

CHAPTER 4

CHAPTER FOUR ENCUMBRANCES, LIENS, and HOMESTEADS

**NEW TERMS
SCARE ME.**





STUDENT LEARNING OUTCOMES (SLOs):

1. Define the terms encumbrance, liens, easement, restriction, and encroachments.
2. Discuss the key characteristics of mechanics' liens, tax liens, and judgment liens.
3. Explain the consumer protection afforded under the California Homestead Law.
4. Explain the various ways by which easements can be created and terminated.
5. Describe how private deed restrictions are created and terminated.

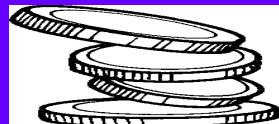
Property Interests

INTERESTS IN REAL PROPERTY

POSSESSORY
Estates

FREEHOLD

LEASEHOLD



FINANCIAL
Liens= \$

VOLUNTARY Lien

INVOLUNTARY Lien

Specific

Specific

General

Mortgage

Trust Deed

Land
Contract

Attachment

Mechanic's
Lien

Property Tax

Special
Assessment

Judgment

Income Tax

NON-POSSESSORY
Encumbrances

NON-FINANCIAL
Non-Monetary

Easement

Private Deed
Restrictions

Public
Restrictions

Encroachment

IN GROSS

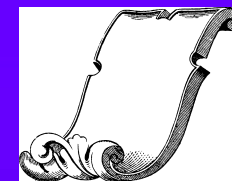
Appurtenant

C C & R's

Zoning

Building
Codes

Health Codes





I. Encumbrance = BURDEN

A. LIENS = Money encumbrances

◆ PHYSICAL = Non-money encumbrances

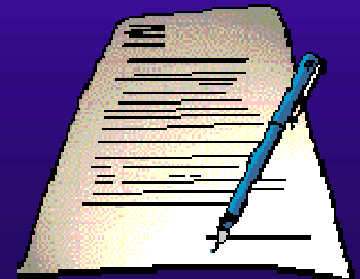
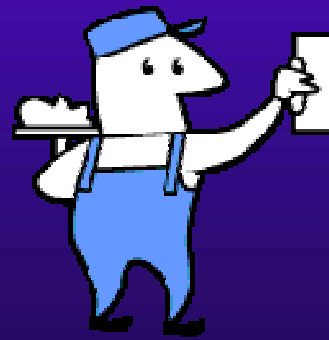
a. Classification of liens

- 1) Voluntary
- 2) Involuntary
- 3) General
- 4) Specific



\$ LIEN \$

1. Deed of Trust - Trust Deed
2. Mechanic's Lien
3. Tax Lien
4. Assessment
 - ◆ Water District Bond
 - ◆ Sidewalks
 - ◆ Street Lights
 - ◆ Curbs & Gutters
5. Judgment Lien



II. Mechanic's Lien

A. Priority determined by date of work commencement, Specific lien

1. 20 Days *after work starts*

Preliminary Notice:

States workers right to file a lien

Work considered complete:

1. Owner occupies the property
2. Owner accepts the work as completed Work stops
3. Work stops for continuous 60 days





If owner files:

Notice of Completion

2. General Contractor has
60 Days after filing

3. All Others: *30 Days after filing* Pg 4-1

When NO Notice of Completion is filed:

