RETRO REWIND

Journey through the Decades



CODE ENFORCEMENT and Other Municipal Liens

Patrick Lester, Esq.

Sponsored By

LIEN ONE
A Deeper Perspective

AccuTitle
TITLE MANAGEMENT PLATFORMS

FNF FAMILY OF COMPANIES
FLORIDA AGENCY

WHO'S WHO SPEAKER BIO



Patrick Lester, Esq.

Vice President
State Underwriting Counsel

Patrick Lester is Vice President and State Underwriting Counsel for FNF Florida Agency in Maitland, Florida. He started his career with the FNF family of underwriters in 2000 with American Pioneer Title Insurance Company which changed its name to Ticor Title Insurance Company of Florida and eventually merged into Chicago Title Insurance Company. He served as both claims and underwriting counsel at that time. During his time with Ticor Title Insurance Company of Florida he served as the lead underwriting counsel for Ticor's Timeshare and Commercial Division. He currently serves as underwriting counsel for FNF and fields numerous underwriting inquiries on residential and commercial transactions throughout the state. In addition, he serves as lead Florida underwriting counsel for FNF's National Timeshare Division based in Maitland.

He graduated from the University of Central Florida with a Bachelor of Arts in Political Science and earned his law degree at Nova Southeastern University in Ft. Lauderdale, Florida, where he graduated Cum Laude with a concentration in International Law. He was an associate editor for the ILSA Journal of International Law while at Nova. Patrick is a member of The Florida Bar.

CODE ENFORCEMENT AND OTHER MUNICIPAL LIENS (WEBINAR)

I. What is a Code Enforcement Lien?

A. Governed by the Local Government Code Enforcement Boards Act, see Section 162.01, F. S.
   1. Each county or municipality may create by ordinance a local code enforcement board, see Section 162.03, F.S.
   2. The boards were created as a method of enforcing any county or municipal ordinances where a pending or repeating violation exists, see Section 162.02, F.S.
   3. The boards have authority to impose administrative fines and other noncriminal penalties, see Section 162.02, F.S. and Section 162.09(1), F.S.

B. Code Enforcement Liens
   1. A certified copy of an order imposing a fine may be recorded in the public records and will thereafter constitute a lien against the land upon which the violation exists and upon any other real or personal property owned by the violator (also referred to as "cross attaching"). See Section 162.09(3), F.S.
      a. Title insurance considerations for determining whether the lien attaches to the property
      b. Title insurance considerations for determining whether the lien cross attaches to other property
   2. The lien is enforceable in the same manner as a court judgment, see Section 162.09(3), F.S.
   3. Certification of the lien
   4. Recorded Notices of Violation
      a. Covered under Covered Risk 5 of the title insurance policy
      b. Title Insurance Underwriting Requirements – must make an exception in the title insurance policy for the Notice of Violation

II. Establishing Priority and Duration of the Code Enforcement Lien

A. Priority
   1. The lien is treated as a judgment lien and priority would be established as of the date of recording of the lien if it was filed pursuant to Section 162.09(3), F.S.
   2. To determine priority, the agent must review the language of the lien. See *City of Palm Bay v. Wells Fargo*, 114 So. 3d 924 (Fla. 2013)
      a. If the lien refers to Chapter 162 of the Florida Statutes, then it is treated as a judgment lien for priority purposes.
      b. Even if the lien is filed pursuant to a local ordinance that states the lien is superior in dignity to other liens, the lien only has priority based on the time of recordation.

B. Duration - Valid for 20 years after the date upon which the certified copy of the order imposing the fine has been recorded, see Section 162.10, F.S.

III. Payoff of the Lien and Obtaining a Proper Satisfaction

A. These requirements generally apply to a property on which the code violation occurs and to all other real property owned by the violator in other Florida counties or cities, see Section 162.09(3), F.S.

