

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 35 LIENS IN GENERAL

PART 2
LIENS

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CHAPTER 35
LIENS IN GENERAL

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ARTICLE 1
DEFINITION OF LIENS

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§ 35101. Lien.

A *lien* is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

SOURCE: CC § 2872.

§ 35102. General or Special Liens.

Liens are either general or special.

SOURCE: CC § 2873.

§ 35103. General Lien Described.

A *general lien* is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

SOURCE: CC § 2874.

§ 35104. Special Lien.

A *special lien* is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

SOURCE: CC § 2875.

§ 35105. Prior Lien.

Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

SOURCE: CC § 2876.

§ 35106. Limited to Contracts Covered by this Chapter.

Contracts of mortgage, bottomry and respondentia, are all subject to the provisions of this Chapter.

SOURCE: CC § 2877.

NOTE: Article II of Chapter II [Mortgage of Personal Property], Chapter II-A [Conditional Sales] and Chapter III [Pledge], all of Title XIV of the Civil Code, were all repealed out of the Civil Code by P.L. 13-150 as part of the enactment of the Uniform Commercial Code. The concepts and law which replaced these chapters are found within the UCC, which is Title 13 of this Code (Guam Code Annotated).

NOTE: No 1970 Civil Code §§ 2878-2880 existed.

**ARTICLE 2
CREATION OF LIENS**

§ 35201. How Liens are Created.

§ 35202. No lien, Claim not Due.

§ 35203. Lien Future Interest.

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§ 35204. Contract Liens.

§ 35201. How Liens are Created. A Lien is Created:

1. By contract of the parties; or
2. By operation of law.

SOURCE: CC § 2881.

§ 35202. No Lien, Claim not Due.

No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

SOURCE: CC § 2882.

§ 35203. Lien Future Interest.

An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

SOURCE: CC § 2883.

§ 35204. Contract Liens.

A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

SOURCE: CC § 2884.

NOTE: No 1970 Civil Code §§ 2885-2887 existed.

ARTICLE 3
EFFECT OF LIENS

§ 35301. Contract for Lien Transfers no Title.

§ 35302. Certain Contracts Void.

§ 35303. Lien - no Personal Obligation.

§ 35304. Extent of Lien.

§ 35305. Holder not Entitled to Compensation.

§ 35301. Contract for Lien Transfers no Title.

Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

SOURCE: CC § 2888.

§ 35302. Certain Contracts Void.

All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

SOURCE: CC § 2889.

§ 35303. Lien - No Personal Obligation.

The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is security.

SOURCE: CC § 2890.

§ 35304. Extent of Lien.

The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

SOURCE: CC § 2891.

§ 35305. Holder not Entitled to Compensation.

One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurred respecting it, except to the same extent as a borrower, under Civil Code [1970] §§ 1892 and 1893.

SOURCE: CC § 2892.

NOTE: No 1970 Civil Code §§ 2893-2896 existed.

ARTICLE 4

PRIORITY OF LIENS

- § 35401. Priority of Liens.
- § 35402. Priority of Mortgage.
- § 35403. Marshalling Different Funds.

§ 35401. Priority of Liens.

Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

SOURCE: CC § 2897.

§ 35402. Priority of Mortgage.

A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

SOURCE: CC § 2898.

COMMENT: See Title 21 of this code for the recording laws governing real property.

§ 35403. Marshalling Different Funds.

Where one has a lien upon several things, and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he can do so without risk or loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien;
2. To the things which are subject to the fewest subordinate liens;
3. In like manner inversely to the number of subordinate liens upon the same thing; and
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had --
 - (1) To the things which have not been transferred since the prior lien was created;
 - (2) To the things which have been so transferred without a valuable consideration; and

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(3) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

SOURCE: CC § 2899.

NOTE: No 1970 Civil Code §§ 2900-2902 existed.

ARTICLE 5
REDEMPTION FROM LIENS

§ 35501. Redemption Rights: Subrogation.

§ 35502. Inferior Lienor Rights.

§ 35503. How Redemptions made.

§ 35501. Redemption Rights: Subrogation.

Every person having an interest in property subject to a lien, has the right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed, and, by such redemption, becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except insofar as he was bound to make such redemption for their benefit.

SOURCE: CC § 2903.

§ 35502. Inferior Lienor Rights.

One who has a lien inferior to another, upon the same property, has right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

SOURCE: CC § 2904.

§ 35503. How Redemptions Made.

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Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for the delay.

SOURCE: CC § 2905.

NOTE: No 1970 Civil Code §§ 2906-2908 existed.

ARTICLE 6
EXTINCTION OF LIENS

- § 35601. Lien Accessory; Generally.
- § 35602. Extinction by Sale or Conversion.
- § 35603. How Extinguished.
- § 35604. Apportionment.
- § 35605. When Restoration Extinguishes Lien.

§ 35601. Lien Accessory; Generally.

A lien is deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

SOURCE: CC § 2909.

§ 35602. Extinction by Sale or Conversion.

The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguished the lien thereon.

SOURCE: CC § 2910.

§ 35603. How Extinguished.

A lien is extinguished by the lapse of time within which, under the provisions of Title 7 of the Guam Code Annotated [Civil Procedure], an action can be brought upon the principal obligation.

SOURCE: CC § 2911.

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§ 35604. Apportionment.

The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

SOURCE: CC § 2912.

§ 35605. When Restoration Extinguishes Lien.

The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons, subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value.

SOURCE: CC § 2913.

NOTE: No 1970 Civil Code §§ 2914-2919 existed.

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