



## CONSTRUCTION ISSUES AT CLOSING: A TITLE COMPANY'S PERSPECTIVE

By Jeffrey P. York  
Assistant Regional Counsel  
Chicago Title Insurance Company, Chicago NCS

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### INTRODUCTION

One of the more complex and confusing issues that can rear its ugly head at a real estate closing is that of the existence of past, present, or, in some cases, future contracts for construction on the land. These contracts can create headaches for owners, purchasers, lenders, attorneys, and title insurers if the issues surrounding these contracts are not dealt with prior to closing. This article will identify construction issues that arise at closing and discuss how Chicago Title Insurance Company deals with these issues. The scope of this discussion will be limited to acquisition and refinance transactions rather than construction loan closings.

### ILLINOIS MECHANICS LIEN LAW

Before one can start the process of determining if there is a construction issue at closing, a basic understanding of applicable Illinois mechanics lien law is necessary. To accomplish this, a review of the "Mechanics Lien Act" (hereafter referred to as the Act) found at 770 ILCS 60/1 et seq., is imperative. What follows is a brief synopsis of some of the pertinent parts of the Act.

A mechanics lien may arise in favor of any person who, pursuant to a contract, furnishes labor, materials, or services in connection with either the improvement of a parcel of land or the repair, rehabilitation, or remodeling of a building on that land.<sup>1</sup> The lien attaches to the parcel of land in the amount due under the contract.<sup>2</sup> This lien attaches, and the priority of the lien as to third parties is established, as of the date of the contract between the contractor and the owner or his or her agent.<sup>3</sup> In the case of a subcontractor or supplier who does not have privity of contract with the owner, the mechanics lien relates back in time to the date of the contract between the owner and general contractor.<sup>4</sup> A mechanics lien, therefore, is a "secret" lien, the priority of which is not determined by the date on which it is recorded; rather, its priority relates back to the date of the general construction contract. The secret nature of this lien is the cause of many headaches at closing.

For a mechanics lien claimant to enforce a mechanics lien against the owner of the

- 1 770 ILCS 60/1
- 2 Id.
- 3 770 ILCS 60/1 and 60/7
- 4 770 ILCS 60/21



real estate, a foreclosure suit must be filed within two years of the date on which the work was completed or the materials delivered.<sup>5</sup> Regarding enforcement against third parties, however, a lien must be recorded or a foreclosure suit filed within four months of the date of completion or delivery.<sup>6</sup> If a lien is recorded within this four month time period, the lien claimant then has two years from the date of completion or delivery in which to file a foreclosure suit.<sup>7</sup> It is important to note that the purchaser of a parcel of land and the purchaser's lender are defined as third parties under the Act.<sup>8</sup> The Act grants priority to the mechanics lien claimant over third parties during this four month period even if the third party became an owner of the property or a mortgagee before the lien was recorded.<sup>9</sup> Thus, a purchaser or lender can be subject to a mechanics lien claim when the contract on which the lien is based was with a prior owner, or a lender can be subject to a lien based on a contract with the current owner, if the appropriate steps to preserve the lien are taken by the lien claimant.

As previously mentioned, a mechanics lien will expire two years from the date of completion or delivery unless the lien claimant files a foreclosure suit within that time period.<sup>10</sup> The two year statute of limitation may be tolled, however, if any of the following have filed bankruptcy: the owner,

the general contractor, the subcontractor who has filed the mechanics lien or any subcontractor who is in the contractual chain between the general contractor and the mechanics-lien-filing subcontractor.<sup>11</sup>

## DETERMINING IF THERE IS A CONSTRUCTION ISSUE AT CLOSING

Traditionally, in the non-construction loan situation, the title company is informed of possible construction issues at closing by the presentation of the "Statement Required for the Issuance of ALTA Owners and Loan Policies" (ALTA statement) signed by the sellers or owners and purchasers, as set forth in Exhibit A. The pertinent portion of the ALTA statement reads as follows:

That, except as noted at the end of this paragraph, within the last six (6) months (a) no labor, service or materials have been furnished to improve the land, or to rehabilitate, repair, refurbish or remodel the building(s) situated on the land; (b) nor have any goods, chattels, machinery, apparatus or equipment been attached to the building(s) thereon, as fixtures; (c) nor have any contracts been let for the furnishing of labor, service, materials, machinery, apparatus or equipment which are to be completed subsequent to the date hereof; (d) nor have any notices of lien been received, except the following, if any: \_\_\_\_\_

