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SO WHAT'S IN A MECHANICS' LIEN?

What Is a Mechanics' Lien?

Home buyers and construction contractors often hear the term "mechanics' lien" and probably have a limited understanding of exactly what it is. A mechanics' lien is a construction or building repair debt that has attached to real estate. The real estate cannot be sold or transferred to a new owner unless the debt is paid in full or unless the new owner agrees to accept the real estate with the attached debt.

Since virtually no new owners are willing to take on the debts of the prior owners, a mechanics' lien must be paid off, at the latest, at the time of sale of the property. Mechanics' liens have the ability to jump to the head of the line of liens on a property, even ahead of the first lien mortgage.

The Background

Although contemporary usage of the term "mechanic" implies a worker who uses or works on a machine, just about any contractor or subcontractor involved in construction qualifies to file a mechanics' lien if he or she completes work and is not paid. Mechanics' liens arose in the law to level the playing field between construction workers and property owners. Construction workers invest their time, effort, and materials in buildings and repairs located on land owned by someone else. An owner who refuses to pay has the upper hand, since the work has been completed and the property is now in the control of the owner.

Enter the mechanics' lien. The law gives the worker a powerful response by providing the opportunity for the worker to file a lien in the case of nonpayment. An unpaid builder, plumber, electrician, or material supplier who is owed more than \$500 can file a mechanics' lien in the courthouse. He or she simply has to give the property owner notice and file a fairly simple

document announcing the lien. The lien attaches to the real estate where the work was done or where materials were supplied.

If properly filed, a mechanics' lien for new construction dates back to the day when "visible commencement" of the work began. Liens for repairs and alterations are effective only from the date of the filing of the lien.

The Details

But mechanics' liens are quirky. Contractors have only four months from their last day on the job to file the lien. The lien attaches to the property described on the document filed. If the contractor does not clearly and accurately describe the property, the lien will not attach. If the lien document is not promptly and properly served on the owner, the lien fails.

Because mortgage lenders live in dread of mechanics' liens, they are very careful to require that contractors sign broad waivers of liens prior to starting any new construction. The waiver does not only apply to the general contractor. If properly filed and indexed at the courthouse, the mechanics' lien waiver also prevents the filing of any mechanics' liens by all subcontractors.

If you are purchasing a home that has not yet been constructed, your lender will want to be sure that construction does not commence until the general contractor signs and files a mechanics' lien waiver. Even lot-clearing, grading, and excavation can give rise to liens, and both lenders and title insurance companies can insist that all work start only after your mortgage is signed and recorded in the courthouse, and that a mechanics' lien waiver be filed.

If you are a construction contractor or subcontractor, you should regularly expect to be asked to sign a waiver of liens as a condition of

your customers' entitlement to borrow mortgage money and to purchase title insurance. When doing business with an owner who is not borrowing to finance a home improvement project, you should consider refusing to sign a waiver of mechanics'

liens. When no lender or title insurer is involved in the transaction, a contractor should do his or her best to preserve the entitlement to file a mechanics' lien, since it is a powerful tool to secure full and final payment.

EMINENT DOMAIN: LANDOWNER LOSES THE BATTLE BUT WINS THE WAR

In one of the most controversial eminent domain decisions ever, the United States Supreme Court ruled in 2005 that a city's exercise of its eminent domain powers to take private property in furtherance of an economic development plan satisfied the constitutional requirement that such power be used only for a "public use," even though private developers stood to profit handsomely from the city's actions. In reaction to that ruling, some state legislatures have been busy crafting legislation to limit the use of condemnation powers in such circumstances. For their part, the owners of property targeted for condemnation have considered how they still might fend off the taking, or, failing that, how to maximize the compensation that the government must pay.

In a recent case, a landowner was not able to defeat a condemnation initiated by a city so that a new hotel could be built on the property, but he did receive maximum compensation from an obviously sympathetic jury. The landowner was an immigrant who had spent two years and a lot of money renovating a warehouse and building a mail-order cigar business. When two private developers were unsuccessful in negotiations to buy the property as a site for a hotel, they instead reached an agreement with the city whereby the city would condemn the property for their desired use and the developers would pay the costs and fees associated with the condemnation.

When the city was first attempting to buy the property, it sent the landowner a toxic waste notice requiring him to investigate whether any toxins existed in the ground. The landowner tried to comply, but after spending many thousands of dollars he found no toxins. The city would later admit in the litigation that such an investigation was not really feasible so long as a building remained on the property. The toxic waste notice, and especially its suspicious timing, came to be seen as a tactic to put pressure on the landowner

during the negotiations leading up to the condemnation.

Although the trial court ruled that the city could condemn the land for the hotel, in the subsequent trial before a jury for damages, the landowner fared much better. The jury awarded him the entire amount he had sought. The award included several million dollars each for the value of the property itself and for the loss of the goodwill associated with the cigar business. Damages for loss of a business are not typical in condemnation cases, but the landowner was able to show that there was no suitable alternative location for the business, so that he would have to start over from scratch. For good measure, the jury also awarded damages equal to the cost of the dubious toxicity study that the landowner had been forced to undertake.

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