B. Satisfaction of Release of Lien
   1. The title insurance agent must obtain a payoff or estoppel letter from the property governmental entity, including a statement of sufficient funds to pay off the lien plus any accrued interest or penalties, see Section 162.09(3)
   2. After payment of sufficient funds, the title insurance agent must obtain and record a satisfaction or release of the lien, see Section 162.09(3), F.S.
   3. The title insurance agent must also verify there is no continuing violation, i.e., the violation has been corrected (see III. C. 2. below).
   4. If a satisfaction or release of the lien cannot be obtained, an exception must be made in the title insurance policy.

C. Cure of Continuing Violation
   1. A fine will continue to accrue until the violator comes into compliance or until a judgment is rendered in a suit, whichever occurs first, see Section 162.09(3), F.S.
   2. When insuring the property on which the violation occurred:
      a. The agent must also verify in writing that the continuing violation has been cured for the property to issue a policy without an exception for the continuing violation.

b. If the continuing violation has not been cured, an exception must be taken in the policy for the violation.

3. When insuring other property (the violation is on other property), then there is no requirement as to the continuing violation - the agent need only obtain a proper satisfaction or release of the lien.

IV. Foreclosure of Property where a Code Enforcement Lien Exists

A. Code enforcement lien recorded after the mortgage being foreclosed:
   1. May be eliminated in foreclosure
   2. Title insurance underwriting requirements based on filing of lis pendens
   3. Continuing violation must be cured

B. Code enforcement lien recorded before the mortgage being foreclosed:
   1. Cannot be eliminated in the foreclosure
   2. The lien must be released or satisfied or an exception taken in the policy
   3. Continuing violation must be cured

C. Code Enforcement Liens Against Foreclosing Lender - If a major institutional lender has code enforcement liens against it:
   1. For violations on the property being insured: a release of lien is required and a certificate of compliance is required.
   2. For violations on property other than the property to be insured, it is NOT necessary to obtain a release of the lien if: (1) the lender is conveying by warranty deed or special warranty deed; or (2) the lender provides an indemnity to the underwriter for code enforcement liens.

V. PACE Liens

A. Florida's Property Assessed Clean Energy Act (PACE Act). § 163.08, Fla. Stat.
   1. Recordation of financing agreement or a summary memorandum of the agreement creates the PACE lien.
   2. Examiners should be mindful that a PACE lien financing agreement will usually be indexed as an "Agreement."
   3. Funds advanced by the local government pursuant to a PACE financing agreement may be collected as non-ad valorem tax assessments but may not show on tax bill on first year of PACE loan.
   4. PACE liens have super-priority status, the same as property taxes.
   5. Many lenders will not make a mortgage loan on a property encumbered by a PACE lien and require PACE liens be released prior to or at closing.
   6. Settlement agent should obtain an estoppel letter with pay off instructions from the PACE administrator.
   7. Settlement agent should also determine if the payoff amount in the estoppel letter includes the annual assessment for the current year or if the current year's amount needs to be added to the payoff figure in the estoppel letter.
   8. If cash transaction and buyer agrees or if lender also agrees in loan transaction, an exception can be made in lieu of paying off PACE loan and releasing lien.

VI. Other County and Municipal Liens

A. Chapter 153, F.S. Liens
   1. Special assessments for water or sewer system improvements
   2. Liens that may be foreclosed upon
   3. Super priority status

B. Chapter 159, F.S. Liens
   1. Municipal facilities to provide water, sewer or gas system services to the community
   2. Revenue bonds become a lien that may be foreclosed upon
   3. Super priority status
   4. Generally not recorded in the public records

C. Chapter 170, F.S. Liens
   1. Special assessments for construction of roads, streets and sidewalks
   2. Liens may be foreclosed upon
   3. Super priority status

Code Enforcement Liens under Chapter 162

Introduction

Chapter 162, Florida Statutes

The Local Government Code Enforcement Boards Act (the "Act") is found in chapter 162 of the Florida Statutes. Under the Act, each county and municipality may create or abolish by ordinance, local government code enforcement boards ("Boards"). See section 162.03, F.S. In an effort to promote, protect and improve the health, safety and welfare of the citizens of the counties and municipalities, the Boards are created as a method of enforcing any county or municipal ordinances ("Local Ordinances") where a pending or repeated violation exists. The Boards have authority to impose administrative fines and other noncriminal penalties as a method of enforcing these Local Ordinances. See section 162.02, F.S.