If the above line is filled in with the word "none", is it safe for the parties to

5	770 ILCS 60/9
6	770 ILCS 60/7
7	770 ILCS 60/9
8	770 ILCS 60/7
9	770 ILCS 60/1 and 60/7
10	770 ILCS 60/9

<sup>11</sup> Garbe Iron Works, Inc. v. Priester, 99 Ill. 2d 84 (1983).



assume that there are no construction problems? The answer to this question is, unfortunately, no. The ALTA statement only addresses contracts that have already been let. Because of the many nuances of Illinois mechanics lien law, the parties will also be concerned, in some instances, with contracts that will be let in the future. Although the title company generally relies on the ALTA statement from the parties, there are a number of red flags which the company cannot ignore. These warning signs of construction issues include the following:

1. mortgage loan at closing is not fully disbursed, thus indicating that the lender may be holding back money to pay for future construction;
2. current survey of the property reveals construction;
3. proposed change in use of the property indicates that remodeling may occur in the near future;
4. recently recorded mechanics liens appear in the chain of title, indicating recent construction;
5. owner of property pays off tradesmen at closing, indicating recent construction;
6. lender requires an escrow holdback at closing, indicating construction or repairs; and
7. one of the parties to the transaction is known to be in the land development or construction business.

Although these red flags may not in

fact be signs of construction, they are indications that more questions need to be asked of the parties.

It may seem unusual that the ALTA statement inquires about construction which has taken place on the property over the preceding six months when the Act requires the lien claimant to file suit or record a lien within four months of completion to enforce lien rights against third parties. The reason is simply that the title company has built in a two month cushion in order to protect the parties in case a dispute arises with a lien claimant as to when the work was completed.

## OWNER'S COVERAGE FOR PURCHASERS

An owner's title insurance policy will be subject to, among other things, the five general exceptions (see Exhibit B) unless the same are deleted by the title company. A deletion of these five general exceptions, by endorsement to the policy, is referred to as full extended coverage. General exception number four relates to mechanics liens and reads as follows:

Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Chicago Title will, for no additional premium, automatically give extended coverage over general exception number four on residential property (one to four units) upon the presentation of ALTA



statements from the owners or sellers and buyers which do not reveal the presence of contracts let for construction. As for commercial property, extended coverage over general exception number four will be given on the same basis as for residential property, but only upon specific request and the payment of an additional premium, due to both the greater dollar amount and risk involved. Obviously, if other factors indicate the presence of contracts (see preceding section), the Company may require additional clearance items from the parties before approving extended coverage despite the "clean" ALTA statement.

The risk in issuing an owner's policy with general exception number four deleted stems entirely from contracts let by or on behalf of the sellers. Contracts let by the buyers would be revealed by the ALTA statement (and the title company would raise a Schedule B exception concerning these contracts); or, if not so revealed, liability in the event of a claim would be denied to the buyers based upon Exclusions From Coverage 3(a) and (b) as contained in the 2006 ALTA Owner's policy jacket.<sup>12</sup>

It should be noted that a buyer can, in some instances, receive extended coverage over general exception number four even if the sellers have contracted for construction

<sup>12</sup> Exclusions From Coverage (2006 ALTA Owner's Policy): "3. Defects, liens, incumbrances, adverse claims or other matters: (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company, not recorded in the public records at the Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;"

work on the property within the last four months. Although not the subject of this article, the four vehicles that may be used to provide the buyer extended coverage over general exception number four would be (1) a lien waiver package consisting of a general contractor's statement, an owner's statement and final lien waivers; (2) a construction escrow; (3) a title indemnity; or (4) a personal undertaking. In some instances even a buyer who is contracting for the construction can be given limited coverage over unrecorded mechanics liens by way of a series of endorsements to the owner's policy. This is called "Armour note" coverage, which is limited in scope and involves a substantial additional premium.

