

## **Owner's Assertion of a Lien over Property in Possession in Defence of Multiple Acts of Trespass with Conversion.**

### **APPLICABLE LAW**

### **Halsbury's Laws of England Volume 4 on the Nature of Legal Lien**

The concept of lien is in the simple sense of a legal right to keep possession of property until a claim has been met and has been extended to cover a number of analogous rights. Liens are now variously described as legal, non-possessory, equitable, general, particular, statutory, contractual, judicial and subrogatory. Some of these may exist concurrently.

A lien arising by operation of law or equity and not contractual in its nature does not seem to fall within the definition of 'security' in the Consumer Credit Act 1974 but is included for the purposes of the Insolvency Act 1986.

**Legal Lien.** In its primary or legal sense 'lien' means a right at common law for a man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied, but this is given by law and not by contract.

**Non-possessory Lien.** In its secondary sense, 'lien' may be applied to a right subsisting in a person who has no possession of the property concerned but who nevertheless has a right against the owner analogous to a legal lien. Such a right may arise in equity, by statute or under a court order. Thus, a trustee has an equitable lien on the estate or fund for money properly expensed on it and a solicitor, in addition to his legal lien on the client's documents in his possession, has a statutory lien right to ask the court to direct that property recovered is to stand security for his costs.

**A legal lien in its true sense arises by operation of law,** whereas a mortgage is contractual in origin.

A legal lien is a right of defence to an action in respect of the chattel, an action in conversion, brought by the owner to recover the chattel, and is not a right of action in itself *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185 at 194-195, [1963 3 All ER 213 at 215-216, CA, per Diplock LJ, **holding further that lien is a self-help remedy**, triggered by the performance of work which improves a chattel of which the performer has lawful possession and does not depend on any implied contractual term. But a lien, depending necessarily on possession of the subject chattel, normally **entitles the holder to sue any third party who commits a wrong** (such as trespass or conversion) against the chattel during the period of that possession: *The Winkfield* [1902] P 42, CA. See also para 745 text and note 2 post; and BAILMENT vol 2 (Reissue) para 1889.

### **Bouvier's Maxims of Law**

***Contra veritatem lex numquam aliquid permittit.*** The law never suffers anything contrary to truth. 2 Co. Inst. 252. But sometimes it allows a conclusive presumption in opposition to truth. See 3 Bouv. Inst. n. 3061.

***Contractus ex turpi causa, vel contra bonos mores nullus est.*** A contract founded on a base and unlawful consideration, or against good morals, is null. Hob. 167; Dig. 2, 14, 27, 4.

***Culpa lata aequiparatur dolo.*** A concealed fault is equal to a deceit.

***Ei incumbit probatio qui dicit, non qui negat.*** The burden of the proof lies upon him who affirms, not he who denies. Dig. 22, 3, 2; Tait on Ev. 1; 1 Phil. Ev. 194; 1 Greenl. Ev. Sec. 74; 3 Louis. R. 83; 2 Dan. Pr. 408; 4 Bouv Inst. n. 4411.

***Ex facto jus oritur.*** Law arises out of fact; that is, its application must be to facts. The affidavit procedure within the Lien process provides various opportunities for the defendant to rebut the claims and obtain lawful remedy.

**Notice of Conditional Acceptance:** This is a 3-notice lawful Discovery Process which affords the defendant multiple opportunities to negate the claims made against them by the Lien claimant and terminate any further process.

**The Lien Process:** This is a 5-notice lawful Process which includes two lawfully notarised affidavits setting out the claims or the Lien claimant. It affords further opportunities for the defendant to submit evidence, in lawfully notarised affidavits, by way of rebuttal point for point, the allegations made in the claimant's affidavit. A successful rebuttal by affidavit will cease the Lien process. Failure to rebut with material evidence the lien claimant's affidavits will lead to the perfection of the lien in favour of the Lien claimant. A perfected Lien eventually becomes an account receivable in law.

