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Recovery provisions, lien laws, in
public welfare

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BRIEF NO. 57. RECOVERY PROVISIONS - LIEN LAWS - IN PUBLIC WELFARE.

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RECOVERY PROVISIONS

State Departments of Public Welfare attempt to insure recovery of money paid to recipients in three ways.¹ First, they place liens on the property of recipients. Second, they use claims, which do not involve liens, against recipients' estates. Third, they require assignment or transfer of recipient's property to the state. Table 1 shows the restrictive property laws among the states by type of law and by the public assistance categories to which they apply.

Fourteen states have legal provisions for none of these methods.² Of these 14 states, six have had one or more of the restrictive property laws, but have subsequently repealed them.³

CHARACTERISTICS OF LIEN LAWS

Thirty-four states have some type of restrictive property law. Twenty-five of these have a lien provision. Two of the 25 have only a lien provision, while 23 have some combination of lien law and claim or transfer and assignment laws. Eight of these 23 provide for all three types of restrictive property laws.

Table 2 shows, by state, the type of property on which a lien is filed, the property covered by a lien, and monetary exemption from a lien.

All states using liens file them on real property, and 10 states file them on personal property as well. The liens of five states cover the estate, while those of three states cover insurance. New Mexico's lien covers real property only.

The liens filed by all the states cover the property owned by the recipient at the time the lien is filed. In 13 states, the lien also covers property required subsequent to the filing of the lien; New Mexico is included in this group of 13 states.

Eighteen of the 25 states having lien laws make no real or personal property exemptions from the lien. Five states exempt real property to a limited amount; the amount exempt varies from the \$300

¹The material from which this section is drawn is varied. In some instances the state laws only were available; in others state administrative regulations were used. Since administrative regulations may alter laws, the laws may not accurately reflect state practice. The material herein should be evaluated only with these limitations in mind.

²Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas and Washington.

³Alabama, Arizona, Arkansas, Georgia, Louisiana and Tennessee. In addition, Oregon repealed its lien law but kept a claim provision. Indiana, Minnesota and Nebraska have repealed lien laws, but have subsequently reinstated them. Georgia has passed lien laws, at two different times and both have been repealed.

to \$1,500. Four states exempt personal property to a limited amount; the amount exempt varies from \$200 to \$700. The New Mexico law makes no exemptions.

In their lien laws, 11 states exempt from the lien expenses for the recipient's last illness and burial; these exemptions vary in amount from \$125 to \$700. The New Mexico law gives preferred status to expenses for last illness and burial above the welfare lien.

Other characteristics of state lien laws vary widely. Some of these variations are shown in Table 3.

As a condition of granting assistance, the states are evenly divided in their practice of obtaining the written consent of a recipient before taking a lien. Twelve states require the written consent of the client, and 12 states do not. New Mexico does not require the recipient's written consent.

State laws vary to a slight extent about the time when the lien is to be filed. Twenty-two states including New Mexico file a lien when the grant for public assistance begins. Two states may file a lien at any time after the grant has begun, while Virginia may take a lien on the estate of the recipient at his death.

Most of the states require their welfare agencies to record all liens; however mandatory filing is not universally required. In five states, the recording of a lien is discretionary with the agency.

The extent to which and the conditions under which the state laws require recovery upon the death of a recipient vary. In only 6 states must the agency attempt to collect the entire amount due the state either by foreclosure or settlement with the heirs. However, in five of these states and in 14 additional states, of which New Mexico is one, recovery from real property is delayed, if the real property is a house occupied by a surviving spouse or dependent relatives. In 16 states including New Mexico, collection of the entire amount due the state is discretionary with the agency: in the "best interest" of the state, the agency may settle with the heirs for a lesser amount, or it may dismiss the claim entirely.

CHARACTERISTICS OF CLAIM LAWS

Twenty-seven of the 34 states that have restrictive property laws have claim laws. Nine of the 27 states have only claim laws, while 18 have claim laws in conjunction with lien or transfer and assignment laws.

Table 4 indicates some characteristics of claim laws.

In seven states, the agency must file a claim upon the estate of a deceased recipient, but in four of these states the filing may be delayed when the real property of the deceased is occupied by a surviving spouse or dependent relative. In 12 states, the agency decides upon an individual basis whether to file a claim. Eighteen states make provision that a claim is not to be filed against real property when it is occupied by a surviving spouse or dependent relative.

Only seven states make dollar exemptions from claims. The only state that exempts real property, Connecticut, exempts \$300. The only

state that exempts insurance, California, exempts \$250. Four states exempt from \$100 to \$550 of personal property, while three states exempt from \$150 to \$625 for expenses for the last illness and burial.

CHARACTERISTICS OF TRANSFER AND ASSIGNMENT LAWS

Fourteen states have transfer or assignment of property laws. All of these states use these laws in addition to lien or claim laws.

