to perfect the lien for the additional amount that previously was terminated.



## APPENDIX 1

### Vehicle Liens

This FAQ answers common questions and clarifies policy related to Administrative Memorandum 2000-11, Administrative Liens for Past Due Support. This FAQ was also drafted in response to the memo issued by the Michigan Secretary of State (Friend of the Court (FOC) Title Lien, November 1, 2015). If court or FOC staff have any questions or would like additional information or clarification, please contact Paul Gehm at [[gehmp@courts.mi.gov](mailto:gehmp@courts.mi.gov)] or (517) 373-5975.

#### 1. Q. When should I perfect a lien?

**A:** Liens are used to collect child support. Therefore, it is important to place liens on property with value. As outlined in the [Administrative Memorandum 2000-11](#), evaluate whether the property has sufficient value to justify the lien before deciding whether to place a lien.

When considering whether to place a lien, it is also important that placement of the lien does not restrict the person's ability to earn income. For example, a possessory lien should not be placed on a payer's tools of trade, which will likely limit the payer's ability to work. If the levy and sale of a motor vehicle would interfere with the payer's ability to work, it is better to place a lien on recreational use vehicles such as show vehicles, snowmobiles, boats, or other watercraft.

SCAO recommends that FOC offices perfect liens only on property they are prepared to levy within a short time. The value of property (particularly motor vehicles) diminishes over time. Further, the longer the office waits to levy, the more likely it is that other creditors will compete for any equity in the property. Imposing a lien on personal property merely in the hope that there may be a recovery someday if the payer attempts to sell the property will not likely result in any useful collection amount and may result in the FOC taking possession of property that has no value. An exception to this approach may be justified where the payer owns property with high equity but the payer needs the property for some purpose that would justify not levying the lien (e.g., the property is necessary to aid the payer's custody or parenting time or for generating income).

If a local FOC has formal authorization to access the Law Enforcement Information Network (LEIN) resource, it may be beneficial to run a query to determine whether a person has a vehicle registered in the person's name, and obtain identifying information for vehicles. To run the report, FOC staff should request a "Query Alpha Vehicle" or SOS 47:15.<sup>47</sup> Running these reports may also identify other pieces of

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<sup>47</sup> A "Query Alpha Vehicle" or SOS 47:15 will show all vehicles registered to a person or just an address. Agencies using Talon can find the correct form in the "Vehicles" section of their form lists. SOS is limited to showing a maximum of 22 responses; when there are more than 22 responses, a code appears in the top line of the response that begins with an asterisk (\*). The operator then submits the code in the labeled box on the form to retrieve the next page, and then runs the new code as long as one appears.

It seems this transaction only works for Michigan vehicle files. For other states, we recommend sending an administrative message to the state's main Originating Agency Identification Numbers (ORI) office.

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property registered under the individual's name. Another resource for asset identification is available in MiCSES.<sup>48</sup>

## **2. Q. What should I do before perfecting a lien?**

- A.** The FOC office must ensure that: 1) the payer has notice of the lien; 2) the property has sufficient value to justify imposing the lien after the property is sold and the costs of the sale are paid; and 3) there are no other outstanding liens on the same property.

1) Michigan law requires that “a lien shall not be perfected or levied under this act unless the Title IV-D agency has provided a notice to the payer that liens exist by operation of law and that the payer’s real and personal property can be encumbered or seized if an arrearage accrues in an amount that exceeds the periodic support payments payable under the payer’s support order for the time specified in this act. Notice has been provided if it is in the payer’s support order or if it was mailed to the payer at any time.” MCL 552.625a(4).

Statute requires that a payer receive notice of the lien arising by operation of law, of the intent to perfect, notice of perfection, and notice of intent to levy. Notice of the lien arising by operation of law has been provided for in the Uniform Child Support Order (UCSO) since 2006. Therefore, staff will want to ensure that the payer’s order was entered after 2006; if the most recent order was issued before 2006, staff will need to first send notice to the payer that a lien arises by operation of law.<sup>49</sup>

A payer should be given the opportunity to set up a payment arrangement to avoid the lien or any levy.

SCAO has produced several forms to meet the statutory requirements for the different stages of the lien process. These forms are:

- [FOC 90 \(Notice of Lien\)](#)
- [FOC 91 \(Notice of Perfection of Lien\)](#)
- [FOC 92 \(Notice to Release Lien\)](#)
- [FOC 93 \(Notice of Intent to Levy\)](#)
- [MC 19 \(Request and Order to Seize Property\)](#)

2) A lien should be perfected on property with value. Therefore, one of the first steps in the process is to look at the value of the property. As Administrative Memorandum 2000-11 states, the payer’s real or personal property must be of sufficient value or equity to make perfection of the lien cost effective.

For vehicles, information from Kelley Blue Book and similar sites may be used as a reference for estimating the current fair market value. However, the amount is subject to many factors, including the condition of the vehicle, which may be unknown.

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<sup>48</sup> Staff can view the MiCSES Asset List (ATLT) screen for information regarding a case member’s financial, account, real estate, and vehicle registration information. For vehicle-specific inquiries, staff can refer to the “Registered Vehicle Assets” (ASRV) screen.

<sup>49</sup> FOC staff should review the most recent order to ensure that the proper lien notification is present.

3) The office will also want to consider whether there are already outstanding liens on the property. For vehicles, staff can refer to the MiCSES ASRV screen, which includes vehicles registered to a case member, and any information on liens placed on the vehicle(s). While the ASRV screen is populated with data manually entered by MiCSES users (as opposed to official data from the SOS), any information will be helpful in determining whether to place a lien on a vehicle.