What Are Some Examples of Violations?

Local Ordinances are enacted to serve and protect the citizens and they regulate countless community activities; for example, animal control, litter control and public nuisances (such as loud noises, disorderly conduct, loitering, and unauthorized storage or dumping), to name only a few. It is clear from the language of the statute that counties and municipalities are given broad enforcement authority when a Local Ordinance is violated. Some examples of violations of these Local Ordinances are dirty pools, inoperable vehicles in yards, overgrown lawns, broken windows, trash or debris by the road, false fire alarms, noise complaints, animal or pet citations and nonconforming signs.

How Does a Violation Become a Lien? What is the Process?

If a violation under chapter 162 exists, the code inspector notifies the violator in a Notice of Violation, giving the violator reasonable time to correct the violation. If that violation continues beyond the time specified, the code inspector notifies the Board and requests a hearing. The Board then schedules a hearing, with notice sent to the violator. See section 162.06 F.S. After listening to testimony, the Board will issue findings of fact and conclusions of law and will issue an Order for Relief. This Order for Relief may include a requirement that it must be complied with by a specific date and that a fine may be imposed (which may also include the cost of repairs), and it may be recorded in the Public Records.[1] See section 162.07. If the violator does not comply with the Order for Relief by the set time, the Board may order the violator to pay a fine for each day the violation continues in an Order Imposing a Fine. A certified copy of the Order Imposing a Fine may be recorded in the Public Records and will then constitute a lien against the land on which the violation exists and upon any other real property owned by the violator (commonly referred to as "cross attaching"). This Order Imposing a Fine is enforceable in the same manner as a court judgment.[2] After three months from the filing of this lien remaining unpaid, the Board may foreclose on the lien or sue to recover a money judgment for the amount of the lien, unless the property is homestead. See section 162.09, F.S.

What Does a Code Enforcement Lien Look Like?

Code enforcement liens typically contain some or all of the following information:

- The name of the violator.
- The type of violation and/or service provided by the city or county to correct the violation, such as mowing or demolition.
- The particular ordinance violated.

[1] The phrase "Order for Relief" is used for purposes of these materials to generally refer to the Order rendered after the initial hearing under Section 162.07, F.S. It may be titled using a different name based on local practices and many times this initial order is not recorded in the public records.

[2] Similarly, the phrase "Order Imposing a Fine" is used for purposes of these materials to generally refer to the Order which, once recorded in the Public Records, constitutes a lien on property under Section 162.09, F.S. Practically, this Order may be referred to by any number of various names based on local practices and should not be disregarded solely based on the title of the document.

- Whether the lien is being filed pursuant to chapter 162, Florida Statutes, or a city or local ordinance authorizing the filing of the lien.
- The legal description or street address of the property where the code violation occurred.
- A lump sum due or a daily fine.

However, a lien should still be treated as valid even if it does not contain some or all of the usual information.

Covered Risks under the Title Insurance Policy

If a code enforcement lien is recorded in the Public Records, it must be released in order for a policy to be issued without an exception for the recorded lien. As to violations that continue to exist, depending on the nature of the violation, many times a notice of compliance will be required in order for a policy to be issued without an exception for the continuing violation.

However, title agents frequently encounter situations in which a Board has recorded a notice that the subject property is in violation of the local code or an enforcement action has been initiated, but no lien has yet been recorded. Typically, a Notice of Violation sets a time period within which the violator must correct the violation and thereby avoid the filing of a lien. Violations and enforcement actions based on Local Ordinances are Covered Risks under the title insurance policy only if a notice setting forth the violation is recorded in the Public Records (Covered Risk 5) or a notice of enforcement action is recorded in the Public Records (Covered Risk 6).

