

Understanding and Insuring Construction Projects

MLTA 2026 Spring Seminar



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1

Agenda

- Types of Construction Loans
- Lender Underwriting
- Disbursement Process
- Underwriting Mechanic's Lien Coverage
- Construction to Permanent (One-Time Close) Loans
- Key Risks and Mechanic's Lien Claims





2

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Types of Construction Loans

- Two Step – Construction Loan with separate end financing
 - Borrower/Builder
 - Owner Builds
 - Specs
 - Standard Title Policy



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Types of Construction Loans

- One Step – All-In-One (Construction/Perm Loan)
 - Borrower/Builder
 - Owner Builds
 - All-In-One Title Policy

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Borrower Approval

- Credit/Income/Assets/Debts
- Reserves
- Understanding of the construction process – signed agreement

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Builder Approval

- History/Reputation
- Resume/References
- License/Insurance/Subs
- Understanding of the construction process – signed agreement

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Construction Process

- Contract
- Plans
- Specs
- Cost Breakdown
- Detailed with bids

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Loan Structure

- 1st Lien Position
- 9-12 months (extensions)
 - Specs – 6-9 months
- Interest Only Payments per month on what is drawn out
- 75-80% LTV based on appraisal
 - Specs – 75% Loan to Cost

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Loan Structure

- Monthly draws based on work completed
 - Borrower approves
 - Check/wire to payee
 - Order packages upfront – 50%
- Completion Inspections
- Monthly Lien Waivers
 - Builder – master
 - Subs
 - Pre-start

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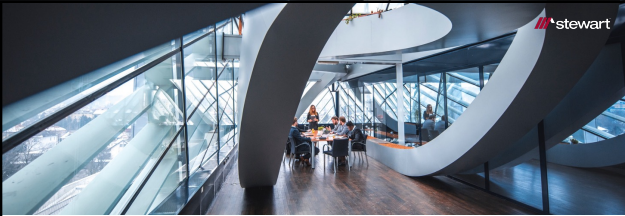


Loan Structure

- Builder Risk Policy
- 10% Contingency Plan
- Final Draw when work fully complete – C.O.O.
- Survey – Pre/Post

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Underwriting Mechanic's Lien Coverage

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Identifying Construction Loans

- Expressly stated in initial Order
- Loan Amount significantly exceeds property value
- Loan Amount significantly exceeds Owner's Policy Amount
- Loan Amount significantly exceeds existing debt


12


12




Identifying Construction Loans

- Lender Instructions
 - Not all funds disbursed at closing (i.e., "holdback")
 - Request for construction related endorsements
- Closing Day "Surprise"





13



Montana Construction Liens

71-3-542. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and that is filed after the construction lien attaches.


(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to the lienholder to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement to which the lien was attached.

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14




Montana Construction Liens

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance **was taken to secure advances made for the purpose of paying for the particular real estate improvement to which the lien was attached.**

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15




Covered Risk 11(a)

11. The lack of priority of the lien of the Insured Mortgage upon the Title:

- a. as security for each advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:
 - i. contracted for or commenced on or before the Date of Policy; or
 - ii. contracted for, commenced, or continued after the Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on the Date of Policy to advance;


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16




Standard Mechanic's Lien Exception

Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the Public Records.




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17




ALTA 32 and 33 Series Endorsements

- Designed for use when Loan Policies cannot have priority over mechanic's liens
- Often referred to as "incremental coverage"
- Used in lieu of Pending Disbursements Clause



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18




ALTA 32 and 33 Series Endorsements

- First paragraph in each version of ALTA 32 states: "Covered Risk 11.a. of this policy is deleted."
- "Date of Coverage" is a defined term and differs from Policy Date
- ALTA 32 and 33 forms must be used together

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19




ALTA 32 Endorsement

- Insures to the extent that charges giving rise to the claimed lien were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured
- Does not insure for claims arising after Date of Coverage or not appearing in supporting documents
- Does not require title company to be involved in disbursement of funds

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ALTA 32.1 Endorsement

- Insures to the extent that direct payment was made to the claimant by the title company or by the Insured with the title company's written approval
- Does not insure for claims arising after Date of Coverage or not directly paid by title company or Insured with title company approval
- Contemplates title company involvement in disbursement of funds

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21




ALTA 32.2 Endorsement

- Insures to the extent that direct payment was made to the claimant by Insured or on the Insured's behalf
- Does not insure for claims arising after Date of Coverage or not directly paid by or on behalf of the Insured
- Does not require title company to be involved in disbursement of funds