## LENDER'S COVERAGE: PRIORITY OF THE MORTGAGE

The construction issue for a lender boils down to one simple question: to what extent does the mortgage have priority over present and future mechanics lien claims? This issue can be broken down into three scenarios.

1. Mechanics liens arising from contracts let prior to the date the mortgage is recorded have complete priority over the mortgage provided the lien is recorded or suit filed as noted above.<sup>13</sup> The ALTA statement from the owners or sellers and purchasers should reveal the presence of these contracts. Insurance over lien rights in this category may be obtained at the date of policy only through the use of the "clearance" vehicles

<sup>13</sup> 770 ILCS 60/1 and 60/7



described in the preceding section.

2. Mechanics liens, if preserved as noted above, (and other liens and encumbrances) arising from contracts let subsequent to the date of the recording of the mortgage<sup>14</sup> will have complete priority over the mortgage to the extent that the proceeds of the mortgage loan have not yet been disbursed.<sup>15</sup> It is typical at closing for the lender or the escrowee acting on behalf of the lender (if the loan proceeds are being disbursed through the escrow) to supply the title company with the disbursement statement found at the bottom of the ALTA statement which reveals how much, if any, of the mortgage loan proceeds have been disbursed at closing. Insurance over lien rights in this category may be obtained only by use of the "clearance" vehicles at the time when remaining mortgage funds are disbursed.
3. Mechanics liens, if preserved as noted above, arising from contracts let subsequent to the date a fully disbursed mortgage is recorded also will have priority over the mortgage to the extent of enhancement claims.<sup>16</sup> The ALTA statement from the owners or sellers and purchasers will not reveal the presence of these contracts since they have yet to

be let. If some of the mortgage proceeds are not being disbursed at closing, there is a good chance that this money is being held back to pay for future construction costs. However, the converse of this is not true. If all of the mortgage proceeds are disbursed at closing, there is no guarantee that this money will not be used to pay for future construction costs. All of the money may have been disbursed to the borrower or more likely to a third party (i.e. trustee or escrowee) who is required to pay for future construction. This area is of great risk to the parties because it deals with future events. Insurance over lien rights in this category may be obtained only by use of the "clearance" vehicles at the time the work is completed and only to the extent that the work is paid for from the mortgage proceeds. No coverage is provided for enhancement claims which are not paid for from the mortgage proceeds.

## 2006 ALTA LOAN POLICY

The 2006 ALTA Loan Policy provides construction coverage in the policy jacket, which coverage may then be reduced by certain Schedule B exceptions. Covered Risk 11(a) gives the lender coverage over mechanics liens arising out of contracts let prior to the date of the policy and mechanics liens arising out of contracts let subsequent to the date of the policy which will be financed out of the loan proceed.<sup>17</sup>

<sup>14</sup> This discussion excludes revolving credit and letter of credit mortgages.

<sup>15</sup> See 735 ILCS 5/15-1302 which implies that advances made within 18 months of the recording of the mortgage have the same priority as if the money were disbursed on the date of recording. However, there are no cases of record that have interpreted this statute; therefore, Chicago Title does not rely on its enforceability.

<sup>16</sup> 770 ILCS 60/16

<sup>17</sup> Covered Risks (2006 ALTA Loan Policy): "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



The policy also insures the lender that the insured mortgage has priority over liens and encumbrances by virtue of full disbursement of the loan proceeds at closing. If contracts have been let or if part of the loan proceeds (disbursed or not yet disbursed) are to be used for future construction, the following Schedule B exception is raised:

Any lien, or right to a lien, for services, labor, or material furnished after \_\_\_\_\_.

If contracts have not been let, but part of the loan proceeds are to be used for future construction, the above line will be filled in with the recording date of the insured mortgage.

If contracts have been let but the title company has not been supplied with any construction clearance, the above line will be filled in with a date which is one day prior to the date of the contract between the owner and general contractor as disclosed by the ALTA statement.

