



Maine Mechanic's Liens Potentially Have Priority over Mortgage

If the filing of a mechanic's lien does not facilitate payment to the lien claimant, the lien must be foreclosed. One of the issues faced in a foreclosure action is: What happens when the sale of the property does not provide enough money to satisfy all claimants? When this situation occurs, the secured parties are paid according to the priority of their claim. Very generally speaking, the priority of a claim is usually based on when that claim attached to the property, or was perfected. However, there are so many exceptions to that standard rule that sometimes it seems that it is not the standard rule at all. For example, many states give a tax lien priority over a mechanic's lien, or treat all mechanic's liens equally no matter when they were filed or when the work was done. A brief discussion of priority issues by state can be found in the resources section of zlien.com in the state FAQs.

These special rules sometimes work to the advantage of the mechanic's lien claimant, however. Such is potentially the case in Maine.

In Maine, the mechanic's lien has priority over the property interests of the owner if the labor or materials were provided to the project "by virtue of a contract with or by consent of the owner." This seemingly obvious statement provides two interesting points, however.

1: In order to foreclose on the property in Maine, it is necessary to show that the labor or materials were furnished to the project either pursuant to a contract with, or with the consent of the owner. If the owner can show that he did not consent, and/or did not know about, the labor or materials being furnished by the lien claimant, the mechanic's lien will not have priority over the owner's interest in the property - rendering it unenforceable.

2: This is where this interesting bit of information can be turned to the lien claimant's advantage. Maine is what is known as a "title theory" state. This seemingly dry legal term of art can be used to

provide great protection for a mechanic's lien claimant in Maine. In a "title theory" state, a mortgage holder is deemed to be an "owner" of the property because they hold legal, (but not equitable) title to the property.

Now, take another look at the statement above that a mechanic's lien has priority over the interests of the owner if the labor or materials were furnished under a contract with the owner, or by consent of the owner. This means that in Maine, if a lien claimant can show that he furnished labor or materials to the project with the consent of the mortgage holder, his mechanic's lien will have priority over even the mortgage on the property in a potential foreclosure action.

It is, however, the lien claimant's burden to prove that the mortgage holder had knowledge of the work being performed. One potentially easy way to accomplish the necessary step is to send a Notice to the mortgage holder upon the beginning of work or furnishing materials. If the mortgage holder knew of the labor and/or materials being furnished, the mortgage holder's subsequent conduct is examined to determine whether its interest should be subordinated to the mechanic's lien.

One more main point to take from this discussion is that even in generally "non-notice" states, there can be advantages to sending notices - even if they are not required.

Read this post on the Lien Blog at:

<http://www.zlien.com/blog/?p=7256>