…(the "Company"), insures, as of the Date of Policy…against loss or damage…sustained or incurred by the Insured by reason of:

5. *A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:*
   - *(a) the occupancy, use, or enjoyment of the Land;*
   - *(b) the character, dimensions, or location of an improvement on the Land;*
   - *(c) the subdivision of the Land; or*
   - *(d) environmental remediation or protection on the Land.*
6. *An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.*[3]

"Enforcement Notice" is defined under the Policy Conditions as:

f. A document recorded in the Public Records that describes any part of the Land and:
   - *i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;*
   - *ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or*
   - *iii. asserts a right to enforce a PACA-PSA Trust.*

Therefore, if a Notice of Violation or Enforcement Action is recorded in the Public Records, you must obtain a release of the Notice and a statement that the property is in compliance, or make an exception for the Notice of Violation or Enforcement Action and the continuing violation, if applicable, in Schedule B of the policy.

[3] The policy contains a corresponding Exclusion from Coverage in Exclusions 1(a) and 1(b); however, the Exclusions do not modify or limit the coverage provided under Covered Risks 5 and 6. In other words, the Exclusions apply so long as there is no notice recorded in the Public Records.

Establishing Priority and Duration of the Code Enforcement Lien

In 2013, the Supreme Court of Florida held that a code enforcement lien becomes a lien, and its priority is determined, at the time it is recorded in the official records. See *City of Palm Bay v. Wells Fargo,* 114 So. 3d 924 (Fla. 2013). The Court held that these liens do not have "super priority" status. Thus, even if the lien is filed pursuant to a local ordinance that states the lien is superior in dignity to other liens, the lien only has priority based on the time of recordation. It is important to note that the City of Palm Bay case only applies to code enforcement liens, but not liens pursuant to chapter 157 (drainage), chapter 159 (water, sewer or gas systems) and chapter 170 (roads, streets and sidewalks), of the Florida Statutes.

The lien under chapter 162 is valid for twenty years after the date of recording. See section 162.10, F.S.

Payoff of the Lien and Obtaining a Proper Satisfaction

When attempting to pay off a code enforcement lien, you must obtain a payoff or estoppel letter from the applicable governmental entity to assure collection of sufficient funds for the lien, plus any accrued penalties or interest charges. See section 162.09, F.S. In situations where there is a continuing violation, many times it is also necessary for the violation to be corrected. In addition to requesting and recording a satisfaction or release of the lien, the estoppel letter should state that the violation has been corrected.

Below are examples of the requirements set forth in Schedule B-1 of the title commitment relating to the proper release or satisfaction of the lien:

Release or Satisfaction of Lien

Record in the Public Records a release or satisfaction of the Code Enforcement Lien, in favor of _____, recorded in Official Records Book ___, Page ___, as filed on the subject property.

Proof of Compliance

Record proof acceptable to the Company that the violation referred to in that certain Code Enforcement Lien recorded in Official Records Book ___, Page ___, has been brought into compliance.

Release or Satisfaction of Lien and Source of Violation Removed

Record in the public records a release or satisfaction of that certain Code Enforcement Lien in favor of _____ and against _____, recorded in Official Records Book ___, Page ___, together with proof, acceptable to the Company, that the source of the violation has been removed.

Release or Satisfaction of Lien that has Cross-Attached to Other Property

Record in the Public Records a release or satisfaction of the Code Enforcement Lien, in favor of , recorded in Official Records Book ___, Page ___, as filed against (the vested or prior owner), and pertaining to other property (not the subject property) owned by _____.

BEWARE: Many times, the enforcing body will not agree to provide a satisfaction or release if a violation continues on the property. In other words, the satisfaction or release is contingent upon the property being brought into compliance. If a satisfaction or release of the lien cannot be obtained, an exception must be made for both the lien and the continuing violation in the policy. The only exception to this requirement is when the violation occurs on other property owned by the violator (not the Proposed Insured Property). In this case, only a satisfaction or release of the lien is required.

