



WSSFC 2025

Substantive Track – Session 4

Lien on Us: An Overview of Security Interests under Wisconsin Law

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About the Presenters...

James (Jim) V. Block is a partner at Krautkramer & Block LLC, in Wausau, Wisconsin. He represents clients in bankruptcy, foreclosure, and collection matters. Since 2012, Jim has served as a Chapter 7 panel trustee. Jim earned his J.D., cum laude, from the University of Wisconsin Law School. He has served on the Wisconsin State Bar's Bankruptcy, Insolvency, and Creditors' Rights Board since 2019. In 2023, the American Bankruptcy Institute named Jim to its Top 40 Under 40 Class. Outside of his legal career, Jim is an Eagle Scout and volunteers as a Cub Scout den leader, teaching values like community service and leadership.

Christopher (Chris) J. Dodge is one of the founders and current president of Fuhrman & Dodge, S.C., an eleven-attorney law firm located in Middleton, Wisconsin. Chris's primary practice involves contract, business, and property disputes, as well as litigation involving the banking, dealership and construction industries. Chris is also regularly involved in the operation of business, including representation of business clients in their day-to-day needs, employment matters, purchases and sales of businesses and resolving problems arising out of disputes between business owners. Chris has an extensive practice in collections and business formations. Chris received both his Bachelor of Science degree and his Juris Doctor degree from the University of Wisconsin – Madison. He is admitted to the State Bar of Wisconsin, the U.S. District Courts for the Eastern and Western Districts of Wisconsin, and the U.S. Court of Appeals for the 7th Circuit. Chris is also a member of the Dane County Bar Association, the Western District of Wisconsin Bar Association, and the James E. Doyle Inns of Court. Chris is a musician (drummer), music fanatic and loves to travel, camp, and spend time with family and friends.

Kimberly P. Sebranek is a shareholder and current president of Laffey, Sebranek, Auby & Ristau, S.C. She has been a part of that firm's legal team since 1999. Her practice primarily focuses on banking, bankruptcy (creditor's rights), receiverships, foreclosures, workouts, collections and business litigation. She received her B.A. degree, *summa cum laude*, from Berea College in 1987 and her J.D. degree, *cum laude*, *Order of the Coif*, from the University of Wisconsin in 1998. She was also a Thomas J. Watson Fellow, 1991 – 1992. She is a member of the Dane County Bar Association and the State Bar of Wisconsin. She has been selected to the Wisconsin Super Lawyers List every year since 2011. She has also been recognized by Best Lawyers since 2020. Kimberly currently serves on the Wisconsin State Bar BICR board. She is an active member of both WT Farm League and Team Zoot.

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I. Initial Overview

- A. Framing question: Who gets paid; in what order?
- B. Small-firm lawyers are "first call" for many clients regardless of issue
 - 1. Lien issues cut across nearly every practice area
 - 2. Liens are ubiquitous:
 - * The cause of litigation;
 - * The product of judgments

II. Practical Considerations for Small Firms

- A. Spotting lien issues in client intake
- B. Advising creditors (documentation, filings, deadlines)
- C. Advising debtors (homestead and personal property exemptions, lien avoidance tools)
- D. Drafting secured transaction documents
- E. Litigation strategies for lien enforcement and defense
- F. Ethical duties when advising on secured transactions
- G. Settlement leverage (how liens shape negotiations)

III. Common Terms & Definitions

- A. **Lien:** A legal right v. interest in property securing payment of a debt.
- B. **Security Interest:** An Article 9 concept: A consensual lien on personal property, including fixtures, securing an obligation. (See, *Wis. Stat. Ch. 409*).
- C. **Collateral:** Property subject to a security interest.
- D. **Attachment:** The creation of a security interest between the lender and the borrower.

E. **Perfection:** The formal notification (e.g. filing, possession, control) to third parties that the lender has a security interest in the borrower's property.

F. **Priority:** Rules that determine which lienholder gets paid first.

G. **Judgment Lien:** A lien arising by docketing a money judgment in circuit court.

H. **Statutory Lien:** A lien created by statute (e.g., mechanics' lien, tax lien).

I. **Avoidance:** A bankruptcy or state-law ability to set aside a lien (preferences, fraudulent transfers).

J. **Exemption:** Debtor protections against lien enforcement (homestead, personal property exemptions).

IV. Consensual Liens & Security Interests

A. UCC Article 9 Consensual Security Interests – *Wis. Stat. Chapter 409*

1. Creation and attachment (*See, Wis. Stat. §§ 409.201-409.208*)

- **Statute of Frauds:** A security interest is not enforceable against the debtor or third parties unless the debtor has signed a security agreement that describes the collateral. (*See, Wis. Stat. § 409.203*)