If contracts have been let and the title company has been supplied with acceptable general contractor's statements, owner's statements, and lien waivers to date, the above exception will be waived from schedule B and Interim Mechanics Lien Endorsement A (Revised 2010) will be added to the policy. A copy of this endorsement can be found at Exhibit C. The Interim Mechanics Lien Endorsement

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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;"

A (Revised 2010) insures the lender against liens arising from work that has been paid for as shown on the above referenced general contractor's statements, owner's statements, and lien waivers. An enhanced version of this endorsement can be found at Exhibit D. The enhanced version, or Interim Mechanics Lien Endorsement (Revised 2010), provides the lender with additional coverage over liens arising from certain undisclosed or understated work. Issuance of the enhanced Endorsement is subject to underwriting approval. Typically, the underwriter will need to review financial statements from the owner/developer. If acceptable, the owner/developer will be asked to sign a personal undertaking before this enhanced endorsement is approved for issuance to the lender.

Finally, if the loan has not been fully disbursed at closing, the following Schedule B exception is raised:

#### ***Pending Disbursement Endorsement***

Anything in this policy and any endorsement thereto notwithstanding, the liability of the company under said policy shall not exceed the sum of \$\_\_\_\_\_ (being the amount actually disbursed of the proceeds of the loan secured by the mortgage described in Schedule A at the date of said policy) and costs which the company is obligated under the conditions to pay, but such liability shall be increased by the sum of each subsequent disbursement made under said mortgage up to the face amount of the policy; subject, however, with respect to each such increase, to any defects, liens, encumbrances, adverse



claims or other matters which may be disclosed upon an examination of the title to the estate or interest in said land subsequent to the preceding examination and down to and including the date of each disbursement.

## CONCLUSION

When faced with construction issues at closing, it is important not to become overwhelmed with the complexities of the situation. If at all possible, the customer should sit down with an underwriter prior to closing in order to ferret out the issues and arrive at mutually acceptable solutions. The title company will help break down the issues for the customer into manageable segments. If owner's coverage is requested, the focus will be on contracts let by the sellers. If, on the other hand, lender's coverage is sought, the title company's analysis will cover three different points. First, the company will look at contracts let prior to closing. Second, it will consider contracts which will be let subsequent to the closing but paid for out of the proceeds of the insured mortgage. Finally, the company will determine how much of the loan will be disbursed at closing. By addressing these construction issues at a pre-closing conference with underwriter, the closing should not turn into the headache that it so often does.

# EXHIBIT A



CHICAGO TITLE INSURANCE COMPANY

## STATEMENT REQUIRED FOR THE ISSUANCE OF ALTA OWNERS AND LOAN POLICIES

Commitment No. \_\_\_\_\_

Loan No. \_\_\_\_\_

Date \_\_\_\_\_

To the best knowledge and belief of the undersigned, the following is hereby certified with respect to the land described in the above commitment.

1. That, except as noted at the end of this paragraph, within the last six (6) months (a) no labor, service or materials have been furnished to improve the land, or to rehabilitate, repair, refurbish, or remodel the building(s) situated on the land; (b) nor have any goods, chattels, machinery, apparatus or equipment been attached to the building(s) thereon, as fixtures; (c) nor have any contracts been let for the furnishing of labor, service, materials, machinery, apparatus or equipment which are to be completed subsequent to the date hereof; (d) nor have any notices of lien been received, except the following, if any:  
\_\_\_\_\_
2. There are no revolving credit mortgages, line of credit mortgages, home equity loan mortgages, or other voluntary liens or mortgages affecting title, other than those shown on Schedule B of the Commitment, except the following, if any:  
\_\_\_\_\_
3. That all management fees, if any, are fully paid, except the following:  
\_\_\_\_\_
4. That there are no unrecorded security agreements, leases, financing statements, chattel mortgages or conditional sales agreements in respect to any appliances, equipment or chattels that have or are to become attached to the land or any improvements thereon as fixtures, except the following, if any:  
\_\_\_\_\_
5. That there are no unrecorded contracts or options to purchase the land, except the following, if any:  
\_\_\_\_\_
6. That there are no unrecorded leases, easements or other servitudes to which the land or building, or portions thereof, are subject, except the following, if any:  
\_\_\_\_\_
7. That, in the event the undersigned is a mortgagor in a mortgage to be insured under a loan policy to be issued pursuant to the above commitment, the mortgage and the principal obligations it secures are good and valid and free from all defenses; that any person purchasing the mortgage and the obligations it secures, or otherwise acquiring any interest therein, may do so in reliance upon the truth of the matters herein recited; and that this certification is made for the purpose of better enabling the holder or holders, from time to time, of the above mortgage and obligations to sell, pledge or otherwise dispose of the same freely at any time, and to insure the purchasers or pledgees thereof against any defenses thereto by the mortgagor or the mortgagor's heirs, personal representative or assigns.
8. That, I/we am/are the purchaser(s) or mortgagor(s) of land improved with a residential dwelling not exceeding four units, and no current survey or mortgage's inspection report has been furnished to or is available to me/us. [DELETE STATEMENT IF NOT APPLICABLE.]