Foreclosure of Property Where a Code Enforcement Lien Exists

City of Palm Bay (mentioned above) settled a previously troublesome issue faced by title agents where a code enforcement lien was recorded after the mortgage yet the local government claimed super-priority status based on language in their Local Ordinance. Because of the Florida Supreme Court's holding in *City of Palm Bay*, a code enforcement lien recorded after recordation of the mortgage can now be eliminated in a mortgage foreclosure. There are different underwriting requirements based on when the lien was filed in relation to the filing of the lis pendens in the foreclosure suit. If the lien was filed after the mortgage, but before the foreclosure lis pendens, the City or Board of County Commissioners that filed the lien must be named as a defendant in the foreclosure.

If the lien was filed after the foreclosure lis pendens, the lien will be barred without naming the City or County Commissioners as a defendant.

Although the foreclosure will eliminate the lien on the property, the foreclosure will not eliminate the code violation itself if it continues on the subject property. Therefore, unless the lien or other recorded instrument shows that that the violation has been corrected, proof of compliance must be recorded. Proof of compliance is necessary to eliminate the possibility of a lien being recorded in the gap period. Alternatively, if acceptable to and agreed upon by the Insured, an exception can be made for the violation.

Code Enforcement Liens Against a Foreclosing Lender

With the increasing number of properties held by lenders (either in the lender's name or as trustee of a mortgage backed security trust), the issue of cross-attaching liens is encountered more frequently. Lending institutions are reluctant to clear up liens on properties on which no direct violation exists, desiring instead to take care of the code enforcement lien problem only when the violating property comes up for sale. Where an institutional lender is conveying property by warranty deed or special warranty deed, or is providing an indemnity over code enforcement liens, code enforcement liens against the lender can be disregarded, UNLESS the code enforcement lien affects the subject property. If the subject property being insured is the violating property, a release of the lien is required and a certificate of compliance must be obtained (if the release does not indicate compliance). Similarly, code enforcement liens against federal agencies or instrumentalities that insure or guarantee loans (i.e., VA, FHA, Fannie Mae and Freddie Mac) may be disregarded if the code violation occurred on property not being insured. For questions, please contact the Underwriting Department.

Troubleshooting

Searching for Code Enforcement Liens

Because the nature of these liens may be determined by the local Board, there is no uniformity in the form or indexing of code enforcement liens. Therefore, you must be aware of certain problems which exist in locating and clearing these liens. Often these liens are indexed in the Public Records under the name of a prior owner of the property (the violator), rather than the current owner. This situation results from a delay in the processing of the lien from the time the violation occurred to the actual filing of the lien. Despite the change in ownership, the lien still attaches to the violating real property. In addition, the lien is frequently recorded only with a street address. Therefore, the name search performed on prior owners should be comprehensive so as not to miss liens.

Certified v. Uncertified

Although chapter 162, Florida Statutes, says that a code enforcement lien becomes a lien when a certified copy is recorded, it is unclear what a "certified" copy means in this context. Since the lien is prepared and recorded by the local governmental unit, it may be considered "self-certifying." Therefore, a code enforcement lien should not be disregarded on the ground that it does not appear to be certified.

Homestead

The Act states that a code enforcement lien may not be foreclosed on real property which is a homestead.[4] However, whether a property is classified as homestead is a question of fact based on numerous considerations.[5] Therefore, a code enforcement lien should not be disregarded on the grounds that the owner claims the property is homestead unless a judge makes a determination as to the facts and issues a final court order establishing that the lien did not attach based on the property's homestead status. Do not rely on affidavits of homestead status to insure over a code enforcement lien. Also, do not rely on the Notice of Homestead procedure set forth in section 222. 01(2), F.S. because it only applies to judgment liens filed pursuant to section 55.10, F.S.

