

## **AMENDED REPORT OF AD HOC JUDGMENT LIEN COMMITTEE**

To: Chair Elect Jon Scuderi  
Probate Division Director Sancha K. Brennan  
Real Property Division Director Steven H. Mezer

From: Brian J. Felcoski, Committee Chair

Date: May 26, 2026

In September of 2025, the RPPTL Section formed an ad hoc committee to study an issue being discussed among some members of the Real Property Division. The issue was the treatment of judgment liens under the Florida Probate Code and, in particular, section 733.702, Florida Statutes. To the committee's knowledge, there was no reported case decision (recent or otherwise) that prompted this discussion. There simply appeared to be a healthy debate on the real property side as to the proper interpretation of applicable law that prompted the Section to form this ad hoc committee.

The committee met by zoom on multiple occasions to review applicable law and to discuss the issue of how judgment liens are treated in probate proceedings.

Florida's Probate Code is anchored by public policy that promotes the prompt and final settlement of estates of decedents. *Tsuji v. Fleet*, 326 So. 3d 143, 145-46 (Fla. 1<sup>st</sup> DCA 2021) ("Florida's Probate Code serves many purposes. Chief among them is to promote the timely settlement of a decedent's estate."). To carry out that public policy, the Florida legislature has enacted a broad statute of non-claim that governs the filing of claims in estates. *Id.*

Section 733.702, Florida Statutes, provides in pertinent part:

- (1) If not barred by [s. 733.710](#), no claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its political subdivisions, even if the claims are unmatured, contingent, or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or another wrongful act or omission of

the decedent, is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding on or before the later of the date that is 3 months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise.

Operating in conjunction with section 733.702 is section 733.706 that addresses judgment creditors. Section 733.706 provides:

Except upon approval by the court, no execution or other process shall issue on or be levied against property of the estate. An order approving execution or other process to be levied against property of the estate may be entered only in the estate administration proceeding. **Claims on all judgments against a decedent shall be filed in the same manner as other claims against estates of decedents. This section shall not be construed to prevent the enforcement of mortgages, security interests, or liens encumbering specific property.**

There was robust discussion by the members of the committee as to the proper interpretation of the law including the bold language above. The issue arises out of the principle enunciated by real property practitioners, outside the probate context, that a properly perfected final judgment lien is a lien against all non-homestead property owned by the judgment debtor and therefore could be considered a “lien encumbering specific property.” Therefore, in a situation in which a creditor holds a properly perfected judgment lien against a debtor’s non-homestead real property, who then subsequently dies, some real property practitioners ask whether is it a requirement that said creditor must file a claim in the probate estate to preserve the properly perfected judgment lien against non-homestead real property because some argue there is a “lien encumbering specific property?”

In contrast, other practitioners point to the holding in *Pinellas County v. Clearwater Federal Sav. & Loan Ass’n*, 214 So. 2d 525, 527 (Fla. 2d DCA 1968)

for support of the position that unlike a mortgage, which is a specific lien, a properly perfected final judgment lien is “a general lien which attaches to any property currently owned or subsequently acquired by the judgment debtor” and is not a specific lien. Therefore, those practitioners would argue that unless the judgment creditor files a timely claim in a probate proceeding, the judgment is no longer enforceable.

In the recent decision of *Jones v. McKinney*, 341 So. 3d 360 (Fla. 2d DCA 2022), a creditor filed a statement of claim in the probate proceeding and litigated the claim to a final judgment. The judgment creditor recorded the judgment and thereafter sought to foreclose its judgment lien against a piece of real property that was the sole asset of the decedent’s estate. The judgment creditor, in effect, sought to elevate its claim above the class 8 status accorded to most claims in the administration of an estate. The estate sought to disregard the lien, to sell the property and apply the proceeds in accordance with the order of payment of expenses and obligations of the estate set forth in section 733.707, Florida Statutes. The appellate court held that the judgment lien was a general lien and not a lien encumbering specific property. It did not fall within the exception set forth in section 733.706 for “mortgages, security interests, or liens encumbering specific property.” The judgment creditor was not accorded any priority in payment from the estate assets after sale of the real property in question.

Real property practitioners argue that this case can be distinguished from the situation in which a creditor holds a properly perfect judgment lien against a debtor’s non-homestead real property PRIOR to the debtor’s death.

Based on this ad hoc committee’s study of the issue and the long-term practice of requiring a claim be filed with respect to judgment creditors and, in the absence of a filed claim, the position by some real property practitioners and others that the lien is no longer in effect, there was a motion by one committee member to do nothing at this time with respect to properly perfected judgment liens in probate. That motion received a second. All members of the committee, with the exception of one person, voted in favor of the motion.

The members of the committee included Tae Kelley Bronner, Cullen Boggus, Jeremy T. Cranford, Amber Ashton, Melissa Murphy, and Brian J. Felcoski.