The undersigned makes the above statement for the purpose of inducing Chicago Title Insurance Company to issue its owners or loan policy pursuant to the above commitment.

Seller or Owner

Purchaser

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print Name

Print Name

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_,

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_,

Notary Public

Notary Public

### LENDER'S DISBURSEMENT STATEMENT

The undersigned hereby certifies that the proceeds of the loan secured by the mortgage to be insured under the loan policy to be issued pursuant to the above commitment were fully disbursed to or on the order of the mortgagor on \_\_\_\_\_. You are hereby authorized to date down the above commitment to cover the date of said disbursement.

Dated \_\_\_\_\_

Signature \_\_\_\_\_



# EXHIBIT B

## CHICAGO TITLE INSURANCE COMPANY

### GENERAL EXCEPTIONS:

- (1) Rights or claims of parties in possession not shown by public records.
- (2) Encroachments, overlaps, boundary line disputes or other matters which would be disclosed by an accurate survey and inspection of the premises. (1992 ALTA Policy)

### OR

- (2) Any Encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. (2006 ALTA Policy)
- (3) Easements, or claims of easements, not shown by public records.
- (4) Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Taxes or special assessments which are not shown as existing liens by the public records.

# EXHIBIT C

## ENDORSEMENT

ATTACHED TO AND FORMING A PART OF  
POLICY NUMBER:

ISSUED BY

CHICAGO TITLE INSURANCE COMPANY

### INTERIM MECHANICS LIEN ENDORSEMENT A (REVISED 2010)

NOTWITHSTANDING ANY COVERED RISKS OF THIS POLICY, THE SOLE MECHANICS LIEN COVERAGE PROVIDED BY THIS COMMITMENT OR POLICY IS FURNISHED PURSUANT TO THIS ENDORSEMENT.

PARAGRAPH 11(A) OF THE COVERED RISKS OF THIS POLICY AND ANY GENERAL MECHANICS LIEN EXCEPTION ("ANY LIEN OR RIGHT TO A LIEN FOR SERVICES, LABOR OR MATERIAL...") IN SCHEDULE B OF THE COMMITMENT ARE HEREBY DELETED AND REPLACED WITH THE FOLLOWING PROVISIONS:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, EXCEPTIONS SHOWN ON SCHEDULE B, AND THE CONDITIONS OF THIS POLICY, THE COMPANY HEREBY INSURES AGAINST LOSS OR DAMAGE BY REASON OF THE LACK OF PRIORITY OF THE LIEN OF THE INSURED MORTGAGE OVER ANY LIEN CLAIM BY A LIEN CLAIMANT ARISING UNDER THE ILLINOIS MECHANICS LIEN ACT FOR SERVICES, LABOR, OR MATERIAL FURNISHED IN CONNECTION WITH AN IMPROVEMENT ON THE LAND, **PROVIDED:**

1. THE LIEN CLAIMANT IS:
  - A. A CONTRACTOR NAMED ON THE SWORN OWNER'S (OR TENANT'S) STATEMENT DATED ~;
  - B. A PARTY NAMED ON THE SWORN CONTRACTOR'S STATEMENT DATED ~ OR ON A SWORN CONTRACTOR'S STATEMENT FROM A PARTY NAMED ON THE AFORESAID OWNER'S STATEMENT; OR
  - C. A PARTY DISCLOSED ON AN AFFIDAVIT SIGNED BY A PARTY NAMED ON THE AFORESAID SWORN CONTRACTOR'S STATEMENTS;
2. THE LIEN CLAIM RELATES TO THAT PORTION OF THE AMOUNT FOR THE LIENED SERVICES, LABOR OR MATERIAL WHICH IS SHOWN AS EITHER PREVIOUSLY PAID OR AS THE AMOUNT OF THE CURRENT PAYMENT PAYABLE TO OR FOR THE BENEFIT OF THE DISCLOSED LIEN CLAIMANT ON A STATEMENT DESCRIBED AT 1A, B OR C ABOVE; AND
3. THE LIEN CLAIM RELATES TO LABOR, MATERIAL, OR SERVICES FURNISHED PRIOR TO THE DATE SHOWN AT 1B ABOVE, OR IN THE ABSENCE OF A SWORN CONTRACTOR'S STATEMENT, THE DATE SHOWN AT 1A ABOVE.