Table 5 illustrates some characteristics of assignment and transfer laws.

Ten states have assignment laws, while five have transfer laws.

Assignment or transfer is required by six states. The mandatory requirement is applicable to insurance in all six states, but is applicable to real or personal property in only three of these states. Assignment or transfer is not required by eight states, that is, it is discretionary.

Eleven of the 14 states using this type of law apply it to insurance. Nine states apply it to personal property, and seven apply it to real property. However, in only three states is the assignment of real or personal property made mandatory.

In three of the states in which the recipient must assign or transfer his property to the state, the state takes title to the property. In two states, the property is held as security for the amount of assistance granted, while in one state the property is held in trust. In five states, the property so assigned or transferred is managed by the public assistance agency.

NEW MEXICO EXPERIENCE

Since New Mexico's Lien and Claim Law has been in existence for less than a year, an evaluation of whether it will have the permanent effect of reducing the number of recipients or of whether it will prove financially costly or profitable to the state is impossible to determine at this time.

Source for text and tables: New Mexico Welfare Investigating Committee, report entitled "Public Assistance and Social Service in New Mexico", 1957.

TABLE 1. Restrictive Property Laws in the Various States, by the Type of Law and Categories to Which They Apply

State	Types of Law			Categories to Which Laws Apply				
	Lien	Claim	Transfer or Assignment	OAA	APTD	AB	ADC	GA
Calif.	x	x	x					x
Conn.	x ¹	x	x	x	x	x		
Idaho	x	x	x	x				
Iowa	x	x	x	x		x ²		
N.H.	x	x	x	x	x	x ³		
N.Dak.	x	x	x	x	x			
Pa.	x	x	x	x	x	x		
Wis.	x	x	x	x				
Ind.	x	x		x		x ²		
Ky.	x	x		x		x		
Minn.	x	x		x		x ²		
Mont.	x	x		x	x	x		
Nebr.	x	x		x				
N.Mex.	x	x		x	x	x		x
N.C.	x	x		x				
Ohio	x	x		x				
S.Dak.	x	x		x				
Vt.	x	x		x	x	x		
Mass.	x		x	x	x			
N.J.	x ¹		x	x	x			
N.Y.	x		x	x	x	x	x	
R.I.	x		x	x				
W.Va.	x		x	x				
Md.		x	x	x	x	x		
Utah	x ¹			x	x	x	x	x
Va.	x			x	x	x		
Ill.		x		x				
Kans.		x		x	x	x	x	x
Maine		x		x	x	x		
Mich.		x		x				
Nev.		x		x				
Oreg.		x		x	x	x		
S.C.		x		x				
Wyo.		x		x				
Total	25	27	14	33	16	17	3	4

¹Conveyance of all real property will be accepted in lieu of a lien.

²Claim provision only applies.

³Assignment provision only applies.

TABLE 2. Coverage of State Liens by Type of Property on Which Lien Is Filed, by Property Covered, and by Exemptions.

State	Type of Property on which Lien is Filed				Property Covered by Lien		Exemptions from Liens		
	Real	Per-sonal	Es-tate	Insur-ance	Held when Lien Filed	Acquired Later	Real	Personal	Last Illness and Burial ¹
Calif.	x	x			u ²	u ²		\$550	\$250
Conn.	x				x ³				
Idaho	x				x	x	\$ 300		
Ind.	x	x	x		x	x			125
Iowa	x				x				
Ky.	x				x	x			
Mass.	x			x	x ³		1,500		
Minn.	x				x ³				... ⁴
Mont.	x				x				
Nebr.	x				x	x			250
N.H.	x	x	x		x	x			
N.J.	x	x		x	x				250
N.Mex.	x				x ³	x			... ⁴
N.Y.	x				x ³				... ⁵
N.C.	x				x				
N.Dak.	x	x		x	x	x			150
Ohio	x				x ³			200	300
Pa.	x	x			x				
R.I.	x	x	x		x		700 ⁶	700 ⁶	700
S.Dak.	x	x			x	x			
Utah	x				x		1,000 ⁷		
Vt.	x		x		x	x			
Va.	x	x	x		x	x			
W.Va.	x	x			x	x	1,500	200	
Wis.	x				x	x			300
Total	25	10	5	3	24	13			

¹The absence of a figure in this column does not exclude the possibility that prior claim for funeral expenses is provided by general statute, rather than a lien law.

²Undetermined.

³A legal description of property covered by lien is required.

⁴All expenses are exempt from lien.

⁵Amount of expenses exempted is determined administratively.

⁶The total real and personal property exempt may not exceed \$700.

⁷Applied only to Old Age Assistance.

TABLE 3. Characteristics of State Lien Laws.

