

MLTA 2022 Fall Education Seminar • Nov. 3-4

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Outline

Construction Liens create lien priority issues with all property and especially for property under vertical construction. Understanding pertinent search and exam procedures and the risks associated with identifying and clearing these liens is a fundamental part of title insurance and sound underwriting practices.

Construction Liens 101, Montana (1 hour)

1. Right to File (71-3-523)

A person who furnishes services or materials pursuant to a real estate improvement contract. Includes design professionals and architects.

2. Timeline of the Lien (71-3-533)

Lien must be filed within 90 days after: final furnishing of services/materials OR Owner files a Notice of Completion.

3. Duration of a Construction Lien (71-3-562)

Action to enforce lien must be commenced within 2 years from the date of filing the lien

4. Priority after a Construction Lien (71-3-535)

Once filed, Lien priority relates back to the commencement of work. Commencement is date of first visible change in the physical condition of the real estate caused by the FIRST laborer or materialman. Liens recorded prior to commencement of any work.

5. Clearing a Construction Lien

Release of the recorded Lien

Deletion of the Standard Lien exception

ALTA 32/33 series or ALTA 14 (with Section 4(f) deleted)

Physical Inspection of the site

Lien Waivers

6. Lien Contents

Lien Claimant

Description of property sufficient to identify it

Owner of the property

Name of the party lien claimant contracted with

Description of Services/Materials furnished

Amount owed

Date of both first and last furnishing

Notice provided to contracting Owner

Liberal Construction of lien instrument as to give it “intended” effect (Gen. Elec. Supply v. Bennett, 192 Mont. 110, 113, 626 P 2d 844, 846 1981)

7. Insuring Broken Priority

Owner/Contractor track record

Indemnity Agreements

Financial strength of the Owner

Equity in the project

Disbursement Procedures

Performance Bonds