# EXHIBIT D

## ENDORSEMENT

ATTACHED TO AND FORMING A PART OF  
POLICY NUMBER:

ISSUED BY

CHICAGO TITLE INSURANCE COMPANY

### INTERIM MECHANICS LIEN ENDORSEMENT (REVISED 2010)

NOTWITHSTANDING ANY COVERED RISKS OF THIS POLICY, THE SOLE MECHANICS LIEN COVERAGE PROVIDED BY THIS COMMITMENT OR POLICY IS FURNISHED PURSUANT TO THIS ENDORSEMENT.

PARAGRAPH 11(A) OF THE COVERED RISKS OF THIS POLICY AND ANY GENERAL MECHANICS LIEN EXCEPTION ("ANY LIEN OR RIGHT TO A LIEN FOR SERVICES, LABOR OR MATERIAL...") IN SCHEDULE B OF THE COMMITMENT ARE HEREBY DELETED AND REPLACED WITH THE FOLLOWING PROVISIONS:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, EXCEPTIONS SHOWN ON SCHEDULE B, AND THE CONDITIONS OF THIS POLICY, THE COMPANY HEREBY INSURES AGAINST LOSS OR DAMAGE BY REASON OF THE LACK OF PRIORITY OF THE LIEN OF THE INSURED MORTGAGE OVER ANY LIEN CLAIM BY A LIEN CLAIMANT ARISING UNDER THE ILLINOIS MECHANICS LIEN ACT FOR SERVICES, LABOR, OR MATERIAL FURNISHED IN CONNECTION WITH AN IMPROVEMENT ON THE LAND, PROVIDED:

1. THE LIEN CLAIMANT IS:

- A. A CONTRACTOR NAMED ON THE SWORN OWNER'S (OR TENANT'S) STATEMENT DATED ~;
- B. A PARTY NAMED ON THE SWORN CONTRACTOR'S STATEMENT DATED ~ OR ON A SWORN CONTRACTOR'S STATEMENT FROM A PARTY NAMED ON THE AFORESAID OWNER'S STATEMENT;
- C. A PARTY DISCLOSED ON AN AFFIDAVIT SIGNED BY A PARTY NAMED ON THE AFORESAID SWORN CONTRACTOR'S STATEMENT; OR
- D. AN UNDISCLOSED PARTY CLAIMING BY, THROUGH, OR UNDER A CONTRACTOR NOTED ABOVE AT A, OR A PARTY NOTED ABOVE AT B OR C;

2. THE LIEN CLAIM RELATES TO THAT PORTION OF THE AMOUNT FOR THE LIENED SERVICES, LABOR OR MATERIAL WHICH IS SHOWN AS EITHER PREVIOUSLY PAID OR AS THE AMOUNT OF THE CURRENT PAYMENT PAYABLE TO OR FOR THE BENEFIT OF THE DISCLOSED LIEN CLAIMANT ON A STATEMENT DESCRIBED AT 1A, B OR C ABOVE OR TO A PARTY DISCLOSED ON A STATEMENT DESCRIBED AT 1A, B OR C ABOVE ON ACCOUNT OF SERVICES, LABOR OR MATERIAL FURNISHED BY THE UNDISCLOSED LIEN CLAIMANT; AND

3. THE LIEN CLAIM RELATES TO LABOR, MATERIAL, OR SERVICES FURNISHED PRIOR TO THE DATE SHOWN AT 1B ABOVE, OR, IN THE ABSENCE OF A SWORN CONTRACTOR'S STATEMENT, THE DATE SHOWN AT 1A ABOVE.