



# ISB Real Property Section September 6, 2023

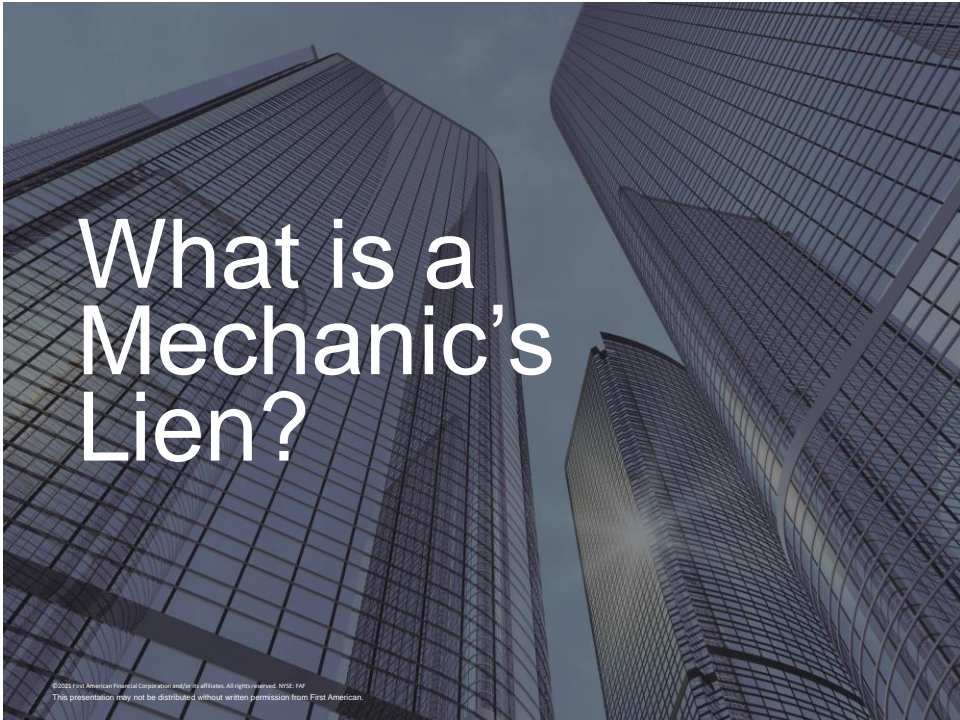
## Mechanic's Liens – Back to Basics

Presented By John Jameson  
Underwriting Counsel – Idaho, Montana and Oregon  
First American Title Insurance Company

First American Title Insurance Company, and the operating divisions thereof, make no express or implied warranty respecting the information presented and assume no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.  
The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.  
©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF  
This presentation may not be distributed without written permission from First American Insurance Company.



1



# What is a Mechanic's Lien?

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF  
This presentation may not be distributed without written permission from First American.

2

## WHAT IS A MECHANIC'S LIEN?

### Mechanic's Lien – I.C. § 45-501, et seq.

A lien against property created by state statutes for the purpose of securing priority of payment to those who furnished:

- Labor
- Materials
- Fixtures
- Machinery / Rental Equipment
- Services (including plans, surveys)

for the improvement of real property.

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE:FAF  
This presentation may not be distributed without written permission from First American.



3

## WHO MAY FILE A MECHANIC'S LIEN?

### I.C. § 45-501

Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any improvement to real property.

- Contractors
- Subcontractors
- Suppliers of Material
- Laborers
- Machinery and Equipment Providers
- Engineers
- Surveyors

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE:FAF  
This presentation may not be distributed without written permission from First American.



4

## WHAT DOES IT COVER?

### What qualifies as an “improvement”?

- New Construction
- Repairs
- Replacement
- Site Improvements
- Rehabilitation Projects
- Tear Downs
- Condominium or Apartment Conversions
- Special Installations

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE:FAF  
This presentation may not be distributed without written permission from First American.



5

## Land Subject to Mechanic’s Liens – I.C. § 45-505

### Property interests subject to a lien

- Inchoate Lien
- The land upon which any professional services are performed or any construction is commenced, as long as the land is owned (or lesser interest) by the person who caused the work to be performed.
- Lien attaches to the improved parcel together with a convenient space about the same, to be determined by the court.
- Leased Premises – Tenant interests. Lien attaches to the improvement and to the leasehold term.
  - Control by owner affects scope of lien.

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE:FAF  
This presentation may not be distributed without written permission from First American.



