



THE TAKEAWAY FROM THE RECENTLY ENACTED ASSEMBLY BILL A7363A

The hits just keep on coming. As if The Consumer Financial Protection Bureau (“CFPB”) and the Centers for Medicare & Medicaid Services’ (“CMS”) joint “Notification Letter” threatening every SNF in the United States with federal and state enforcement actions wasn’t enough, New York State has now enacted Assembly Bill A7363A, also known as the “No Lien Law”.

This new piece of legislation prohibits the imposition of a lien against a debtor’s primary residence if the balance due at issue represents medical debt. So, how does this change the landscape of SNF collections? Firstly, the days of knowing your judgment will be satisfied once the debtor mortgages or sells their primary residence are over. Before the passing of this legislation, payment of the Judgment/lien would be necessary at the time of sale in order for “good title” to pass to the new owners of the property. However, now as there will not be a lien on the property, title companies will no longer be requiring the satisfaction of outstanding judgments as a prerequisite to “close”. Now, your attorneys, if they aren’t doing so already, will have to closely monitor each Judgment where the debtor owns only their primary residence to ensure that when the property sells they are prepared to promptly restrain the net proceeds in the debtor’s account and thereafter, garnish same. While Assembly Bill A7363A protects a primary residence from having a lien placed on the property, it does not protect the proceeds from the sale of the primary residence.

Additionally, while a Confession of Judgment *was* a valuable tool to secure a quick and cost-effective voluntary lien against property, this route no longer gets the job done. In lieu of a Confession of Judgment, a debtor who wishes to consent to a lien, must now sign a mortgage and note in favor of the SNF. Although the filing fees for a mortgage and note may exceed those for a confession of judgment, this method is still a streamlined cost-effective approach for securing the SNF’s outstanding receivables.

Also, keep in mind that as referenced above, the no lien prohibition only applies to the debtor’s primary residence. So, if there is a vacation home or rental property in the debtor’s name, a traditional Judgment will still result in the automatic imposition of a lien against all real property that does not serve as the debtor’s primary residence or homestead. With regard to mortgages, most banks will likely require all outstanding debts, even those not secured by a Judgment, to be paid at the closing of the mortgage regardless as to whether or not there is a lien on the property.

Assembly Bill A7363A also prohibits the use of wage garnishment as a judgment enforcement tool. However, overall, wage garnishment represents a miniscule fraction of successful judgment enforcement and is usually used as a last resort. As such, it is not anticipated that SNFs will feel any real impact from this part of the legislation.

In short, while the “No Lien Law” will certainly make it more difficult to collect on a judgment when the only asset is the debtor’s primary residence, collection on the judgment is still possible, provided your legal team remains on top of their game. The experienced and skilled attorneys at Cona Elder Law are here to assist you with ensuring your facility’s bottom line is minimally impacted by this new legislation.



Ken Kern is a member of Cona Elder Law. Mr. Kern leads the firm’s Health Care Reimbursement and Recovery Department, concentrating his practice in health care facility representation, civil litigation, complex Medicaid eligibility matters, Fair Hearings, Article 78 proceedings, guardianships and resolution of all issues related to resident financial accounts and health care facilities’ bottom line. Mr. Kern handles a wide range of complex matters affecting not only health care facilities but older adults and the disabled as well. He can be reached at 631.390.5000 or visit conaelderlaw.com.