Finally, to see if there is already another FOC lien on the vehicle, staff can review the list found at the SOS website: [http://www.michigan.gov/sos/0,4670,7-127-49534\\_50300\\_50310-370486--,00.html](http://www.michigan.gov/sos/0,4670,7-127-49534_50300_50310-370486--,00.html).

**3. Q. What must be provided to the Secretary of State (SOS) to perfect a lien on a vehicle?**

- A. To perfect a lien, the SOS requires the FOC to send an FOC 90 via e-mail to a dedicated inbox at: [SOS-FOC@MICHIGAN.GOV](mailto:SOS-FOC@MICHIGAN.GOV). The following information must be included: year, make, and VIN/Serial Number. SCAO recommends that if an FOC is placing liens on multiple vehicles owned by the same payer, the FOC should send a separate FOC 90 for each unique vehicle.

As with all other confidential information sent via e-mail, FOC staff is required to encrypt the e-mail and immediately send the SOS the password in a separate e-mail.

**4. Q. What happens once I send the lien information to the SOS?**

- A. The SOS will place a lien on the vehicle with the FOC as the lienholder. The SOS will then issue a new title to the titleholder (payer) with the lien recorded on the title and the court listed as a secured party for the vehicle, mobile home, snowmobile, or watercraft. Because this procedure also perfects the lien, the FOC office is required to send the payer a Notice of Perfection of Lien (FOC 91).

Once the SOS processes the lien, the SOS will post the information on its Friend of the Court lien list at: [http://www.michigan.gov/sos/0,4670,7-127-49534\\_50300\\_50310-370486--,00.html](http://www.michigan.gov/sos/0,4670,7-127-49534_50300_50310-370486--,00.html).

**5. Q. What happens if a payer satisfies the lien?**

- A. When the conditions to release a lien are met (arrearages are paid off), the FOC office must release the lien. To do so, the FOC office should send an FOC 92 (Notice of Release of Lien) to the payer, and also to the SOS at the dedicated e-mail inbox: [SOS-FOC@MICHIGAN.GOV](mailto:SOS-FOC@MICHIGAN.GOV). The SOS requests that the office also include the case number and the words “New” or “Release” in the subject line of the e-mail. As with sending the FOC 90, a separate FOC 92 form should be sent for each vehicle, and each FOC 92 must be encrypted with the password immediately and sent separately.

**6. Q. What happens if the lien does not induce the payer to make payments?**

- A. The office should ensure that once perfected, a lien is acted upon within a reasonable amount of time and not be left on the system (MiCSES and FOC records) for years without action. If the lien does not induce the payer to make payments, the FOC may levy the property (force the sale) (MCL 552.625b[7]) or release the lien. This will

require that the FOC receive authorization or assistance from the court, and often from law enforcement agencies. For personal property, such as a vehicle or boat, the FOC will need to apply to the circuit court for an order to execute the judgment. (MCL 552.625b[8]). The FOC will need to use SCAO form MC 19 (Request and Order to Seize Property).

Upon sale of the asset, the amount that is actually collected and retained by the FOC may not exceed the amount of the support arrearage (in addition to any fees for the execution of the lien), and the FOC must return any extra money to the support payer. If the FOC believes the proceeds will exceed the amount owed, the FOC may want to request the court to order the payer to post a bond using the surplus funds to secure future support.

**7. Q. What information may the FOC share regarding liens and amount of payoff?**

- A.** Federal Title IV-D rules control disclosure of information. Although generally not allowed to discuss case details with a third party, the FOC is allowed to disclose information that serves a Title IV-D purpose (such as enforcement of a lien). This is especially true when releasing information to another agency or department, like the SOS. (MCR 3.218[C][1]). Additionally, if a vehicle dealership inquires about a lien, the office should disclose that information as serving the purposes of the Title IV-D program.

However, the FOC may also receive inquiries about payoff amounts from private buyers. If a private buyer calls, it is recommended that the FOC direct the buyer to communicate with the seller to obtain that information.

**8. Q. What should the FOC do if a dealer accepts ownership of a vehicle that has an FOC lien but the payer gives the dealer a bad (old) lienless title?**

- A.** When a payer trades in a vehicle with an FOC lien on it, and the dealer sells a new vehicle to the payer, the SOS has indicated that it will administratively transfer the old lien to the new vehicle. If the SOS administratively transfers the lien to the new vehicle, the FOC should hold the dealer harmless if the payer's equity in the new vehicle is of equal or greater value than the former vehicle.<sup>50</sup>

If the payer's equity in the new vehicle is less than the payer's equity in the previously-owned vehicle, the FOC should use discretion to hold the dealer harmless based on the likelihood that the payer will build equity in the new vehicle, making the new lien more valuable than the old lien over time.

The FOC should weigh the potential recovery from the forced sale of the lost property, and attempt to settle with the dealer or levy on the lien if the dealer does not agree to a reasonable settlement. If the dealer agrees to a settlement, SCAO recommends that the FOC notice the proposed settlement for the court's approval in order to allow the payee an opportunity to be heard if the payee objects.

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<sup>50</sup> However, if the dealer provides cash back to the payer as part of this transaction, instead of applying credit from the trade-in directly to the new sale, the FOC should pursue recoupment of the payer's cash assets. Additionally, if the dealer can prove that they followed procedure and checked the SOS FOC lien list, and the payer's old VIN was not included on the list, the FOC should simply work with the SOS to have the lien transferred.