



Mechanic's Lien Coverage

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Fidelity National Title Group
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Mechanic's Liens are governed by State Law



60.04 RCW, et. seq.

Lien rights are automatic for "any person furnishing labor, professional services, materials, or equipment for the improvement of real property."

Lienable work includes not only the performance of labor or material services, but the contribution owed to any employee benefit plan.

Rights commence from the first moment the contractor touches the land.

Each contractor, subcontractor, material supplier, etc. has their own lien rights.





Timeline Of A Mechanic's Lien



90 days to file a lien from the date of last work

8 months to foreclose that lien

Time can be tolled by amendment, bankruptcy, agreement, or foreclosure

Lien can be bonded over "removing it" from the land





When do we care about lien rights?



- Seller has contracted for work on the Land in the last 120 days.
- Buyer is getting a construction loan.
- Lender is refinancing a construction loan.
- A builder is a transactor (Buyer or Seller).
- A tenant is performing work on the Land.





Exceptions for lien rights

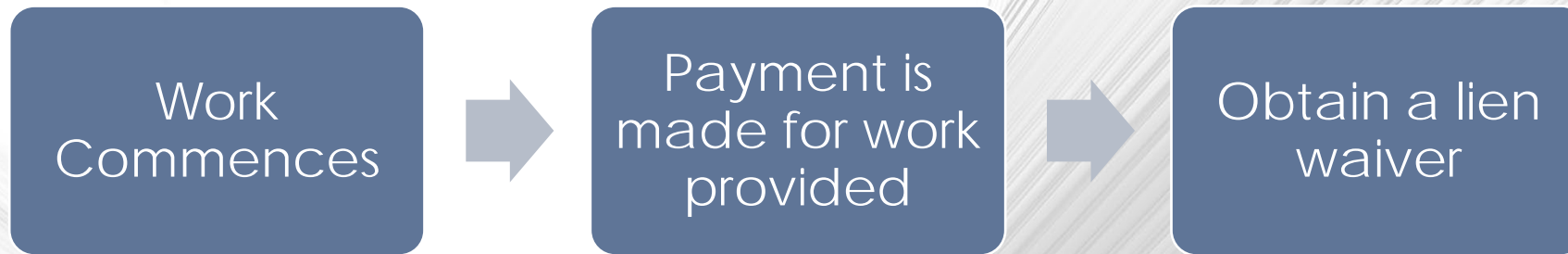


The General Exception for mechanic's liens must remain in the Commitment and any Pro Forma Policy delivered to the customer while underwriting is reviewing for coverage.





Can lien rights be waived?





Can lien rights be waived?



CONDITIONAL LIEN WAIVER LANGUAGE:

The undersigned does hereby acknowledge that **upon receipt of a check from OWNER/GC in the amount of \$1,000 and when the check has been properly endorsed and has been paid by the Bank** upon which it was drawn, this document shall become effective to waive and release all claims for payments arising out of or relating to its work on the above-described project (the "Project").

UNCONDITIONAL LIEN WAIVER LANGUAGE:

The undersigned does hereby acknowledge that **the undersigned has received progress payments from OWNER/GC in the amount of \$1,000** for labor, services, equipment or materials furnished to the above referenced project and does hereby waive and release all claims for payments arising out of or relating to its work on the above-described project (the "Project").





There's a lien on my Commitment!



25. A claim of mechanic's lien or materialman's lien

Claimant: SJS Mechanical Services, LLC
Against:
Amount: \$489,693.47
Work Commenced or Materials Delivered: May 8, 2023
Recording Date: July 6, 2023
[Recording No.:](#) [20230706000539](#)

8. A claim of mechanic's lien or materialman's lien

Claimant: CG Engineering
Against:
Amount: \$15,232.50
Work Commenced or Materials Delivered: September 15, 2021
Recording Date: January 24, 2024
Recording No.: 2024-0124005





There's a lien on my Commitment!



25. A claim of mechanic's lien or materialman's lien

Claimant: SJS Mechanical Services, LLC
Against:
Amount: \$489,693.47
Work Commenced or Materials Delivered: May 8, 2023
Recording Date: July 6, 2023
[Recording No.: 20230706000539](#)

Bond Number: 107729393

KNOW ALL MEN BY THESE PRESENTS, that we , as Principal, and Travelers Casualty and Surety Company of America, a corporation created, organized, and existing under the laws of the State of Connecticut, as the Surety, are held and firmly bound unto SJS Mechanical Services, LLC, as Obligee, in the sum of Seven Hundred Thirty Two Thousand, Eight Hundred Seven Dollars and 00/100 (\$732,807.00), lawful money of the

WHEREAS, the above-described real property is subject to a Claim of Lien filed by Obligee for record in the Official Records of King County, State of Washington, on April 26, 2023, Recording Number 20230426000844, whereby Obligee claims a lien on said real property in the amount of Four Hundred Eighty Eight Thousand, Five Hundred Thirty Eight Dollars and 00/100 (\$488,538.00).





There's a lien on my Commitment!



Contents of a release of lien bond per RCW 60.04.161

- Issued by a surety company authorized to issue surety bonds in the state.
- Contains a description of the claim of lien and real property.
- Amount must be equal or greater than 1.5 times the amount of the claim of lien if more than \$10,000. If less than \$10,000 it must be the greater of \$5,000 or 2 times the amount of the lien claimed.
- Must be recorded.
- May be filed by owner, contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien.
- A separate release of lien bond must be filed for each lien on title.