# The Lien Process

There are two stages within the process:

1/. **THE DISCOVERY PROCESS** (Notice Of Conditional Acceptance – NOCA - Process)

2/. **THE LIEN PROCESS**

Everything described in this document has been tried, tested and perfected, in accordance with the English law of liens including how to serve a common law lien on the CEO of any UK bank or anyone committing a tort against you!

**This process is a non-judicial remedy for any civil wrongdoing.**

It offers a lawful way to secure your property and to recoup your losses to fraudulent activity.

- A properly perfected common law lien process **does not require an order of the court** to be legally enforced.
- A lien is a defence to **any type of civil wrongdoing**.
- A lien right or the **right to enforce a lien arises naturally** under the common law.
- A lien is NEVER a claim – it is only ever a defence to a civil wrongdoing.
- A lien right therefore naturally arises when a bank or anyone commits fraud.

## DISCOVERY DOCUMENTS IN COMMON LAW LIEN PROCESS

1. Notice of Conditional Acceptance
2. Notice of Opportunity To Cure
3. Notice of Default

## KEY DOCUMENTS IN COMMON LAW LIEN PROCESS

1. Notice of Lien Interest
2. Affidavit of Obligation
3. Notice of Fault & Opportunity To Cure
4. Notice of Default
5. Affidavit of Non-Response

## THE DISCOVERY PROCESS

### 1. Notice of Conditional Acceptance

This notice should be served at the beginning of the process, asking for material evidence to justify the recipient's claim of monies owed. In the event an appropriate and timely response is received, the process ends and negotiations begin.

### 2. Notice of Opportunity to Cure

This notice should be served if there is not an appropriate and timely response to the first notice, once again asking for material evidence to justify the recipient's claim. In the event one is received, the process is suspended and negotiations begin.

### 3. Notice of Dishonour (Default)

This notice should be served at the end of the process when the recipient has failed to provide material evidence to justify their claim and the injured party now has enough evidence to proceed with the lien process.

## THE LIEN PROCESS

### 1. Notice of Lien Interest

In this notice, the Lien Debtor is notified of the damages sought in the lien process that will follow and the reasons why the lien right being enforced arose.

### 2. Affidavit of Obligation

The affidavit lays out the allegations of civil wrongdoings against the lien debtor, along with the proof of those allegations, in the form of the evidence which arise from the discovery process, as well as the default conditions, the ledgering of damages owed, and the time allowed to respond appropriately.

### 3. Notice of Fault & Opportunity to Cure

This notice should be served if there is not an appropriate and timely response to the affidavit, once again asking for material evidence to rebut the allegations therein. In the event one is received, the process is suspended and negotiations begin.

### 4. Notice of Default

This notice should be served if there is not an appropriate and timely response to the previous notice, notifying the lien debtor that default conditions now apply.

### 5. Affidavit of Non-Response

This affidavit attests to the delivery of the documents sent to the lien debtor and should be sent when the lien is perfected, 90 days after the date of the Affidavit of Obligation.

**Every properly perfected lien is lawfully enforceable through the established enforcement system, or it can now be exchanged for a line of credit through the Bills of Exchange system.**

## SETTLEMENT

- If settled within the first month payment is the PRINCIPLE claimed.
- If not settled within 30 days triple damages [+ the principal] is applied to the lien's value, becoming four times the original PRINCIPLE claimed.
- If not settled within 90 days, it then includes exemplary damages at 100 times the original value of the lien PRINCIPLE claimed and is then an **Account Receivable** which can be secured against the Lien debtor's estate.

This is because a properly perfected process gives rise to **an equitable lien, capable of registration as a legal charge.**

The liens served are capable of being enforced in the same way all charges are but **without the order of a court.**

The liens served are secured against the personal estate of each named and served lien debtor involved.

Even an unregistered lien is treated as the equivalent of an equitable charge, which can be sold to certain merchant banks for a discounted price.

