The claims statutes do not affect actions or proceedings to by secured creditors to enforce mortgages or other liens that are in place at death. Indeed, the limitation on the presentment of claims statute specifically exempts the enforcement of liens. Est. & Trusts Article § 8-103(d). Also, the prohibition against execution or levy against probate estate property does not extend to the enforcement of pre-death liens. Est. & Trusts Article § 8-114 (b). Thus, to the extent a secured creditor has sufficient security, the enforcement of such secured creditor's claim may be made independent of the probate process. (Cts. & Jud. Proc. Article § 11-402 provides that a judgment becomes a lien on all real property of the debtor upon entry if indexed and recorded for property located within that county and upon indexing and recordation in other counties. A judgment, regardless of whether indexed and recorded, does not generally constitute a lien on personal property until execution thereon.)

The Court of Appeals recently clarified that a post-death judgment lien is not afforded the special treatment given to pre-death liens and, in fact, does not create any special status in a decedent's estate. *Elder v. Smith*, 412 Md. 288, 987 A.2d 36 (2010). In that case, a former wife received the marital award before the death of her husband and she was also entitled to receive one-half of the proceeds of the sale of the marital home. The sale of the home never took place but the divorce, of course, converted the holding from by the entireties to in common. The former wife did not reduce her award to a judgment or record it as a judgment lien. (A marital award is held, in Maryland, not to be the equivalent to a judgment and it is not an interest in the other spouse's property. *Herget v. Herget*, 319 Md. 466, 471, 573 A.2d 798, 800 (1990) ("The court may…enter a monetary award against one party and against the other when that action is appropriate to adjust an inequity that would otherwise result from distribution, strictly in accordance with title, of property qualifying as 'marital property.' To the extent a monetary award is immediately due and owing, the court may enter a judgment reflecting it, thereby subjecting the property of the indebted party to lien and execution.").) Having remarried, the former husband died with only his one-half tenant in common interest in the marital home in his probate estate. Thereupon, the former wife reduced her martial award to a money judgment and recorded it in the county where the property was located.

One of the issues in the case was whether the former wife's debt was entitled to any special status because of her post-death "perfecting" of her pre-death claim. Essentially, the Court held that the status of a claim against a decedent is determined at the moment of death. At the date of death, all property passes to the personal representative so any action on the debt thereafter must necessarily be a claim against the estate:

> The Commission (the "Henderson Commission") has rejected the concept … that title to all property passes directly to the heirs or legatees, subject to the power or control over the property by the personal representative. The Commission felt that this dichotomy between title, on the one hand, and power, on the other, is unworkably vague and unnecessarily inconvenient. On the contrary, the Commission recommends the suggested wording of Section 1-301 in order to make it clear that the title to all property both real and personal, and as to both testate and intestate estates, shall pass directly to the personal representative.
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> *Second Report of Governor's Commission to Review and Revise the Testamentary Law of Maryland*, 13 (1968). The underlying principle, then, is that upon death, title to real property passes out of the hands of the decedent. This conclusion holds true even when, as here, the Personal Representative is substituted as the "judgment debtor."
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> We conclude that the judgment obtained and recorded as a lien against Beales Trail after Mr. Elder's death based upon a marital award against him two years prior to his death, is not afforded priority under the statutory scheme embodied in the Estates and Trusts Article, because title to real property passes out of a decedent's hands after death.

Elder v. Smith, 412 Md. 218, 305, 987 A.2d 36 (2010). In *Elder*, the Orphans' Court had also ordered to the former spouse to release her lien from the property to permit the property to be sold to a third party. The Court of Appeals held that the Orphans' Court did not have such jurisdiction and that only a Circuit Court could effectuate such relief because of the limited jurisdiction of the Orphans' Court.

Thus, the remedy of a creditor will fall exclusively to the probate claim process unless such creditor is a secured creditor prior to the decedent's death.

Section 8-111 provides that secured creditors may look to the probate estate for collection. This statute, however, does not require an election of remedies. Instead, it permits a secured creditor three options if it wants to seek payment through the regular probate process: (a) release the lien and become an unsecured creditor in the full amount of its debt (losing, however, any priority in a specific asset and being lumped in with all other general estate creditors), (b) foreclose on the security and receive the deficiency to the extent it has an allowed claim, or (c) receive the difference between the value of the security (as determined by agreement or by the Orphans Court) and the allowed claim. These options require the filing of a claim or protective claim but the filing of such a claim does not waive a creditor's rights to its security. If a secured creditor, however, wants to seek to redress a deficiency judgment against the estate, that creditor must file a claim, or protective claim, within the statutory period. This may become a more common practice given the sharp decline in property values, especially in beach or vacation home properties. In order to foreclose on its security, however, a secured creditor need not file a claim.