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Nevada Legal Updates:

Priority of Mechanics' Liens: Bank vs. Contractor

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Black's Law Dictionary

Word of the Month

Priority, *n.*: (1) The status of being earlier in time or higher in degree or rank; precedence. (2) An established right to such precedence; esp., a creditor's right to have a claim paid before other creditors of the same debtor receive payment.

Q: *How does priority affect my mechanics' lien on a property when a foreclosure happens?*

A: At the peak of the economic boom, the issue of mechanics' lien **priority** on a construction project was hardly a concern. However, as property values continue to decline, *priority* becomes critical when a property is foreclosed and the money from foreclosure sale is not enough to pay off all the project's creditors – i.e. bank lenders and contractors. The pertinent question then becomes: who gets paid first? Choice A: the bank lender who recorded a deed of trust on the property, or Choice B: the contractors who properly recorded a lien on the property and timely foreclosed on the project? The answer lies on *timing*.

In Nevada, a mechanics' lien claimant who properly records a lien and timely forecloses on the property gets to stand in the foreclosure sale distribution line first over any other lien, mortgage or other encumbrance, that was recorded *after* the commencement of construction. See [NRS 108.225](#). Gibbs, Giden, Locher, Turner & Senet recently won a lien foreclosure case for a general contractor on a priority claim against the bank for a \$800,000 mechanic's lien when it proved that the general contractor had 20 tons of aggregate delivered the day before the bank recorded its deed of trust.

Thus, a valid mechanics' lien has **priority** *over* any mortgage or deed of trust "which may have attached to the property *after* the commencement of construction of the work on improvement." [NRS 108.22112](#) defines "Commencement of construction" to mean any work performed, or materials or equipment delivered that is *visible* from a reasonable inspection of the site. In other words, if lien claimant performs visible, on-site construction before the lender records its deed of trust, then that lien claimant stands first in line in front of the lender on the foreclosure proceeds.

Finally, to win on the **priority** issue, it is *not* necessary that a lien claimant be the one that actually performed the work. If *anyone* performed work that would have been "visible from a reasonable inspection of the site," then all of the mechanic's lien claimants are entitled to **priority** *ahead* of the secured lender.

It is important for any mechanics lien claimant who is seeking recovery of amounts due for work performed, to analyze the existence of any other indebtedness and determine the date wherein work was commenced on the project in relation to the date of recordation of any other encumbrance against the property.

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