

MIDDLESEX NORTH REGISTRY OF DEEDS

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BILLERICA – CARLISLE – CHELMSFORD – DRACUT – DUNSTABLE – LOWELL – TEWKSBURY
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DO I HAVE ANY LIENS?

A lien is defined as a charge against property, or an interest in property, that secures the payment of a debt or the performance of an obligation. There are many types of liens in Massachusetts, all with different names and purposes. Some liens are created automatically by operation of law; others require a document to be recorded at the registry of deeds.

Liens are indexed at the registry under the property owner's name, not the property address. To find a lien, you must search the property owner's name in the registry's computerized index, either at the registry or online. You must do this search yourself; registry of deeds employees may not do it for you. Credit agencies may obtain public information from the registry of deeds website, however, the registry has no direct contact with any credit agency.

The following is a brief description of the most common liens in Massachusetts:

Real Estate Tax Liens – Cities and towns have an automatic lien on real estate for any property taxes due. When buying or refinancing, a property owner usually obtains a municipal lien certificate (MLC) from the town. The MLC shows what taxes are owed on a property. Most often, the taxes are paid up to date. When an MLC is recorded at the registry of deeds, property owner liability for taxes is limited to the amount stated on the MLC. If taxes remain unpaid, the municipality may “take” the property by recording an instrument of taking. A property owner who pays taxes after a taking has been recorded must obtain a release from the municipality. If the taxes remain unpaid, the municipality may file a lawsuit in the Land Court to cut off the right of the homeowner to redeem the property by paying the back taxes.

Condominium Lien – A condominium association has an automatic lien on a condominium unit to ensure the payment of condominium fees. The buyer of a condominium unit usually requires the seller to provide a statement from the condominium association in accordance with MGL c.183A, s.6B, stating that all condominium fees are paid (often called a “6B Certificate”). To enforce a condominium lien, the condominium association must begin a lawsuit against the unit owner. In that case, a certified copy of the complaint from the court must be recorded at the registry of deeds.

Mechanic's Lien – A person who does work on, or provides material for, a property may obtain a lien for the value of the goods or services by following the procedures set out in Massachusetts General Laws (MGL) c.254 which requires the recording of a notice of contract followed by a statement of account. The claimant must also commence a lawsuit within a set period of time. The procedure for obtaining a mechanic's lien is a complicated one. Please consult MGL c.254 for the specific requirements.

Lis Pendens – When a lawsuit that may affect title to real estate is commenced, either party may request the judge to authorize a “notice of lis pendens” which means “suit pending.” Once the judge “endorses” the lis pendens, it may be recorded at the registry of deeds to put the world on notice of the lawsuit.

Attachment – An attachment is an order issued by a court in favor of a plaintiff in a lawsuit against the real estate of the defendant to ensure that if the plaintiff receives a judgment in the lawsuit, he will be able to collect it from the defendant's property.

Execution - When a plaintiff recovers a money judgment in a lawsuit, the court issues an execution which is an order to the sheriff to seize the real estate of the defendant and use it to pay the debt to the plaintiff. In most cases, the sheriff simply records the execution at the registry of deeds and waits for the defendant/property owner to find a way to settle the debt. Once the case has been settled, the defendant should obtain a clerk's certificate stating that the case has been resolved. Obtain the clerk's certificate from the office of the clerk for the court in which the case was pending. The clerk's certificate should then be recorded at the registry of deeds. This would show that the execution was no longer valid.

Federal Tax Lien – The Internal Revenue Service will record a lien against a person's real estate for the amount of unpaid federal taxes. Once the amount owed has been paid, the IRS will record a Release of Federal Tax Lien.

Massachusetts Tax Lien – The Massachusetts Department of Revenue will record a lien against a person's real estate for the amount of unpaid state taxes. Once the tax has been paid, the DOR will record a Release of Massachusetts Tax Lien.

Medicaid – When a person receives Medicaid (often by going into a nursing home and having the state pay for his care), the Commonwealth has an automatic lien on that person's real estate. After the person dies, the Commonwealth is entitled to reimbursement for the cost of care from the value of the real estate.

Death – When a person dies owning an interest in real estate, the Commonwealth has an automatic lien on the property to ensure payment of any estate tax that is due. In most cases, this lien can be resolved by the person in possession of the property recording an affidavit at the registry of deeds in accordance with Massachusetts General Laws c.65C, s.14.

Mortgage – A mortgage is a type of deed by which a borrower conveys to a lender a security interest in real estate owned by the borrower. The interest conveyed is the right to foreclosure (or auction off) the property and to use the proceeds of the sale to pay the debt. "Mortgage" is a very broad term that includes first mortgages, second mortgages, home equity loans, and lines of credit.

UCC – The Uniform Commercial Code allows a merchant to claim a security interest in equipment or some other tangible object that becomes attached to real estate. For example, solar energy companies file UCC documents to create a security interest in the solar panels placed atop the roof of a customer's house.

Other – Any other document that might create an encumbrance on the property of another will be treated as a lien. As a matter of public policy, the courts and the legislature have indicated that unless some specific statute allows otherwise, the registry of deeds cannot record a document that would constitute a lien on someone's property unless that document has been endorsed by a judge.

Lien documents are never physically removed from the registry records. Instead, a document that releases the lien is recorded and the release and the lien are linked together at the registry. Anyone looking at the lien would then see that it had been released. The recording fee for most release documents at the registry of deeds is \$75, payable by cash or check (no credit cards).

Questions – Email or call Register of Deeds Richard Howe at lowelldeeds@comcast.net or at 978/322-9000.