State	Client's Written Consent Required		Time of Filing Lien		Recording of Lien		Characteristics of Recovery			
	Required	Not Required	When Grants Begin	Anytime After Grant	At Death	Mandatory	Discretionary	Collection Amount due State Man-datory	Delay of Recovery Possible	Collection Amount due State Discretionary
Calif.	u ²	u ²					x			u ²
Conn.	x	x	x				x		x	
Idaho			x						x	
Ind.	x		x						x	
Iowa		x	x						x	
Ky.		x	x						x	
Mass.		x	x						x	
Minn.		x	x						x	
Mont.		x	x						x	
Nebr.		x	x						x	
N.H.	x			x ⁴			x ⁴		x	
N.J.	x		x ⁵						x	
N.Mex.		x	x ⁵						x	
N.Y.	x		x ⁵				x		x	
N.C.	x		x						x	
N.Dak.	x		x						x	
Ohio	x		x						x	
Pa.	x			x					x	
R.I.	x								x	
S.Dak.		x							x	
Utah	x								x	
Vt.		x	x						x	
Va.		x	x ³		x ⁶		x ⁶		x	
W.Va.	x		x					u ²	x	
Wis.		x	x						x	
Total	12	12	22	2	1	21	5	7	19	16

1 Recovery from real property is delayed if occupied by surviving spouse or dependent relatives.

2 Undetermined.

3 The filing of the lien is mandatory only when the recipient owns real property.

4 When a grant begins, the Department files a "notice" that it has a reimbursement agreement signed by the recipient.

At any time later the Department may file a "certificate" of the amount of assistance granted. The certificate acts as a lien.

5 The system is similar to that of New Hampshire, except that "notice" acts as the lien.

6 On the death of a recipient, a lien may be filed on his entire estate.

TABLE 4. Characteristics of State Claim Laws

State	Filing of Claims			Exemption from Claims			Last Illness and Burial
	Collection Amount due State Mandatory	Delay of Recovery Possible	Collection Amount due State Discretionary	Real	Personal	Insurance	
Calif.		u ²	x		\$550	\$250	\$625
Conn.	x		x	\$300			
Idaho	x	x					
Ill.	x						
Ind.		x					
Iowa		x	x				
Kans.		x	x				
Ky.	u ²	x	u ²				
Maine	x ²	x	u ²				\$400
Md.	u ²	x					
Mich.			x				
Mont.	x	x					
Nebr.		x					
Nev.	x ²	x	u ²				
N.H.	u ²	x			\$100		
N.Mex.			x				
N.C.			x				
N.Dak.			x		\$100		
Ohio	u ²	x	u ²		\$200		\$150
Oreg.	u ²	x					
Pa.		u ²	x				
S.C.	x						
S.Dak.	u ²						
Vt.			x				
Wis.		x	u ²				
Wyo.	u ²	x	x				
Total	7	18	12				

¹Not enforceable against real property occupied by surviving spouse or dependents.
²Undetermined.

TABLE 5. Characteristics of State Assignment and Transfer Laws.

State	Type of Law		Application		Type of Property			Management of Assignment			State Takes Title	
	Assign-ment	Transfer	Manda-tory	Discre-tionary	Real	Personal	Insurance	Held as Security	Held in Trust by Agency	Managed		
Calif.		X										
Conn.	X		X		X	x1	x2	u5	x	u5	u5	
Idaho	X		X		X	x3	x4					
Iowa	X		X		X							
Md.	X		X		X	X	x9	u5	X	u5	u5	u5
Mass.	X		X				x9	u5				x8
N.H.	X		X		X		x9	u5				u5
N.J.	X		X		X		x10	u5				u5
N.Y.	X		X		X		X					X
N.Dak.	X		X		X							
Pa.	X		X		X	x12	x16					x13
R.I.	X		X		X	x15	x	u5				u5
W.Va.	X		X		X	X	x	u5				u5
Mis.	X		X		X	X	x17	u5				u5
Total	10	5	6	8	7	9	11	2	1	5	5	3

- 1 Property in excess of \$50 transferrable.
- 2 Insurance in excess of \$250 cash surrender value transferrable.
- 3 Property in excess of \$600 assignable.
- 4 Insurance in excess of \$600 cash surrender value assignable.
- 5 Undetermined.
- 6 Assignment becomes lien when filed.
- 7 Department may require assignment or absolute conveyance of all property.
- 8 Title taken if property conveyed.
- 9 Insurance must be assigned if in excess of \$300 cash surrender value.
- 10 Insurance must be assigned if in excess of \$1,000 face value.
- 11 May require assignment or transfer.
- 12 The state may take mortgages on real property in addition to transfer, assignment, or lien laws.
- 13 Title taken in case of transfer.
- 14 Transfer required on real property other than homestead.
- 15 Property in excess of \$200 must be transferred.
- 16 Insurance in excess of \$300 cash surrender value must be transferred.
- 17 Insurance in excess of \$200 cash surrender value must be transferred.