4. Everyone: *90 Days after Completion*

Once Mechanic's Lien is filed

2. Mechanic must execute in *90 Days after filing*

B. Landlord has 10 days to file Notice of non-responsibility from the date of discovery.

MECHANIC'S LIEN

DAYS

*10 Notice of Non Responsibility
(Tenant orders work)*

20 Preliminary notice

30 Subcontractors and others

60 General contractor

90 All

90. Statute of Limitations





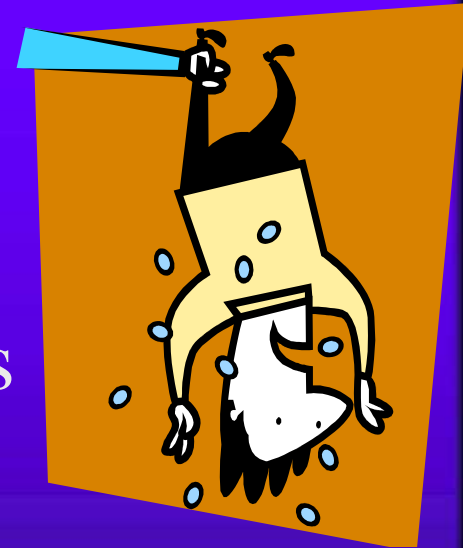
III. Major Types of Tax Liens

a. Unpaid Real Property Taxes

b. Unpaid Federal Income Taxes

c. Unpaid State Inheritance Taxes

d. Unpaid Gift Taxes



IV. JUDGMENT LIEN

A. **Created by a Court of Law**

◆ *The judgment process:*

1. Writ of Attachment

- Court ordered to seize the property

2. Judgment

- Court's decision

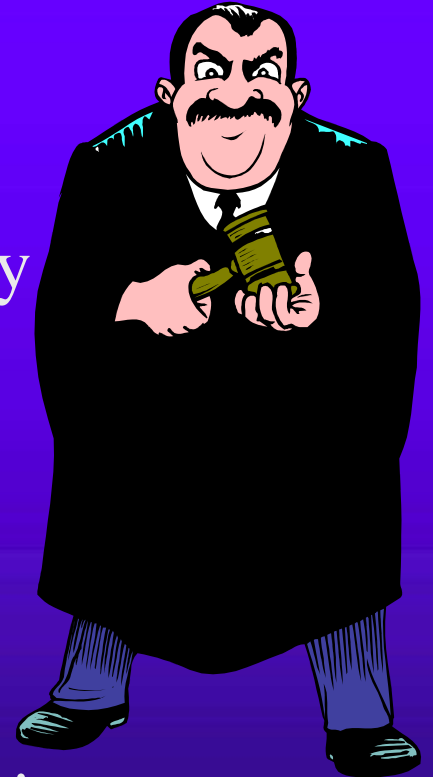
File an Abstract of Judgment

3. Lien created for 10 years

- Recording establishes a General Lien

4. Writ of Execution

- Sale of the property ordered



V. Declaration of Homestead

2. To be valid, recorded document
 - a. Designed to protect homeowner's equity
Filed showing "Head of Household"
 - b. Declare claimant is living on property
(May include a home, boat, motor home, or a mobile home on a lot)
 - c. Description of property
 - d. Only ONE homestead at a time





e. Homesteads may be terminated
by:

- ◆ Selling the home
- ◆ Filing a Notice of Abandonment
- ◆ Filing a NEW homestead on another property.
- ◆ Equity protection for home owners

IV. Proceeds from forced sale go to:

1. Discharge of prior liens
2. Exemption to homestead claimant
3. Satisfaction of the judgment
4. Balance of funds goes to the claimant
5. Six months to reinvest the proceeds from a forced sale



VII. Non-money of Physical Encumbrances

EASEMENT

- ◆ The limited right to enter and use all or a portion of the land of another.(not a trespasser)

Two classes of easements:

1. Easement APPURTENANT

1. Dominant tenement
2. Servient tenement

2. Easement IN GROSS





B. Creating an Easement

- a. Deed : May Grant or Reserve
- b. Implication/Necessity
- c. Dedication
- e. By condemnation for utilities use
(easement in gross)
- f. Prescription
 - Open and notorious use
 - Continuous use for 5 years
 - Hostile to owner's interests
 - Under claim of right or color of title



c. Terminating an Easement

1. Express release when servient tenement receives release by dominant tenement
2. Quiet title in action
3. Merge title
4. Abandonment
5. Non-use of a prescriptive easement for 5 years

VIII. PRIVATE DEED RESTRICTIONS

A. Private Deed Restrictions

1. C C & R's

Covenants: Covenant = A PROMISE

Condition: A limitation on ownership

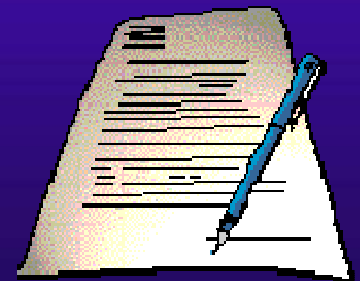
Restriction: Discrimination is unenforceable
when violated, may result in loss of title