Commercial Construction Loans



- New construction
- Midstream loan or extension of additional credit
- “Take out” loan post-construction





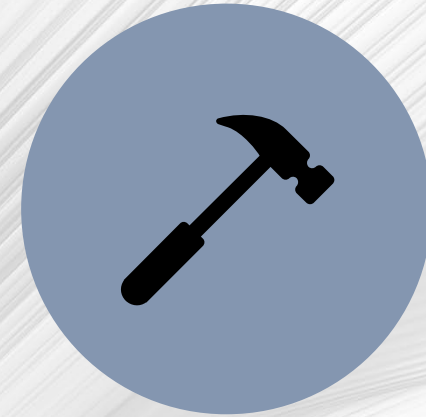
We want to know about the project..



WHAT ARE THEY
BUILDING?



HOW MUCH WILL IT
COST? (BUDGET)



HAS WORK STARTED?





Requirements Section Schedule B-I



It is our understanding that the proposed mortgage will secure a construction loan. In order to consider providing loss-of-priority coverage we will require:

For all commercial construction projects:

1. A budget which includes hard and soft costs.
2. A copy of the sources and uses for funding the construction, including equity to date.
3. An indemnity agreement executed by the borrower, all guarantors, all members/partners of the borrower. To the extent the financial strength behind the project may be in a member of a member or other lower tier entity or individual, that party would be expected to be an indemnitor.
4. Current financial statements for all indemnitors (audited, if available). (Depending on the age of the financial statement, an additional statement of no material change since that time might be requested.)
5. A copy of the general contract.
6. Subordination agreement from the general contractor, even if work is not expected to commence prior to closing.
7. A copy of the draft loan agreement.

If work commences prior to closing:

1. A list of all subcontractors who have commenced work or delivery of materials on site, including the contract amount, any amounts paid and/or remaining on each subcontract. This will help us determine if additional subordination agreements are needed from subcontractors.
2. Copies of lien waivers received to date from contractors and subcontractors.





What are “financials”?



BALANCE SHEET – SHOWS ASSETS, LIABILITIES, AND NET WORTH AT A SPECIFIC DATE



INCOME STATEMENT – SHOWS REVENUE AND EXPENSES FOR A PERIOD OF TIME



CASH FLOW STATEMENT – SHOWS HOW CASH IS USED – OPERATION, INVESTING, OR FINANCIAL ACTIVITIES





Types of Coverage for a Lender



- Full, upfront coverage – the General Mechanic's Lien Exception is deleted (see below).
- Interim Disbursement or Pending Disbursement Coverage – coverage is limited to the ALTA 32 series and ALTA 33 endorsements. An exception is shown: Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the ALTA [32, 32.1, or 32.2] Endorsement as it may be revised by ALTA 33-06 (Disbursement) Endorsement.
- No Coverage – the General Mechanic's Lien Exception is shown: Any lien, or right to a lien, for contributions to employee benefit funds, or for state workers' compensation, or for services, labor, or material heretofore or hereafter furnished, all as imposed by law, and not shown by the Public Records.





Pending Disbursement Coverage - Exception



“ Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA [32; 32.1; or 32.2] Endorsement as it may be revised by ALTA 33-06 (Disbursement) Endorsements.”





ALTA 32 [Insuring provision only]



3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.





ALTA 32.1

[Insuring provision only]



3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval.





ALTA 32.2

[Insuring provision only]



3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf on or before Date of Coverage.





1. The Date of Coverage is amended to _____.
 - [a. The current disbursement is: \$ _____]
 - [b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: \$ _____]

2. Schedule A is amended as follows:

3. Schedule B is amended as follows:
 - [Part I]

 - [Part II]





ALTA 32 Series Summary



	32-06	32.1	32.2
What is the monthly interaction with the Title Company?	<ul style="list-style-type: none">Owner & GC Sworn StatementsUnconditional and Conditional WaiversTitle SearchReview Fee applicable	<ul style="list-style-type: none">Owner & GC Sworn StatementsUnconditional and Conditional WaiversTitle SearchDisbursement/Review Fee applicable	<ul style="list-style-type: none">Title Search
Who directly disburses each loan draw?	<ul style="list-style-type: none">Insured Lender, after review & approval by title company	<ul style="list-style-type: none">Title Company's Construction Disbursement Group	<ul style="list-style-type: none">Insured Lender or Qualified disburser on behalf of the Lender
Indemnitor Required?	<ul style="list-style-type: none">Yes, creditworthy indemnitor required. Ex: Borrower, Loan guarantor(s), GC, parent entity.	<ul style="list-style-type: none">Yes, creditworthy indemnitor required. Ex: Borrower, Loan guarantor(s), GC, parent entity.	<ul style="list-style-type: none">Yes, creditworthy indemnitor required. Ex: Borrower, Loan guarantor(s), GC, parent entity.





Owner Policies issued simultaneously with a Construction Loan



Full, upfront coverage – no exception



Limited mechanic's lien coverage – showing an exception: Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, arising through the Insured or its agents, all as imposed by law, and not shown by the Public Records.



No coverage – showing general mechanic's lien exception





Developer Sale-Outs or Refinance [Commercial] ...



ALWAYS UNDERWRITTEN FOR FULL,
UPFRONT COVERAGE



INDEMNITY MAY CARRY FORWARD IF
WE INSURED THE CONSTRUCTION LOAN



Options for Residential Builders



- General Indemnity
- Builder is same entity as owner





Builder Sales to Consumers - Residential



Always underwritten for full,
upfront coverage



General indemnity





FINAL TIPS



- Bring underwriting into the conversation early on in your transaction. We want to learn about the project and help you tailor the requirements to better reflect the project at hand.
- What coverage is the Lender or Buyer seeking?
- **ALWAYS get approval from underwriting if there are any mechanic's lien issues.**





Q&A





THANK YOU!



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