

Title Talk



Mechanics' Lien Waivers

We are often asked to insure title to property upon which new construction or remodeling is taking place. In such a situation, the issue of mechanics' lien liability arises. Under the Mechanics' Lien Law (49 P.S. § 1101 et seq.) a claim may be filed by any contractor or subcontractor for labor or material in excess of \$500.00. Such a claim becomes a lien on the real property and takes priority "as of the date of the visible commencement upon the ground of the work of erecting or constructing the improvement" for new construction, and as of the date of the filing of the claim for alterations and repairs. (49P.S. § 1508). Such a claim could take priority over the mortgage being insured.

In order to preserve the lien priority of the insured mortgage, either the mortgage must be recorded or a valid mechanics' lien waiver must be filed prior to the commencement of the work. (Although the wording of the act hints that the waiver need only be executed by the contractor). A waiver entered into between the owner and the general contractor and filed against owner and contractor as both plaintiff and defendant in the prothonotary's office will preclude the filing of any claim by the contractor or subcontractors working under him. However, should the owner independently hire others to provide labor or material, they would not be bound by the waiver and could file a claim. In this situation, or when an owner attempts to act as his own general contractor, the owner may attempt to cure the problem by filing multiple waivers with various subcontractors. From a title insurance standpoint, this is not sufficient to comfort the insurer against the possibility of a claim, for the filing of multiple waivers raises the question of whether every laborer or material supplier is covered by a waiver. In such a case, in order to insure over possible mechanics' liens, we will require an additional risk premium and a signed release by all subcontractors and materialmen. The owner must also sign an affidavit that all laborers and suppliers have signed the release.

Therefore, to protect your clients and lenders, insist that a valid mechanics' lien waiver be filed prior to the commencement of any work or that no work be commenced prior to the recording of the mortgage.

Closed July 5th

We will be closed July 5th in conjunction with the July 4th holiday (which is on a Sunday).

(P.S. This will also give us a chance to recuperate after the picnic on Sunday - Contributions of Ben Gay, Solarcaine, and Alka-Seltzer are welcome).

CREATED

for

ATTORNEYS

by

ATTORNEYS

New Ratings Just In

Currently all title insurance underwriters have to be rated by an independent agency and must achieve a satisfactory (S) Grade in order to issue policies covering certain government insured loans.

The new ratings for 1998 have just been released and Penn Attorneys has been rated **A'** by Demotech, Inc. (one of the most-respected of these rating agencies); to quote from their definitions page:

A' Regardless of the severity of a general economic downturn or a deterioration in the insurance cycle, insurers earning a Financial Stability Ratings of "A prime" possess Unsurpassed financial stability related to withstanding a general economic downturn or deterioration of an underwriting cycle.

A Blast from the PAST MOBILE HOME ALERT!

No, a tornado is not on the way. Now that we have your attention, please be reminded that we must be notified when a mobile home exists or is intended to be placed on a property. If so, requirements will appear on your Penn Attorneys Commitment instructing you to certify that no encumbrances are noted on the title, and that all taxes, including any special trailer assessments have been paid. We will also provide you with a form upon which you must furnish proof of surrender of the trailer title. Please feel free to call us if you have any questions.

Late Breaking News Details to Follow

Penn Attorneys Title Insurance Co., in cooperation with the Merriam Insurance Agency of Schenectady, NY, is pleased to announce a special opportunity for our Member Attorneys to obtain broad coverage Professional Liability Insurance at a significant savings over prevailing rates.

Beginning in June, 1999 Penn Attorneys will sponsor an **exclusive** Discount Liability Insurance Program where all the discounts go directly to the insured, allowing for terrific savings to you. This special program will only be available to our approved attorneys and firms with approved attorneys.

Details will be available shortly, but if you are due for renewal shortly you might want to call Josie Lubiejewski at 1-800-352-2216 or in Erie at 454-8278 to see if its ready to launch.

DISCLAIMER:

Penn Attorneys makes absolutely nothing from this program. It is provided strictly as a service to our attorneys. Evaluate this program using the same guidelines you would use to evaluate any insurer.

Title Alert Rehash

We're totally excited about our new "1031" program and the opportunities it presents to our attorneys. If you haven't made your reservations yet, try now - there may still be openings at some of the sites.

Purchase Money Mortgages and Lien Priority

Generally speaking, it is not necessary to recite within the body of a second mortgage that it is, in fact, a second mortgage because the fact that it was recorded at a later time than the first mortgage creates this result by operation of law. However, when two mortgages are both purchase money mortgages, the question of priority is not so "cut and dried".

Here's how complications can arise:

By definition a mortgage given back to the seller of the property from the buyer to secure repayment is a purchase money mortgage. Let's assume at the same time an additional mortgage is given to a third party mortgagee (eg: local bank) to secure additional purchase funds.

