

REAL PROPERTY LIENS



It is not uncommon for real property to be subject to various types of liens. Although it is advisable to make sure the liens are cleared before selling the property, this is not always possible. If the liens are not satisfied, the new owner could potentially lose the property along with his or her investment. A policy of title insurance protects the new owner and lender in the event unreleased liens are discovered after the property has been transferred to them.

Voluntary and Involuntary Liens

Basically, there are two types of real estate liens, voluntary and involuntary. A voluntary lien is one put on the property by the owner voluntarily, such as a mortgage or deed of trust. This is a lien typically given to a bank or other lender as security for a loan to the borrower. In the event the loan isn't repaid, the lender can foreclose on the property and sell it either through a judicial foreclosure action, or more commonly through a non-judicial trustee's sale. If the amount the lender receives from the sale is not sufficient to satisfy the loan in full, the borrower may be personally liable for the difference, depending on the jurisdiction in which the property is located, the type of loan involved and whether the foreclosure was done judicially or through a trustee's sale.

In contrast, an involuntary lien is placed on the property by a third party without the consent of the owner. Examples of involuntary liens include judgment liens and property tax liens. If the obligation isn't paid, the lien can be enforced through a sale of the property. In the case of tax liens, many jurisdictions will allow the unpaid taxes to go "delinquent" for a certain period of time, during which the owner can redeem the property by paying the amount of the unpaid taxes plus interest and penalties. If the unpaid amounts aren't satisfied within the redemption period, the property can be sold by the taxing authority.



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**Real Property Liens continued*

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Mechanic's Liens

A specific type of involuntary lien is known as the mechanic's lien. Whenever a work of improvement is performed on a property, the contractor, as well as the subcontractors and materials suppliers, can impose a lien on the property for the value of their services or materials if they are not paid as agreed. Even if the property owner pays the general contractor in full, mechanic's liens can still be recorded by the subcontractors or material suppliers if the general contractor fails to pay them. Typically, mechanic's lien laws allow the lien to be recorded within a certain period of time after the work is completed, or work on the property ceases. The lien claimant then has a certain period of time to file an action to foreclose the lien or it terminates by operation of law. Depending on the jurisdiction, it may be possible for the owner to have the lien released by recording a mechanic's lien bond. Once recorded, the bond becomes security for the payment of the debt, instead of the property. The premiums charged for a mechanic's lien bond will vary from state to state.

Liens & Title Insurance

Whether voluntary or involuntary, liens are a serious matter that if left unsatisfied, can result in the loss of the property. That is why whenever a property is purchased, it is important to obtain a policy of title insurance. A title policy protects the insured by covering any specified title defects in accordance with the terms and conditions of the policy, up to the policy limits.



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