

Priority Disputes and other Lien Issues

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Basic Lien Priority for Real Property

- Lien Types
- Priority Rules

Basic Lien Types

- Mortgage
- Deed of Trust
- Materialman's Lien
- Judgment Lien

Basic Lien Types

- Tax Liens
 - Federal Tax Liens
 - Perfection
 - Superpriority
 - Stringent Notice Requirements
 - State Tax Liens

Priority Rules

- First in Time, First in Right
- Exceptions to Basic Priority
- Additional Advances
- Subrogation
- Materialman's liens

Basic Lien Priority for Personal Property

- Fixtures
- Personal Property governed by UCC

Fixtures

- Definition
- Perfection of Interest
- Priority

Personal Property under the UCC

- UCC Priority Rules
 - First to File
 - Subordination
 - Expiration or Termination of Filing

Personal Property under the UCC

- Definition
- Rules Governing
- Perfection
 - Method
 - Requirement of Security Agreement
 - Location of Filing
 - Collateral Description

Foreclosure of Real Property Lien

- Notice to other lienholders
- Inclusion in Judicial Foreclosure Proceedings
- Impact of foreclosure on other liens
- Right to Surplus
- Redemption Rights of other lienholders
- Fixtures

Foreclosure of Real Property Lien

- Pre-Foreclosure title search
- Discovery of Prior Liens
 - Inclusion in Prior Title Policy?
 - Option of Claim against Policy
 - Liens arising after Closing and Title Insurance
 - Materialman's Liens
 - Tax Liens

Foreclosure of UCC Liens

- Pre-Sale UCC Lien Search
- Notice to other lienholders
- Impact of foreclosure on other liens
- Right to Surplus

Equitable Subrogation

- What is it and When is it Used?
- Elements:
 - Advanced money to extinguish the prior encumbrance (Complete extinguishment?);
 - Expectation of obtaining a position equal to that of the discharged lien;
 - No knowledge of the intervening lien at the time of recording; and
 - Application of this doctrine would not work an injustice or unduly burden the holder of the intervening lien

Questions?

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Thank You

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