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22




ALTA 33 Endorsement

- "The Date of Coverage is amended to _____."
- Contains optional provisions to recognize the amount of the current disbursement and the aggregate amount disbursed to date
- Also includes updates to Schedules A, B-I and B-II
- ALTA 33 is the only endorsement form which can amend the Date of Coverage

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23




Underwriting Requirements

- Project Documentation
 - Construction Contract
 - Construction Budget/Project Cost Breakdown
 - Hard and Soft Costs
 - Land Acquisition Costs
 - Sources and Uses of Funds (i.e., loan vs. equity)

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24




Underwriting Requirements

- Project Documentation, cont'd
 - If worked started: Dollar Amount and percentage of work performed to date and remaining to be performed
 - List of all contractors and suppliers to date
 - Proof of payment/lien waivers for all work to date

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25




Underwriting Requirements

- Documentation from Owner/Borrower/General Contractor
 - Indemnity Agreement
 - Financial Statements
 - Credit Enhancements
 - Lien Search

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26




Underwriting Requirements

- Documentation from Lender
 - Construction Loan Agreement
 - Loan Documents (Mortgage/Note/Guarantees)
 - Disbursement Schedule
 - Appraisal

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27




Disbursements and ALTA 33

- Update search to confirm no recorded liens or other adverse matters
- Require satisfactory evidence that all work has been paid for in full
 - Draw Package
 - Invoices
 - Checks/Wire Transfers
 - Complete set of lien waivers
 - Updated Indemnities


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28




Disbursements and ALTA 33

- ALTA 33 issued to amend Date of Coverage to date of last disbursement
- ALTA 33 only issued as to loan disbursements, not Owner/Borrower equity



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29




Construction to Permanent/All-In-One

- One Contact at Title Company
- Loan Amount/Extended
- Endorsements
 - ALTA 8,1, 9, 22 – other specific needs per property
 - ALTA 32 – Construction
 - ALTA 33 - Draw
 - CLTA 102.4 – Foundation
 - ALTA 11 – Modification

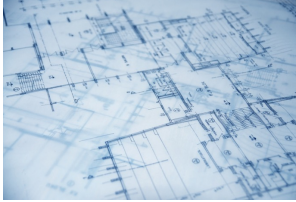
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Insuring Construction-to-Permanent (a/k/a One-Time Close) Loans

- The Challenge: Structuring the Commitment to address both phases of the Loan life cycle



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Insuring Construction-to-Permanent (a/k/a One-Time Close) Loans

- Consider a Schedule B-I Note in the Commitment:

NOTE: THIS IS A ONE-TIME CLOSE CONSTRUCTION LOAN. All endorsements will be issued at the time the construction is completed, and all requirements hereunder have been met. Please be advised that additional charges will be made if the permanent financing is at a higher loan amount than that set forth on this commitment.

- Differentiate between requirements by using "post-closing" or "after completion" labels

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32




Insuring Construction-to-Permanent (a/k/a One-Time Close) Loans

- Requirements when converting from Standard to Extended
 - List of all parties who provided work or materials and corresponding lien waivers from the same
 - Updated Indemnity Agreement from Owner/Borrower/General Contractor
 - Updated Financial Statements

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33




**Insuring Construction-to-Permanent
(a/k/a One-Time Close) Loans**

- Requirements when converting from Standard to Extended, cont'd
 - Certificate of Occupancy?
 - Survey
 - Updated Owner/Borrower Title Affidavit

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34




Endorsements

- ALTA 3.1: Post-closing, subject to Requirements
- ALTA 4 or 5: Post-closing, subject to Requirements
- ALTA 8.1: Ok at Closing
- ALTA 9: Ok at Closing if vacant, subject to Requirements post-closing
- ALTA 11: Post-closing

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35




Endorsements

- ALTA 22: Post-closing (frequently misunderstood)
- ALTA 25: Post-closing with survey
- Land Under Development: Ok at closing with site plans
- CLTA 102.4/102.5: Ok mid-construction subject to Requirements
- Date Down: Post-closing, subject to Requirements

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36



Mechanic's Lien Claims

- Mechanic's Lien Claims tend result in large claim losses because of the duty to defend the Insured Owner or Lender
- Defenses are usually based on the Claimant's failure to strictly comply with statutory requirements related to timing, notice and proper recording
- Recoupment opportunities are often limited because of borrower insolvency

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40





Questions?

41
