

**Title Problems 101
Simple Judgment Liens**

Seller has numerous judgments docketed as liens against his property. Seller filed bankruptcy and had the judgments discharged. Doesn't the bankruptcy also discharge the judgment liens so that the property can be sold free and clear of them?

No, not unless special attention was paid to them in the bankruptcy action, which we find rarely to have been the case. A judgment is a court order declaring one person owes money to someone else. A judgment may be "docketed," which is another word for recorded, in the local circuit court clerk's office land records. If docketed, the judgment becomes a lien – it "attaches" in real estate lawyer parlance – to any real estate interest owned by the judgment debtor. Now, when someone files bankruptcy the bankruptcy order will discharge the personal liability of the judgment debtor to the judgment creditor, but it does not discharge the lien against the land. I know this seems like it is unfair or wrong, but think of a mortgage company proceeding on its note and deed of trust: bankruptcy may prevent the lender from suing the owners for the money owed on the loan but it does not prevent the lender from foreclosing on the property – it has a valid, pre-bankruptcy lien against the property and is entitled to be paid. Now, in the case of judgments it is possible to have them discharged as a lien if they were "avoided as a preference" in the bankruptcy action. When we face this title problem we get the seller to go back to his bankruptcy attorney in order to obtain evidence they were so avoided. Failing that evidence they must be paid as part of the sale.