(Please take note that, since the 1968 Amendment to the Lien Priority Law (now 42 Pa.C.S. section 8141), where a mortgage is given to someone other than the seller of the property, it is not considered a purchase money mortgage unless it specifically states that it is.)

The Third party mortgagee identifies his mortgage as a "Purchase Money Mortgage." (This is fairly common). Consider also that a purchase money mortgage differs from other mortgages with respect to lien priority in that it becomes a lien from its date of delivery if recorded within 10 days of delivery.

Query: Which mortgage has priority?

Answer: Neither. They have equal priority even if recorded on different dates, if both were recorded within 10 days of delivery.

What to do: If the mortgage to the bank is intended to be a first mortgage, clearly indicate on the sellers mortgage that is "intended to be a second lien to a mortgage given to _____".

Penn Attorneys Welcomes The Following Newly-Approved Attorneys:

Alexander B. Bunson, Esq.	Allegheny
Alex L. Svirsko, Jr., Esq.	Cambria
Richard Winkler, Esq.	Crawford
Gregory S. Baldwin, Esq.	Erie
Jeffrey C. Herman, Esq.	Erie
Mary Payton Jarvie, Esq.	Erie
Evan Charles Rudert, Esq.	Erie
Grant C. Travis, Esq.	Erie
Darrel J. Vandeveld, Esq.	Erie
Blair H. Hindman, Esq.	Jefferson
Patrick J. Aregood, Esq.	Luzerne
Gregory E. Fellerman, Esq.	Luzerne
Michael C. McHugh, Esq.	Luzerne
Paul E. Smith, Esq.	Luzerne
Bernard D. Walter, Esq.	Luzerne
Anthony V. Clarke, Esq.	McKean
Edith A. Pearce, Esq.	Philadelphia
William D. Schrack, III, Esq.	York

**PENN ATTORNEYS TITLE INSURANCE CO.
SEC. 1031 TAX-DEFERRED EXCHANGE PROGRAM**

RESERVATION FORM

APPROVED ATTORNEY: _____

ADDRESS: _____

PHONE: _____ FAX: _____

Yes, I will be attending the Penn Attorneys Title Insurance Co. Interactive Video Conference concerning the Sec. 1031 Tax-Deferred Exchange Program.

Please place my reservation for the following location:
(Mark "X" by your choice:)

_____ Clarion University, 840 Wood Street, **Clarion**, PA.

_____ Dixon University Center, 2986 North Second Street, **Harrisburg**, PA.

_____ Marywood University Media Center, 2300 Adams Avenue, **Scranton**, PA.

_____ University of Pittsburgh at Johnstown, 450 School House Road, **Johnstown**, PA.

WED. FULL Gannon University — Live Site
Palumbo Building, Room 3237
824 Peach Street, Erie, PA.

ADDED PREVIEW SESSION—ERIE ONLY: **TUESDAY, JUNE 15, 1999 @ 1:00 P.M.**

_____ Gannon University
Palumbo Building, Room 3237
824 Peach Street, Erie, PA.

Reservations required by Monday, June 7th, 1999.

Fax or Mail to:
Penn Attorneys Title Insurance Co.
900 State Street, Suite 320
Erie, PA. 16501
FAX: Erie 453-5983 — or — 800-234-2352

TITLE ALERT

Announcing an entirely new service from Penn Attorneys Title Insurance Co.:

THE SEC. 1031 TAX-DEFERRED EXCHANGE PROGRAM

This is not another seminar about the concept but rather an entirely new program designed to help you walk your client through the complications inherent in the "tax-deferred exchange". This program is not designed to turn you into a tax expert but, rather, to introduce you to your on-call experts and to provide you with your own reference manual.

We have scheduled an **INTERACTIVE VIDEO CONFERENCE** on **Wednesday, June 16, 1999** from 8:30 a.m. 'til Noon at the following locations:

Clarion, PA.: Clarion University, 840 Wood Street, Clarion, PA.

Harrisburg, PA.: Dixon University Center, 2986 North Second Street, Harrisburg, PA.

Scranton, PA.: Marywood University Media Center, 2300 Adams Avenue, Scranton, PA.

Johnstown, PA.: University of Pittsburgh at Johnstown, 450 School House Road, Johnstown, PA.

Erie, PA.: Gannon University — Live Site, Palumbo Building, Room 3237, 824 Peach Street, Erie, PA.

Registration & Continental Breakfast at each site at 8:30 a.m.

Presentation begins promptly at 9:00 a.m.

RESERVATIONS REQUIRED: It is **absolutely critical** that you make your reservation (form enclosed) by **Monday, June 7th, 1999**, as space in these facilities is severely limited. (There is no charge to our Approved Attorneys for this event.)

*This newsletter is also available at our web site
— www.pennattorneys.com*

