

The subject of Mechanics' Liens

is a complex one, as evidenced by the fact that over 200 sections of the California Civil Code deal with the subject. It is not the purpose of this paper to offer legal advice or even to attempt to summarize all aspects of the current laws pertaining to Mechanics' Liens, but rather to clarify some title insurance underwriting guidelines and our requirements concerning these liens.

A Mechanics' Lien may be made by a person providing work, materials or services to improve real property. Thus, delivery men, lumber yards, surveyors, inspectors or others besides the actual contractors or construction workers can file such a lien.

The claim of the lien starts when the work is commenced or when the goods or services are delivered. For example, if the materials are delivered before the construction loan deed of trust is recorded, then the Mechanics' Lien is actually senior to that deed of trust. If the Mechanics' Lien was not paid and the lien foreclosed, the deed of trust would be "wiped out" and that loan would no longer be secured by the real property. As a title company insuring a construction loan, we would inspect the property before recording the deed of trust to assure ourselves that no work has been commenced or delivery of any goods or services accomplished.

A Mechanics' Lien binds the property for only 90 days after filing, unless one of the following occurs:

1. An action to foreclose the lien is filed with the proper court within that 90 day period after recordation of the lien.
2. If credit is given (ie: time payment plan), then the action to foreclose must take place within 90 days after the expiration of the credit or extension, but in no case longer than one year after the completion of the work of improvement.

Title practice is to show and consider Mechanics' Liens for one year after recording of the lien, even if no action to foreclose is found. (Failure to foreclose upon a Mechanics' Lien does not prevent the claimant from pursuing other legal action such as breach of contract, unjust enrichment, etc. subject to applicable Statute of Limitations.)

How a title company will handle each instance of a recorded Mechanics' Lien will vary, depending upon the individual situation. Some options may include requiring a bond (Sec. 3143 Cal. Civil Code,) holding money pending resolution of the claim, or various indemnity agreements. Each case must be evaluated individually.

For further information on this subject or when faced with a Mechanics' Lien, legal counsel should be obtained.