IX. Public Restrictions are government imposed limitations

Zoning Ordinances

Building and safety codes

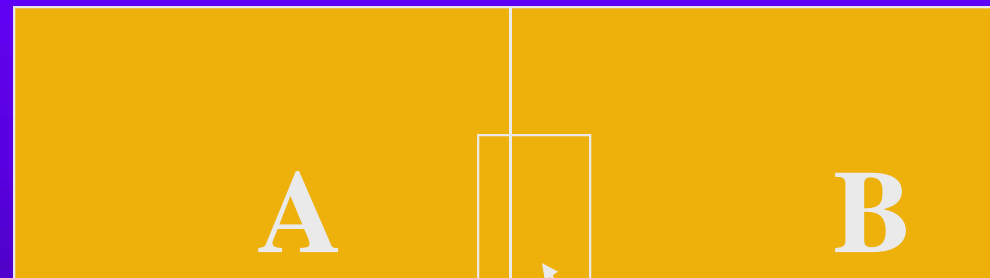
Health codes





X. Encroachment

- ◆ The wrongful extension (trespass) of a structure or any improvement (partially or wholly) onto the property of another.



Encroachment

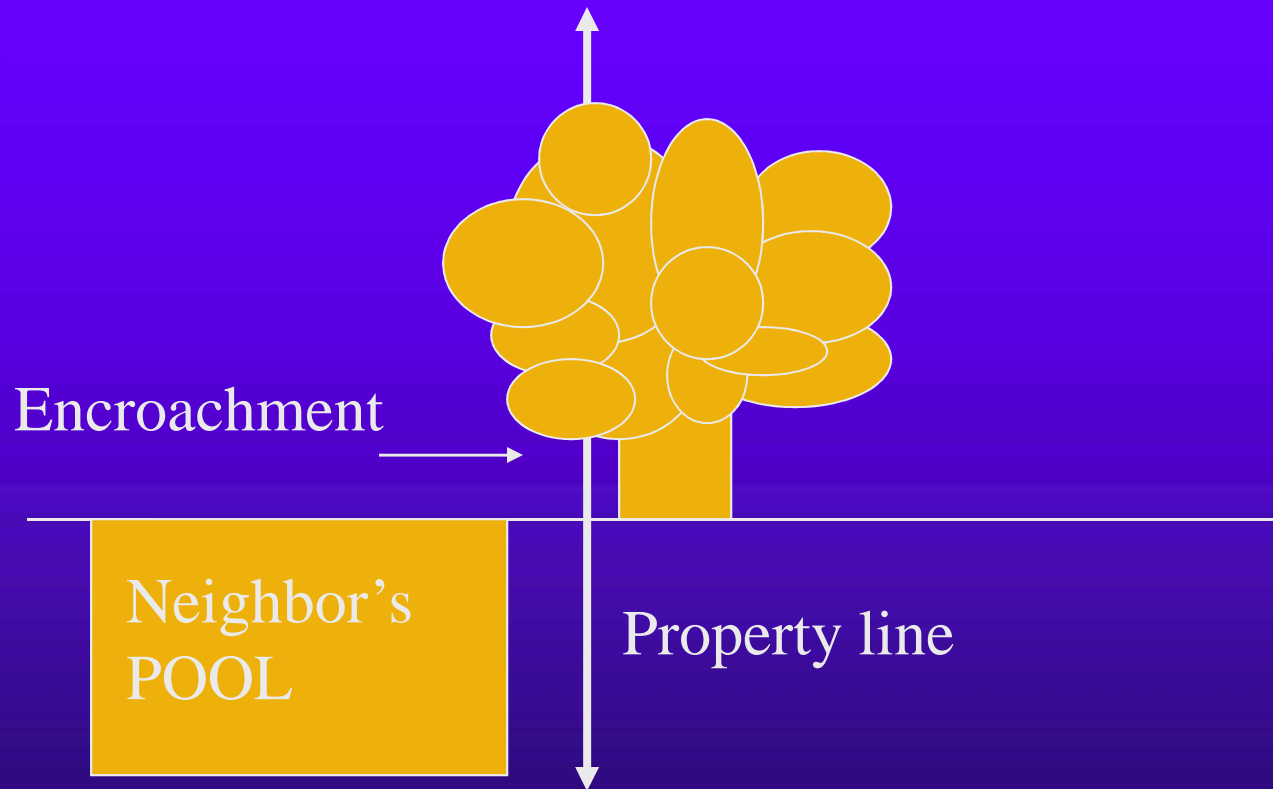
B's garage or shed

*Not covered by standard CLTA title insurance policy.

**May become prescriptive easement or adverse possession

Encroachment

◆ Non Money Encumbrances



Statute of Limitations is three years

LETS GO HOME