2. Perfection methods (filing, possession, control) (*See, Wis. Stat. §§ 409.301-409.316*)

3. Priority issues (*See, Wis. Stat. §§ 409.317-409.339*)

- First-to-file
- PMSIs
- Buyers in ordinary course

B. Mortgages and Land Contracts – *Wis Stat. Chapter 706*

1. Basics of real estate security interests

2. Recording requirements and the Wisconsin race-notice system

3. Priority in real estate

- notices required

4. Special issues

- fixtures
- assignments of rents
- doctrine of equitable subrogation

V. Statutory Liens

A. Statutory Liens

1. Mechanics and Construction Liens – *Wis. Stat. § 779.01, et seq.*

a. Threshold considerations

- i. Lienable work or materials must improve the property (*See, Wis. Stat. § 779.01(2)*)
- ii. Distinguish prime contractor vs. subcontractor status
- iii. Record first and last date of work or delivery of materials

b. Notice requirements

- i. Prime contractors: 10-day notice within 10 days of first furnishing labor/materials on private projects (best practice: include in contract)
- ii. Subcontractors: 60-day notice to the property owner within 60 days of first furnishing labor/materials (private and public projects)
- iii. Exceptions to notice requirements

c. Post-completion deadlines

- i. Notice of intent: 30 days before filing a lien, and within 5 months of last work/materials
- ii. Claim for lien: filed within 6 months; served within 30 days of filing
- iii. Action to enforce: filed within 2 years of lien claim

d. Priority rules

- i. Priority dates back to visible commencement of work (*See, Wis. Stat. § 779.01(4)*)
- ii. Superior to later liens and unrecorded mortgages if claimant lacked notice

2. Other Statutory Liens

a. Creation and scope

b. Tax Liens

- i. Federal Tax Liens (IRS): The "secret" or "silent" lien
 - Perfection: Filing the Notice of Federal Tax Lien (NFTL)
 - Priority: The "first in time, first in right" rule and statutory "super-priorities"
 - After-acquired property issues
- ii. State Tax Liens (DOR/DWD)

- Creation: The issuance of a tax warrant (*Wis. Stat. § 71.91*)
- Lien on all real and personal property
- Enforcement and collection actions
- Foreclosure and Redemption
- Tax certificate foreclosure (*Wis. Stat. Chapter 75*)
- Redemption rights

c. Hospital Liens (*Wis. Stat. § 779.80*)

Creation and perfection

Priority issues

VI. Judgment Liens

1. Docketing a judgment (*See, Wis. Stat. § 806.15*)
2. Lien on real property (not personal property) (*See, Wis. Stat. § 806.15(1)*)
3. Duration and renewal of judgment liens (*See, Wis. Stat. § 806.15(2)*)
4. Enforcement tools
 - i. Garnishment (*See, Wis. Stat. Ch. 812*)
 - ii. Execution (*See, Wis. Stat. Ch. 815*)
 - iii. Supplementary proceedings (*See, Wis. Stat. § 816.03, et seq.*)

VII. Preservation & Perfection

- A. The importance of timely action
- B. Maintaining and updating records (e.g., lapsed UCC-1 filings)
- C. Wisconsin quirks and pitfalls
 1. Mis-indexed recordings
 2. Fixture filings and mixed collateral
- D. Priority contests (first-to-file) and common litigation issues

VIII. Avoidance & Challenges in Proceedings

- A. Bankruptcy Proceedings
 1. The automatic stay
 2. Trustee avoiding powers (*11 U.S.C. §§ 544–550*)
 3. Lien avoidance under the Bankruptcy Code
 4. Preference and fraudulent transfer exposure