[4] There is a split among the Florida courts as to (1) whether a code enforcement lien even attaches to homestead property in the first place or (2) whether a code enforcement lien attaches to the property, but then is not enforceable because of the homestead nature of the property. Despite this uncertainty, the homestead protection still applies.

[5] For example, a property may be homestead but is then abandoned by the owner, which results in the property losing its homestead status and the lien attaching to the property.

Cross Attaching Under a Local Ordinance

The question whether a code enforcement lien cross-attaches to non-violating property becomes difficult if the lien states it was filed pursuant to a specific local ordinance and does not reference chapter 162, Florida Statutes.

- If the lien states it attaches to all property of the violator, then it should be considered as cross-attaching to all of the violator's property and not limited to the violating property.
- If the lien is silent as to cross-attaching, the Local Ordinance should be reviewed for cross-attachment provisions. If the Local Ordinance says the lien attaches to the property on which the violation occurred and is silent as to other property owned by the violator, then the lien may be considered as only attaching to the violating property.
- If there is any uncertainty as to whether the lien also attaches to non-violating property, it is recommended to treat the lien as cross-attaching.

It is important to always review the applicable local ordinance referenced in the lien. Local ordinances can be found at www.municode.com or the website for the City or County.

PACE Liens

In 2010, the Florida Legislature established Florida's Property Assessed Clean Energy Act (PACE Act). § 163.08, Fla. Stat. When a PACE loan is made, the local government enters into a financing agreement with the property owner to finance a qualifying improvement, such as solar panels or energy efficient doors and windows. The agreement authorizes the local government to impose a recurring non-ad valorem annual assessment to repay the PACE loan, to be added to the annual property tax bill and collected by the county tax collector. Typically, two recorded documents evidence a PACE loan: a summary memorandum of agreement, followed by an addendum to financing agreement. The recorded instruments give constructive notice that the assessment to be levied on the real property creates a lien of equal dignity to county taxes and assessments from the date of recordation. A PACE financing agreement will usually be indexed as an "Agreement."

Many lenders will not make a mortgage loan on a property encumbered by a PACE lien. Therefore, usually the settlement agent will need to confirm that the PACE lien is paid off at or prior to closing in transactions involving loans. To determine payoff amount, the settlement agent should obtain an estoppel letter with pay off instructions from the PACE administrator and also determine if the payoff amount in the estoppel letter includes the annual assessment for the current year. At some point during the year, the PACE administrator will notify the tax collector of the amount of the annual assessment. Estoppel letters issued after that time, may not include the amount of the assessment and therefore that amount would need to be added to the payoff figure.

A sample requirement would read:

> *Record a termination of that certain Summary Memorandum of Agreement recorded _____ in Official Records Book _____, Page _____ (or Instrument Number _____), as affected by the Addendum to Financing Agreement recorded _____ in Official Records Book _____, Page _____ (or Instrument Number _____). NOTE: These instruments secure a lien under the Property Assessed Clean Energy (PACE) Act being repaid through annual non-ad valorem assessments on the property tax bill. If the PACE administrator's payoff statement does not include the current year's assessment, it will be necessary to escrow a minimum of 150% of the annual assessment until the tax bill has been issued and the assessment has been paid.*

When issuing an owner's policy in a cash transaction or a transaction in which the lender has approved an exception for a PACE lien, the settlement agent should determine if the exception is acceptable to the purchaser. If the buyer is willing to buy the property subject to the PACE lien, the owner's policy, as well as any loan policy, with lender approval of the PACE lien, must contain an exception for the PACE agreement that reads substantially as follows:

> *Terms, provisions, covenants and obligations, including the imposition of a special assessment against the Land, contained in that certain Summary Memorandum of Agreement recorded _____ in Official Records Book _____, Page _____ (or Instrument Number _____), as affected by the Addendum to Financing Agreement recorded _____ in Official Records Book _____, Page _____ (or Instrument Number _____). The coverage of any 9-06 or 9.3-06 Endorsement which may be attached to the policy is not afforded with respect to this item.*

Other County and Municipal Liens

Many municipalities and other local taxing authorities assess liens. It is important to note that local knowledge is critical – sometimes, the county or municipality tax is included with the property's ad valorem taxes and is not separately assessed.

