

The Obligation-Based Lien Alternative

Cash loans can effectively equity strip your assets, but are not without their drawbacks. Your lender must pay taxes on the interest payments. Also, you may not be able to completely encumber your assets through commercial lending. You must also make interest payments. Finally, you may not have enough cash to sufficiently fund a decontrolled entity, to completely equity strip a target asset.

Fortunately, other obligations – aside from cash loans - serve as the basis for a lien. Liens commonly secure obligations in the normal course of business, and are every bit as valid as cash loans. Furthermore a lien securing an obligation may be superior in some ways to a lien securing a loan. For example, there is generally no negative tax or economic consequence to fulfilling an obligation. Nor do you worry whether your interest payments are tax-deductible. You have no interest expenses at all, for that matter.

It's easy to structure a security agreement so that the lien is not reduced or paid down until your obligation is completed in full. You can even structure the agreement so that the lien grows until the obligation is fulfilled. If you or your entity is owed the secured obligation, it will have little value to a creditor, whereas the cash proceeds of a loan have value to a creditor. You then have to protect the loan proceeds.

Moreover, if you have creditors, you may not have the cash assets to pay the loan and your protected property will then be in danger of foreclosure. However, cash shortages should not affect your ability to fulfill non-monetary obligations, (or rather we could arrange a monetary obligation with a friendly entity) so foreclosure is not a problem.

Nor do you have to worry about how you will get \$500,000 to equity strip your \$500,000 home. Cash loans are easy to quantify. You cannot get a large lien to secure a small loan. However, certain obligations can be difficult to quantify, so you have more leeway when you structure an obligation of equivalent value to the cash value of a lien.

Keeping these points in mind, let's examine a few ways to create a bona fide obligation to justify a valid lien on your property.