

MECHANICS LIEN ISSUES

By Paul Peterson

VP & Senior Staff Underwriter

Fidelity Family of Title Insurers

- I. **“Mechanics Liens”, also known as “Materialmens’ Liens” are state specific non-consensual liens imposed on the land in favor of unpaid parties who have performed lienable services, labor or materials**
 - A. Created by state statute or constitution, not recognized at common law
 - B. Generally not imposed on public property
 - C. Lienable services, labor or material issues
 - i) Improvement to realty v. maintenance
 - ii) Repairs, alterations & additions
 - iii) Demolition
 - iv) Rental equipment
 - v) Fixtures and appliances
 - vi) Architect’s plans, especially where the project is not started
 - vii) Site work (grading, clearing and streets)
 - viii) Off site utilities that tie into the lot
 - ix) Specially fabricated material not delivered to the jobsite
 - x) Material delivered but not incorporated into the improvement
 - D. Improvements must be authorized by the owner
 - i) Knowingly permitted
 - ii) Spousal or co-tenant consent
 - iii) Vendees
 - iv) Leasehold liens
 - v) Extras
 - E. Land affected by lien
 - F. Person entitled to a lien
 - i) All parties furnishing lienable services
 - ii) Defined tiers
 - iii) Union benefits
 - iv) Licensed contractor
 - G. Amount of lien
 - i) Contract price
 - ii) Lower tier recovery may be limited to amount due upper tier
 - iii) enhancement
- II. **Requirements to perfect a Mechanics Lien**
 - A. Provisions required in written contract
 - B. Commencement Notices
 - i) Recorded Notice of Commencement
 - ii) Subcontractor notice to owner at start of job
 - iii) Residential remodeling notice requirements
 - C. Notices affecting funds with owner or lender

- D. Notice of intent to lien
- E. Recorded Mechanics Lien
 - i) Must be recorded within defined time period
 - ii) Statutory requirements for recorded mechanics lien claim
- F. Filing of suit to enforce mechanics lien claim
 - i) Must be commenced within defined time period
 - ii) Elements required in suit

III. When does the Mechanics Lien Claim attach against mortgages and judgments?

- A. Priority as of the date of the contract with the owner for the claimant's work (Illinois)
- B. Priority as of the first date of any visible improvements (majority)
- C. Separate priority dates for site work and for buildings (California)
- D. Priority as of the date of commencement by that claimant (Oregon)
- E. Priority as of the date of recording of a Notice of Commencement (Ohio)
- F. Priority as of the date of recording of the mechanics lien claim (Maryland)
- G. Priority against prior recorded liens as to the improvements with caselaw giving equitable priority over construction loans (Missouri)
- H. Parity with construction loan (Indiana caselaw, now limited to commercial property)
- I. Enhancement rights. (Illinois gives a mechanics lien claimant whose lien attached after the lien of the mortgage a share of the foreclosure proceeds in proportion to the extent that the mechanics lien claimant increased the value of the property)

IV. Will the Mechanics Lien Claim affect third party residential purchasers who buy before recorded notice of the mechanics lien claim?

V. Lien waivers

- A. Partial or final
- B. Conditional or unconditional
- C. Statutory or non-statutory
- D. Items to consider
 - i) parties benefited by the lien waiver
 - ii) authority of party executing lien waiver
 - iii) description of property
 - iv) type of material furnished
 - v) acknowledgment of consideration received
 - vi) contract status
 - vii) certification as to no unapproved or undisclosed extras
 - viii) waiver to date or extent of payment
 - ix) identity and contract status of lower tiers vs. indemnity against liens of lower tier

VI Statutory Payment Provision

- A. Payment in full of contractor defeats subcontractor liens (Virginia)
- B. Statutory payment system limits lower tier lien rights (Illinois)
- C. Trust fund provisions (New York)

VII State by State Resources

- A. Lien Law on Line (www.lienlawonline.com)
- B. Commerce Clearing House – Secured Transactions – Mechanics Liens

VII Bonds

- A. Payment and Performance Bonds
 - i) given at the start of the job
 - ii) Defenses to bond include cardinal change of contract, lack of proper notices, and failure to pay the contractor in full
- B. Safeguard Programs
 - i) insurance for contractor against subcontractor defaults
 - ii) deductibles and overall loss limits may apply
 - iii) contractor or contractor's bankruptcy trustee (but not owner) has recovery rights under the bond
- C. Statutory payment bond
 - i) statutory release of recorded mechanics lien claim
 - ii) not authorized in roughly half of the states
 - iii) may need court approval
 - iv) check bonding company against Department of Treasury list at <http://fms.treas.gov/c570/c570.html>