6

## AMOUNT OF LIEN I.C. § 45-511

The amount of a lien is the unpaid part of the person's contract price, limited to services actually performed and materials actually supplied, and subject to provisions of I.C. § 45-511.



©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NYSB: FAF  
This presentation may not be distributed without written permission from First American.



7

## Perfecting the Lien

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NYSB: FAF  
This presentation may not be distributed without written permission from First American.

8

## WHO MUST RECORD A CLAIM OF LIEN? § 45-507

### Recording Claim of Lien : § 45-507

Any person who may claim a mechanic's lien pursuant to this chapter **MUST** file a claim with the county recorder in order to have a valid and enforceable lien.

- Claim contents must be strictly complied with.
- The claim must be filed within ninety (90) days after completion of the labor or services.
- Claim must include the following:
  - Statement of demand after deducting credits and offsets
  - The name of the property owner or reputed owner
  - The name of the person who engaged the contractor
  - A legal description of the property to be charged
- The claim must be verified by the oath of the claimant.

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE:FAF  
This presentation may not be distributed without written permission from First American.



9

## Priority of Lien – I.C. § 45-506

- Mechanic's liens have priority over any lien, mortgage, or other encumbrance that attaches subsequent to the commencement of physical work.
- Lien attaches on the date materials were delivered, leased, rented, and/or materials or services were commenced to be furnished.
- Each claimant has independent priority based on when the particular claimant commenced work or provided services.
- All actions to foreclose must be commenced within 6 months from the date of the filing of the claim of lien (45-510(1))

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE:FAF  
This presentation may not be distributed without written permission from First American.



10

## PRIORITY OF MECHANIC'S LIEN OVER MORTGAGE

### I.C. § 45-506 – Mechanic's lien is:

- Superior to all subsequent recorded liens or mortgages
- Although each provider has independent priority, work performed pursuant to a contract, all work performed pursuant to the contract will relate back to the commencement of start of work pursuant to the contract.
- No protection against mechanic's liens for bona fide purchasers or mortgagees (inchoate lien).

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE: FAF  
This presentation may not be distributed without written permission from First American.



11

# Mechanic's Liens And Title Insurance

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISSE: FAF  
This presentation may not be distributed without written permission from First American.

12

## ALTA TITLE POLICY COVERAGE

### Review of applicable Covered Risks

- Owners and Loan Policy
  - Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from...
- Loan Policy
  - The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISO: FAF  
This presentation may not be distributed without written permission from First American.



13

## ALTA TITLE POLICY COVERAGE

### Review of applicable Covered Risks

- **11(a) Loan Policy Only**
- 11. The lack of priority of the lien of the Insured Mortgage upon the Title
  - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
    - (i) contracted for or commenced on or before Date of Policy; or
    - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
  - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISO: FAF  
This presentation may not be distributed without written permission from First American.



14



## AVOIDING COMMON PITFALLS

### Money Shortfall

After construction started, material and labor costs skyrocketed. Don Developer is short \$1,500,000 to complete the apartment development. Even though costs increased unexpectedly, so did the property values. The projected value on completion and occupancy is now \$24,000,000. The insured lender wants to help Don by increasing the loan amount.

What priority and viability issues does this loan advance create?



©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE: FAF  
This presentation may not be distributed without written permission from First American.



15

## AVOIDING COMMON PITFALLS

### Recorded Lien

Don Developer obtained his construction mortgage and an extended policy was issued with mechanic's lien endorsement. Some work has been completed and he submits a request for a second draw. In your search you find that a mechanic's lien has been filed, HOWEVER the lien does not comply with state statutes.

Will this lien show as an exception on the title commitment?



©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE: FAF  
This presentation may not be distributed without written permission from First American.



16



## AVOIDING COMMON PITFALLS

### Sale and Permanent Financing

Don recently completed the apartment development and is selling it to Craig Bigbucks for \$30,000,000. Craig is paying \$10,000,000 down and getting a loan for \$20,000,000. Craig wants an extended owner's policy deleting the standard exception for mechanic's liens. The lender wants an extended loan policy. Don signs an owner's affidavit stating that all work has been recently completed on the property and paid for and no liens are recorded.



What else would a title officer and/or underwriter want to know?

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE: FAF  
This presentation may not be distributed without written permission from First American.



17

## Q and A



©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NISE: FAF  
This presentation may not be distributed without written permission from First American.



18