Chapter 153 Lien

A county (or its sewer and water district) may levy special assessments for the construction or reconstruction of water and sewer system improvements. See sections 153.05 and 153.52, F.S. These assessments levied pursuant to sections 153.05 or 153.73, Florida Statutes, constitute liens upon the benefitting property from the date of confirmation of the resolution ordering the improvements. Certain special assessments provided for in section 153.52, Florida Statutes, are collected by the tax collector at the same time as ad valorem tax assessments. Additionally, section 153.67, Florida Statutes, provides for a lien against property serviced by any water or sewer system when the fees are not paid. These liens also have super-priority status and may be foreclosed like a mortgage.

Chapter 159 Lien

Chapter 159, Florida Statutes, enables a municipality (e.g., city, town, village or port authority) to acquire, construct or purchase facilities to provide water, sewer and gas system services to properties within the community. The municipality may pay for the same out of revenue bonds. Any municipality issuing revenue bonds has a lien on the property for service charges for such facilities. See section 159.17, F.S. These liens, commonly called "chapter 159 liens", have priority over all other liens or encumbrances on the property, except state, county or city taxes. Chapter 159 liens may be foreclosed upon in the same manner as a mortgage on real property, and have a duration of twenty years. Chapter 159 liens do not need to be recorded in the Public Records. Many times, payment for these services under chapter 159 will be included in the ad valorem tax assessment. If a chapter 159 lien exists, it can be released by the municipality.

Chapter 170 Lien

These liens enable a municipality to construct and repair roads, streets, sidewalks and alleyways, and to levy special assessments for the payment of the same. Once the assessment is approved by resolution or ordinance of the governing body of the municipality, the assessment is deemed a valid and binding first lien that is "co-equal with the lien of all state, county, district and municipal taxes." See section 170.09, F.S. The municipality may provide that the chapter 170 lien assessment be paid in yearly installments over a period of thirty years. If an installment is not timely paid, the municipality may foreclose the lien in the same manner as a mortgage or under the foreclosure guidelines set forth in chapter 173 of the Florida Statutes.

Lien for Utility Services against Former Occupant of Rental Unit

No county may refuse services or discontinue utility, water, sewer or wastewater reuse services to the owner of any rental unit or to a tenant or prospective tenant of such rental unit for nonpayment of service charges incurred by a former occupant of the rental unit. § 125.485, Fla. Stat. Further, any such unpaid service charges incurred by a former occupant shall not be the basis for any lien against the rental property except to the extent that the

present tenant or owner has benefited directly from the service provided to the former occupant. These provisions apply only when the former occupant of the rental unit contracted for such services with the county.

Notwithstanding this state statute, some localities may take the position that former tenant charges are liens due to their local ordinances. The best practice when handling charges regarding former tenants is to contact the utility authority to see if they consider these charges as liens and if they do, they should be paid or remain as an exception.

Underwriting Requirements

Below are examples of the standard requirements set forth in Schedule B-1 of the title commitment relating to these various county and municipal liens under chapters 153, 159 and 170:

- *Proof of payment of any outstanding assessments in favor of _____ County, Florida, any special taxing district and any municipality.*

  NOTE: If this requirement is not satisfied the following exception will appear on Schedule B:

  Any outstanding assessments in favor of _____ County, Florida, any special taxing district and any municipality.

- *Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing.*

  NOTE: If this requirement is not met the following exception will appear on Schedule B:

  Any lien provided for by Florida Statutes in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer, waste or gas system supplying the insured land or service facilities.

