Construction Lending News

Volume 5, Second Quarter 2003

Summary of Oregon Construction Lien Law

By: James A. Zehren[1]

Oregon Revised Statutes chapter 87.001 et seq. provide for the "construction lien" as a mechanism for securing payment to persons and entities providing labor, design professional services, materials, and rental equipment on private construction projects. Although Oregon's lien statutes express the codified law, a working understanding requires knowledge of Oregon's construction lien case law.

The Basics of Oregon Construction Lien Law

Private projects only. Construction liens in Oregon secure payment only on privately-owned projects. No construction lien rights exist on publicly-owned projects.

Connection to property owner. Lien claimants are limited to those who, through a contractual relationship or other principal-agency connection to the property owner, improve the value of the property.

continued on page 2

Liability Insurance Crisis-Part 2 Effective Risk Management

By: Michael G. Bartosch[2]

Practicing good risk management, like getting up early in the morning and exercising or skipping dessert, is not easy. It requires a certain discipline that is also the reason for the long term success of many businesses. The good news is that it doesn't necessarily require a lot of money to implement. By practicing good risk management, a builder can reduce the probability that he will have an insurance claim (reduced frequency), and he can reduce the amount that the insurance company will have to pay out if there is a claim (reduced severity).

Insurance companies are in business to spread risk over a large population and pay valid claims when presented. They are also in the business of making money. If everyone practiced good risk management, insurance companies could make insurance coverage available to a wider population and still make a good return. When insurance companies make a good return, it draws more money into the insurance arena which helps lower the cost of insurance.

Like housing sales, it's a matter of supply and demand. At the present time, the demand for insurance coverage far outweighs the available supply of dollars backing insurance. A builder can get a piece of this limited supply of insurance dollars by being a better customer for the insurance company than the guy down the street. He does this by implementing a good risk management program. He is competing for limited insurance dollars just like he is competing for the limited supply of homebuyers.

What is a good risk management program?

A good risk management program contains a number of specific elements that all revolve around four general concepts:

- Avoiding Liabilities - Prudent site preparation, effective design and construction practices, careful project supervision and use of quality materials
- Minimizing Liabilities - Protective provisions in sales contracts, written third party warranty contracts, prompt settlement of customer complaints as to warranty items and effective sales training
- Shifting Liabilities - Contracts with all parties involved in the construction process (design, subcontractors, vendors) which include indemnification clauses and mandated insurance requirements, warranty period and waiver of subrogation
- Insuring Liabilities - Certain liabilities can be insured, although this is the most expensive solution. The insurance solution does not have a high degree of predictability because of claim handling practices and disputes regarding coverage

By implementing these practices, a builder is reducing his risk, increasing his opportunity for business success and

continued on page 3

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Summary of Oregon Construction Lien Law (con't)

Work for tenants or purchasers. A lien of a claimant working for a tenant or contract-for-deed purchaser generally attaches to the interests of the property owner (the landlord or the contract-for-deed seller) unless that owner, within three days after learning of the construction, posts on the property a "notice of nonresponsibility". However, if the lease of a tenant requires the improvements, the life of the improvements will exceed the term of the lease, and the landlord will benefit from the improvements upon expiration of the lease, then a notice of nonresponsibility generally will not shield the owner from the lien.

Improvement versus land. A construction lien generally attaches to the improvement "together with the land that may be required for the convenient use and occupation of the improvement constructed at the site, to be determined by the court at the time of the foreclosure of the lien." ORS 87.015(1).

Claimant licensing. Lien claimants who are contractors or subcontractors must be licensed by the Oregon Construction Contractors Board at the time of bidding, offering to perform, or performing their work in order to have lien rights. Lien claimants who are architects or engineers must be registered and otherwise authorized to perform their services by their respective Oregon board of examiners in order to have lien rights.

