

MLTA 2021 Fall Education Seminar
Thursday, November 4, 2021
Outline

A construction lien is a lien against real estate arising under Title 71 Chapter 3 Part 5 of Montana Code. It is a claim created by state statute for the purpose of securing priority of payment of the price or value of work performed and materials furnished in improving or repairing a building or other structure and as such, it attaches to the land as well as the building and improvements constructed thereon. The purpose of a construction lien is to provide security for the payment for those who have furnished labor, materials, and services to change the physical condition of the real estate. Said lien has priority over any mortgage that is taken to secure advances made for the purpose of paying for the real estate improvement. If a title agent insures the mortgage and provides coverage over construction liens, which is a common request of lenders, the title insurer could be subject to great risk under the title insurance policy. It's time to get back to basics and educate the new, and remind the seasoned employees, about the basics of construction lien law and priority concerns so they understand the potential risk and understand how to underwrite that risk.

Construction Liens – Back to Basics

- 1. What is a Construction Lien?**

- 2. What is Priority?**

- 3. Definitions – (§71-3-522)**
 - a. Commencement of Work

 - b. Contract Price

 - c. Contracting Owner

 - d. Original Contactor

 - e. Real Estate Improvement Contract

4. **Who May File a Construction Lien? (§71-3-523)**

5. **What is the Extent of the Lien? (§71-3-525)**

6. **What is the Amount of the Lien? (§71-3-526)**

7. **Must you give Notice of a Right to Claim a Lien? (§71-3-531)**
 - a. Notice of Right to Claim a Lien

 - b. Notice of Completion

8. **When Does the Lien Attach?**
 - a. Filing a Construction Lien

 - b. Commencement of work

9. **How long is the Lien Viable? (§71-2-562)**

10. **Bonding a Construction Lien (§71-3-551 & 71-3-552)**

11. **What is the Effect of the Lien on Real Property?**
 - a. Attachment

 - b. Priority

12. Administrative Rules of Montana (ARM 6.6.2201)

a. Construction Indemnity Agreement

b. Financial Information

c. Responsible Person

13. ALTA Title Policy Coverage

- Covered Risk 2

- Covered Risk 10

- Covered Risk 11a

14. Title Insurance Industry Response to Construction Liens

a. Schedule B Exception for Construction Lien

b. Coverage - ALTA Series Endorsements
ALTA 32-06

ALTA 32.1-06

ALTA 32.2-06

ALTA 33-06