B. Fraudulent Transfers (*Wis. Stat. Ch. 242*)

1. Uniform Fraudulent Transfer Act (*UFTA*)
2. Badges of fraud

C. Wisconsin-specific procedural nuances

1. Case study: *Hart v. Greenwich Insurance Co.*, 2012 WI 63

IX. Hot Topics and Recent Case Law

A. Key federal precedents

B. Wisconsin Supreme Court and Court of Appeals lien cases

C. Emerging issues (e.g., electronic filing, UCC modernization, agricultural liens)

X. Conclusion & Q&A

A. Core takeaways for small-firm practitioners

B. Resources and further reading

1. Lien on this Guide: Issue-Spotting Decision Tree handout

Construction Lien Law Checklist

- ☐ Determine if work or material is lienable.
- ☐ Classify lien claimant as:
 - Prime contractor; or
 - Subcontractor, supplier, or service provider
- ☐ Classify project as:
 - 1. Private
 - ☐ Small;
 - ☐ Large; or
 - ☐ Bonded
 - 2. Public Works
- ☐ Follow procedure for appropriate lien claimant and project.
 - 1. **Prime Contractor—Private Small Project**
 - ☐ Send 10-day notice within 10 days after the first labor or materials are furnished if contract is oral, or include in written contract. Wis. Stat. § 779.02(2).
 - ☐ Send or deliver 30-day notice of intent to file a lien claim 30 days before filing a lien claim—must be within five months from day last labor, materials, or services were provided. Wis. Stat. § 779.06(2).
 - ☐ File claim for lien within six months from the date the lien claimant furnished the last labor, materials, or services. Wis. Stat. § 779.06(1), (3).
 - ☐ Serve copy of claim for lien on owner within 30 days. Wis. Stat. § 779.06(1).
 - ☐ File summons and complaint within two years from the date of filing a claim for lien. Wis. Stat. § 779.06(1).
 - 2. **Prime Contractor—Private Large Project**
 - ☐ Send or deliver 30-day notice of intent to file a lien claim 30 days before filing the claim—must be within five months from day last labor, materials, or services were provided. Wis. Stat. § 779.06(2).
 - ☐ File claim for lien within six months from the date the lien claimant furnished the last labor, materials, or services. Wis. Stat. § 779.06(1), (3).
 - ☐ Serve copy of claim for lien on owner within 30 days. Wis. Stat. § 779.06(1).
 - ☐ File summons and complaint within two years from the date of filing a claim for lien. Wis. Stat. § 779.06(1).

3. **Prime Contractor—Private Bonded Project**

- ☐ Follow notice requirements in paragraphs 1 or 2 above, depending on size of project; OR
- ☐ Commence action on contract.

4. **Prime Contractor—Public Works**

- ☐ Provide notice of claim to governmental body. Wis. Stat. § 893.80.
- ☐ Commence action on contract.

5. **Subcontractors, Suppliers, and Service Providers—Private Small Project**

- ☐ Send or deliver 60-day notice (lien notice) within 60 days after furnishing the first labor, materials, or services. Wis. Stat. § 779.02(2)(b).
- ☐ Send or deliver 30-day notice of intent to file a lien claim 30 days before filing the claim—must be within five months from day last labor, materials, or services were provided. Wis. Stat. § 779.06(2).
- ☐ File claim for lien within six months from the date the lien claimant furnished the last labor, materials, or services. Wis. Stat. § 779.06(1), (3).
- ☐ Serve copy of lien claim on owner within 30 days. Wis. Stat. § 779.06(1).
- ☐ File summons and complaint within two years from the date of filing the claim for lien. Wis. Stat. § 779.06(1).

6. **Subcontractors, Suppliers, and Service Providers—Private Large Project**

- ☐ Send or deliver 30-day notice of intent to file a lien claim 30 days before filing the claim—must be within five months from day last labor, materials, or services were provided. Wis. Stat. § 779.06(2).
- ☐ File claim for lien within six months from the date the lien claimant furnished the last labor, materials, or services. Wis. Stat. § 779.06(1), (3).
- ☐ Serve copy of lien claim on owner within 30 days. Wis. Stat. § 779.06(1).
- ☐ File summons and complaint within two years from the date of filing a claim for lien. Wis. Stat. § 779.06(1).

7. **Subcontractors, Suppliers, and Service Providers—Private Bonded Project**

- ☐ No later than 60 days after first performing work, notify prime contractor that subcontractor is working on the project, unless exempted from notice requirement. Wis. Stat. § 779.035(2)(b).
- ☐ Send notices of lien on proceeds before payment is made to prime contractor or subcontractor. Wis. Stat. § 779.036(1), (2).
- ☐ Commence action to recover from proceeds within three months from the time the notice of lien is served if claim is disputed. Wis. Stat. § 779.036(3).

- ☐ Commence action within 20 days of notice of proportional payout or within six months after completion of work of improvement if undisputed claims exceed the amount due prime contractor or subcontractor. Wis. Stat. § 779.036(4)(a), (b).
- ☐ Send notice to surety of nonpayment if required by the bond.
- ☐ Commence action on the bond within one year of completion of contract. Wis. Stat. § 779.035(2).

8. **Subcontractors, Suppliers, and Service Providers—Public Works**

- ☐ No later than 60 days after first performing work, notify prime contractor that subcontractor is working on the project, unless exempted from notice requirement. Wis. Stat. § 779.14(2)(am).
- ☐ Send notices of lien on proceeds before payment is made to prime contractor. Wis. Stat. § 779.15(1), (2).
- ☐ Commence action to recover from proceeds within three months if claim is disputed, filing notice of bringing action with public officer with whom the claim is filed. Wis. Stat. § 779.15(3).
- ☐ Commence action within 20 days of notice of proportional payout if undisputed lien claims exceed amount due the prime contractor. Wis. Stat. § 779.15(4).
- ☐ Send notice to surety of nonpayment if required by the bond.
- ☐ Commence action on the bond within one year of completion of contract. Wis. Stat. § 779.14(2)(a).
- ☐ Second-tier subcontractors, suppliers, and service providers, except on highway projects under section 84.06(2), are covered by bond.