- *Any lien provided by County Ordinance or by chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.*

In order to delete these requirements, the buyer may obtain a lien search and you must review it to determine if any assessments, service charges or liens exist. In the alternative, you may contact the county and/or municipality directly and obtain written verification as to any assessments, service charges, or liens that exist on the property. This latter option may be particularly difficult if your transaction involves property outside of your usual area of practice and you are unfamiliar with the local governments for that area. If any assessments, service charges or liens exist, they must be paid and released prior to closing and a policy may be issued without an exception. However, if the buyer chooses not to obtain a lien search report, then the requirements listed about will become exceptions under the marked up commitment and policy.

Municipal Lien Search Companies

A title search report will reveal any liens recorded in the Public Records. However, many times liens and violations of Local Ordinances are not recorded in the Public Records. As a practical matter, these unrecorded liens and violations by a prior owner can become the responsibility of the buyer upon the sale of the property.[6] Therefore, as part of the buyer's due diligence, many buyers choose to purchase a lien search of the property. A thorough lien search from a reputable municipal lien search company will search the property history for unrecorded liens, code violations, outstanding real property taxes, special assessments, unpaid utilities, open permits and building violations, to name a few. A copy of the lien search report should be provided to the buyer.

[6] Many times, the party responsible for the cost of a municipal lien search fee is set forth in the Contract for Sale and Purchase.



A DEEPER PERSPECTIVE

We Dig Deep To Ensure An Accurate And Comprehensive Search So There Are No Post-Closing Surprises

We Find Risk Where Others Don't: Lien One delivers meticulous due diligence solutions that ensure a confident, timely, and secure closing.

Beyond the obvious, we have the tools and the unique municipality know-how to uncover detrimental unrecorded property claims, and the experience to support clients in rapid resolution.

LienOne.com | 561-353-5000
Info@LienOne.com

Nationwide Services

- Municipal Lien Search
- Association Solutions
  HOA • POA • Condo • Recreation • Club
- Tax Certificates
- Title Reports
- Zoning Verification Letter
- Vacant Property Registration
- Recorded Lien Payoffs
- Payoff Tracking
- Customized Products, Reports, and Services

AccuTitle

EMPOWERING THE TITLE INDUSTRY

We have the solution for you.

TitleFusion

TitleFusion is a robust, cloud based title production and closing platform made by title professionals for title professionals. This highly customizable platform increases workflow productivity through innovative functionality. The flexibility of online access reduces valuable time and resources spent on local system maintenance, networking, and support issues.

www.accutitle.com/titlefusion
(877) 354-1170
Sales: tfsales@accutitle.com
Support: tfsupport@accutitle.com

Closers' Choice

Closers' Choice is an intuitive and efficient platform designed for title professionals to close with confidence. Closers' innovative functionality, together with a robust list of vendor integrations, saves time so title professionals can focus on driving business.

www.accutitle.com/closerschoice
(800) 393-4460
Sales: ccsales@accutitle.com
Support: ccsupport@accutitle.com

landtech

Landtech is made for and supported by title experts. This easy to use settlement software is a fully customizable real estate closing application that has been empowering title professionals for over 40 years. Landtech now offers **Landtech Lime**, a fully cloud version of the original Landtech software.

www.accutitle.com/landtech
(800) 835-1523
Sales: ltsales@accutitle.com
Support: ltsupport@accutitle.com

TrackerPro

TrackerPro is a configurable platform to enable title insurance agents to easily automate their tasks. Trackerpro offers an integrated financial management module as well as time management and tracking tools.

www.accutitle.com/trackerpro
(631) 393-6999
Sales: tpsales@accutitle.com
Support: tpsupport@accutitle.com

AccuTitle provides four end-to-end technology platforms to enable title professionals to manage real estate transactions with ease.

All AccuTitle Platforms Feature:

- Premiere Security Technology
- Secure Document Client Portal
- Robust Vendor and Underwriter Integrations
- Intuitive Workflow Solutions
- Seasoned Customer Service Professionals

To book a demo online visit
www.accutitle.com
or contact us today!