

# LIENS

## A. COMMON LAW LIEN

A common law lien is the right to possess and retain personal property which has been improved or enhanced in value by the person who claims the lien until the person claiming the property pays in full all charges attaching to the property for such improvement. Every lien requires that (i) a debt has arisen from services performed on the thing, (ii) title to the thing is in the debtor, and (iii) possession of the thing is in the creditor. A lien is a security device to enforce payment.

## B. CLASSES OF LIENS

Common law liens are divided into two classes: *general* and *special*.

### 1. General Lien

A general lien is the right to retain *all of the property* of another person as security for a general balance due from such other person. A factor, a del credere agent, and a universal agent have a general lien on the property of their principal in their possession.

### 2. Special Lien

A special lien is the right to retain *specific property* of another to secure some particular claim or charge which has attached to the property retained. A common or private carrier, a warehouseman or ordinary bailee, a trustee, an attorney at law, an arbitrator, and a general or special agent all have a special, not a general, lien on the property of others in their possession. [Sheinman and Salita, Inc. v. Paraskevas, 22 Misc. 2d 436 (1959)].

### 3. Consequence of Classification

The question as to whether a lien is general or special becomes important only when the lien holder releases a portion of the chattels held as security. *Note:* Where doubt exists, a lien is construed as special rather than general.

#### a. General Lien

If a lien holder has a general lien and releases part of the chattels, he releases *no portion of his lien* and he may hold the unreleased portion until the entire lien charge is paid.

#### b. Special Lien

If the lien is a special lien and the lien holder releases a portion of the chattels held, he thereby waives his lien *to the extent of the chattels released*.

## **C. PARTICULAR PROBLEMS REGARDING LIENS**

### **1. Lien Given by One Not the Owner**

A lien is a proprietary interest, a qualified ownership, and, in general, can only be created by the owner or by someone authorized by him.

*Example:* A person in possession of a truck with the owner's permission cannot create a lien for repairs. The fact that the repairs are of benefit to the owner is immaterial.

### **2. Innkeepers and Common Carriers**

The lien of an innkeeper and a common carrier is recognized by the common law on the theory that common carriers and innkeepers, being compelled by law to indiscriminately accept all persons who presented themselves, must be protected and secured in their just charges for the services rendered.

#### **a. Innkeepers**

The lien of an innkeeper is peculiar in nature, in that it attaches to any property brought into the inn by the guest, although it is not essential that the guest should, in all cases, be the owner of such property. The property may be that of a third person, or even stolen goods, and if the innkeeper has no knowledge that such property is not rightfully in the possession of the guest, his lien will attach generally to all such property to the extent of a reasonable charge for the services rendered.

*Example:* The samples of a traveling sales representative are subject to a lien for an innkeeper's charges and may be sold, after proper notice, to satisfy such charges, even though the innkeeper has full knowledge that they are owned by the guest's employer.

#### **b. Common Carriers**

Although a common carrier is generally required, like an innkeeper, to accept all goods delivered, unlike the innkeeper, it has no lien on the goods which it receives from persons other than the owner. The reason for this rule is that the carrier may demand transportation charges in advance, or in the alternative, proof from the shipper that he is acting with authority from the owner.

### **3. Warehouser**

At common law the warehouser had no lien on the bailed chattel for the reason that he did not in any manner improve it. Gradually, a lien was extended to the warehouser to secure him for the time and labor expended on the chattel and for his storage charges. The lien is now embodied in U.C.C. section 7-209, and this statute has survived federal and constitutional challenge. [See *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149 (1978)] However, its status under the New York State Constitution is uncertain. (See below.)

### **4. New York Constitutional Law Problem**

In spite of the fact that the Supreme Court upheld the provisions for enforcement of the warehouser's lien [U.C.C. §7-210] in *Flagg Bros., Inc. v. Brooks, supra* (no state action), the New York Constitution has been held to prohibit the ex parte sale of property to satisfy the lien of a garagekeeper. [*Sharrock v. Dell Buick-Cadillac, Inc.*, 45 N.Y.2d 152 (1978)]

*And note:* Actual notice to a lienor whose interest is subordinate to an artisan's lien is necessary before the sale of the property. [*Motor Discount Corp. v. Scappy & Peck Auto Body, Inc.*, 12 N.Y.2d 227 (1963)]

## **D. WAIVER OF LIEN**

### **1. By Contract**

Although a lien is conferred by law, it may be waived by any contract inconsistent with the existence of the lien. Such contracts usually occur when the artisan agrees to deliver the goods before payment for his services is to be made.

*Example:* If a person delivers cloth to a tailor to be made into a garment, under an agreement by which the tailor is to be paid for his services 30 days after the completion and delivery of the garment, the tailor has no lien on the goods.

### **2. By Acceptance of Other Security**

Where a lienor accepts security for payment, the security eliminates the common law lien. The acceptance of such security indicates an intention to regard it as a substitute for the lien.

### **3. Demand for Unlawful Charges**

Where the lienor includes in his valid lien amounts in excess of his lawful charges, he indicates that a tender of the lawful amount by the owner will not be accepted. A tender, therefore, is waived; the lienor is placed in default and becomes liable in an action of replevin or trover.

### **4. Reservation of Lien or Temporary Use by Bailor**

The lien is not lost if the lienholder surrenders the goods to the bailor specially reserving his lien or the bailor is permitted to make temporary use of the property. Therefore, a garagekeeper does not lose his lien on automobiles stored in his garage where the owners are permitted to use their cars daily.

In the case of surrender of temporary possession, the lien enjoys priority over the claims of the bailor's subsequent creditors.