

Real Estate Law

Liens

- A security interest in real estate, using an encumbrance on property for the satisfaction of a debt that is created by agreement of the parties or by operation of law
- may extend to after-acquired land

- **Liens secure debt & are only as valid as the debt itself**

All liens are really the same, except:
▶ How they arise,
▶ What their priority is

Types & Terms:

Mortgage Lien – always consensual

Deed of Trust – Trustee to convey the deed back to M'or upon payment of the debt – power to sell is given to Trustee upon M'or's default

Power of Sale – may be included in the Contract of Sale in the event of default (only in 1/2 of states), normal with a Deed of trust

Assessment lien – lien on property benefiting from a municipal improvement

Attachment Lien – a lien acquired on property by a creditor upon levy of an attachment

Carrier's Lien – lien against freight conferring right on the carrier to retain the property until the bill is paid

Charging Lien – lien attaching to a judgment or recovery awarded to a plaintiff and securing payment of the plaintiff's attorney's fees and expenses

Choate Lien – a lien that requires no further action to be made enforceable and that identifies the lienor, the property subject to the lien, and the amount of the lien

Common-Law Lien – a lien under common law giving a creditor (as a bailee) in possession of property the right to retain possession until payment of the amount due

Equitable Lien – a lien against property that does not require possession of the property and that is available in equity to prevent unjust enrichment

Factor's Lien – a lien against property held on consignment by a Factor conferring the right to retain possession of the property until payment of the amount due **UCC Title 9**

Floating Lien – lien created in a security agreement against the property owned by the debtor at the time of the agreement, as well as afterwards

General Lien – lien for satisfaction of a balance due from owner of property, but not confined to amount due in respect to the property itself

Inchoate Lien – lien for which some procedure remains unfinished

Judgment Lien – lien acquired against the property of a debtor by securing a favorable judgment from a court

Judicial Lien – lien obtained by a legal or equitable process, as judgment, levy, attachment, or execution.

Landlord's Lien – lien against goods and valuables of a tenant to secure payment of money owed to landlord

Mortgages

A mortgage must secure a debt, and once paid off, mortgages cease to exist by operation of law

Mortgage Broker



Mortgages establish 2 Mortgagee rights:

- 1) against the personal obligations of the Mortgagor
- 2) against land offered by Mortgagor as security

Taking subject to a mortgage – if debt is defaulted, land may be taken and sold at foreclosure

Assumption – buyer agrees to pay on pre-established mortgage, but the original owner's obligation is not removed (*good deal for lender*) unless explicitly released by lender. Under an assumption, the law requires lender to first go against the land, second against the buyer, and only last against the original owner

More Liens

Maritime Lien – lien arising under maritime law against a ship or its cargo which may be enforced by a court-ordered seizure of the property

Materialman's Lien – a lien on property for materials supplied

Mechanic's Lien – lien against a building and its site to assure priority of payment for labor and services and material – **priority will relate back to original commencement of the project, which may include the architectural design**

Retaining Lien – lien that attaches to the papers or property of a client which have come into his or his attorney's possession in the course of employment and that secures payment of the attorney's fees

Special Lien – equitable lien enforceable to compel performance of an obligation (as under a divorce settlement)

Specific Lien – lien upon specific property as a security of the payment of a debt involving that property

Tax Lien – statutory lien on property for taxes due giving the tax authorities a lien on that property

Vendor's Lien – lien, esp. on real property securing payment in full of the purchase price by the buyer

Colorado's Statutes on Liens

Liens On Real & Personal Property

- Warehouse's Lien
CRS 4-7-209
- Lien of Carrier
CRS 4-7-307
- Issuer's Lien (*certificated securities*)
CRS 4-8-209
- Attorney's Lien
CRS 13-93-114
- Administrative Lien
CRS 26-13-122
- Lien for Livestock Trespass and Care
CRS 35-46-108
- Lien on Water Right
CRS 36-3-121
- Lien of Conservancy Assessment
CRS 37-5-114
- Museum's Lien
CRS 38-14-108
- Lien on Personal Property
CRS 38-20-101-201
- Lien for Care & Feeding of Pets
CRS 38-20-102
- Lien of Common Carrier
38-20-105
- Molder's Lien
CRS 38-20-106.2
- Agistor's Lien
CRS 38-20-203
- Lien for Services
CRS 38-21-101-106
- Self-Service Storage Facility Liens
CRS 38-21.5-101-105
- General Mechanics Liens
CRS 38-22-101-133
- Lien on Mining Property
CRS 38-22-104
- Real Estate Brokers Security Act
CRS 38-22.5-101-111
- Lien on Ditches
CRS 38-23-101-110
- Lien on Wells and Equipment
CRS 38-24-101-111
- Harvesters Liens
CRS 38-24.5-101-108
- Transportation Fuel Tax Liens
CRS 38-24.7-101-107
- Uniform Federal Lien Registration
CRS 38-25-101-107
- State and Local Tax Liens
CRS 38-25.5-101-105
- Contractors Bonds & Lien on Funds
CRS 38-26-101-110
- Hospital Liens
CRS 38-27-101-106
- Lien for Assessments
CRS 38-33.3-316 & 37-46-121
- Tax Liens
CRS 39-1-107 & 39-26-117
- Liens on Towed Vehicles
CRS 42-4-2105
- Bond Lien
CRS 43-3-207
- Lien for Labor
CRS 38-20-106