## Enforcement of Perfected Liens

**A perfected lien is a judgement in law.**

A perfected lien and a judgment are distinct legal concepts, but they both involve legal claims against property.

The difference between the two:

### 1. **Perfected Lien:**

- Any Lien is a legal right or charge that a creditor has in a debtor's property, granted until a debt is satisfied.
- A perfected Lien is one that has been legally established, typically by complying with the required legal formalities, such as filing a lien with the appropriate government office. The process of perfecting a lien varies based on the type of lien and the jurisdiction. Halsbury's Law of Liens applies to UK jurisdiction.

Halsbury's Laws of England is a comprehensive legal encyclopaedia that covers various areas of English law. It provides authoritative and detailed information on legal topics, including liens. The information in Halsbury's Laws of England is often cited in legal research and practice.

Specifically, Halsbury's Law of Liens is a recognized and authoritative source on the law of liens in the UK. The principles and information provided in **Halsbury's Laws are generally applicable to the legal framework in England and Wales.**

### 2. **Judgment:**

- A judgment is a formal decision by a court regarding the rights and claims of parties in a legal matter.
- In the context of debt and liens, a judgment can result from a legal action brought by a creditor against a debtor. If the court rules in favour of the creditor, it may enter a judgment against the debtor, determining the amount owed.

A perfected lien is based on Common Law and a judgment is based on Statute Law. While one is lawful & the other a legal concept, **they are both enforceable in the context of debt collection.**

If a creditor obtains a judgment/ Perfected Lien against a debtor using either Statute Law or Common Law, the judgment/ Perfected Lien stands as the legal basis to enforce a lien or take other actions to collect the debt.

### **Can a perfected non-judicial lien be made into an order of a court in England & Scotland?**

In **England and Scotland**, the enforcement of a perfected lien, whether judicial or non-judicial, can be achieved with or **without using legal processes**; legal court process is not always necessary.

A perfected non-judicial lien represents a **legally recognized interest in property and is capable of being enforced** in itself. It is also **capable of being turned into an order of a court** via statutory legal proceedings if required.

The specific procedures can depend on the type of lien, the nature of the debt, and the circumstances surrounding its enforcement.

### **Legal Proceedings:**

To enforce a perfected non-judicial lien and obtain the legal authority to take certain actions (such as seizing and selling the property to satisfy a debt), a **creditor is entitled to enforce the perfected lien without any court involvement.**

However, the lien creditor is also lawfully entitled, if so desired, to initiate legal proceedings via a statutory court to **obtain an enforcement order from the court.**

### **Types of Liens:**

The procedures for enforcing different types of liens (e.g., real property liens, security interests in personal property) may vary. The rules will be outlined in statutes, case law, or other legal sources.

### **Court Approval:**

Depending on the nature of the lien and the intended enforcement actions, court approval may sometimes be preferable to achieve enforcement but is seldom essential.

A court order for enforcement may sometimes be preferable **as an additional option** to provide the legal authority to carry out some specific enforcement actions related to the lien using established registered Enforcement officers of the courts.

### **Enforcement:**

Even an unregistered lien is treated as the equivalent of an equitable charge, capable of being registered at Land Registry and/or Companies House. The lien can be sold to certain merchant banks for a discounted price via a Bill Of Exchange compliant with the Bills of Exchange Act 1882.

## **Bills of Exchange Act 1882**

An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes.

[18th August 1882] <https://www.legislation.gov.uk/ukpga/Vict/45-46/61>

## **The Consideration for a Bill**

### **Bills of Exchange Act 1882, Section 27 - Value and Holder for Value.**

(1) Valuable consideration for a bill may be constituted by;

(a) Any consideration sufficient to support a simple contract.

(b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) **Where the holder of a bill has a lien on it arising** either from contract or **by implication of law**, he is deemed to be **a holder for value to the extent of the sum for which he has a lien.**

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