Pre-lien notices. Certain pre-lien notices must be given on all residential projects (buildings occupied by owners that are comprised of four or fewer residential units) in order for lien claimants to be able to file valid liens. An "Information Notice to Owner" must be given by lien claimants with a direct contract with the residential owner, at the time of contracting for a written contract and within five days after entering into an oral contract. Other lien claimants must give a "Notice of Right to a Lien" to the residential owner within eight business days after commencing performance. On non-residential projects (commercial projects), only material suppliers (and maybe design professionals) must give the Notice of Right to a Lien to the owner within the same eight days in order to be able to file valid liens. However, failure of a lien claimant to give a pre-lien notice can affect the priority of a lien versus other types of encumbrances on the property. (See discussion of "priority" below.)

Lien filing deadline. A claim of lien generally must be filed within 75 days after the cessation of the lien claimant's performance or within 75 days after substantial completion of the project as a whole, whichever occurs first. Although filing a notice of completion is one way of establishing the date of substantial completion, it is not often used in Oregon because it is only evidence of completion that can be overcome by more compelling evidence. The 75-day filing deadline cannot be extended by agreement of the parties. A claim of lien filed prior to the commencement of the 75-day period (prior to cessation of the lien claimant's performance, or prior to substantial completion of the project as a whole) likely will be premature and therefore invalid.

"Abandonment" to establish lien filing deadline. Another way of establishing the 75-day deadline for filing a claim of lien is by means of "abandonment". It occurs either 75 days after cessation of construction or when the owner or a mortgagee posts and files a "notice of abandonment". An incomplete project can also be deemed not abandoned, when the owner or a mortgagee posts and files a "notice of nonabandonment" within 74 days after the cessation of construction. Such notices of nonabandonment can be renewed every 150 days, indefinitely.

Lien foreclosure deadline. A construction lien foreclosure suit must be filed within 120 days after the filing of the claim of lien. This deadline cannot be extended by agreement of the parties; except that it can be extended for up to two years after the date the claim of lien was recorded if the parties had a pre-lien agreement providing for extended terms of payment and this agreement is set out in the claim of lien.

Lien filing and foreclosure forums. A claim of lien must be filed with the County Recorder of the county in which the project is located. A lien foreclosure suit must be filed with the Circuit Court of the county in which the claim of lien was recorded.

Lien release bonds. A construction lien may be removed from the property by means of a lien release bond or deposit posted in the amount of 150 percent of the amount of the lien. The owner of the property "or any other interested person" may file and perfect a lien release bond or deposit. ORS 87.076(1). Certain notices must be given and certain documents must be recorded in order to remove a lien by this means. Once a lien has been so removed, the foreclosure of the lien occurs in the normal course except that the lien attaches to the bond rather than to the property.

Recovery of attorneys' fees and costs; two post-filing notices. Once a lien foreclosure suit is filed, the prevailing party can recover its attorneys' fees and other costs incurred in asserting the lien or defending against it. However; a lien claimant is entitled to so recover only if it timely gave two

notices to the property owner and mortgagees and trust deed beneficiaries. First, a notice that the claim of lien was filed must be given along with a copy of the claim of lien, within 20 days after the filing of the claim of lien. Second, a notice of intent to foreclose must be given, either 10 days or more prior to the filing the foreclosure suit or such that the notice is received 10 days or more prior to the filing of the foreclosure suit, depending on how one reads the statute.

No recovery of attorneys' fees by lenders that prevail on priority. No attorneys' fees will be awarded unless the court decides "the issues of the validity and foreclosure of the lien". ORS 87.060(5). As such, a lender that prevails only on the issue of the priority of its security interest vis-à-vis a construction lien is not a prevailing party for purposes of an award of attorneys' fees under Oregon's lien law.

Priority of Oregon Construction Liens. The most unusual feature of Oregon's construction lien law is that a lien can obtain priority over a pre-recorded mortgage or trust deed. (In this context, "pre-recorded" means recorded prior to the time the lien claimant commenced its performance.) This involves several factors.

First, this outcome does not occur if the work of the lien claimant is an alternation or repair, and the pre-recorded mortgage or trust deed was not given to finance that work.

Second, this outcome applies only as to the improvement and not as to the land. As such, under Oregon law a lien can have priority over a pre-recorded mortgage or trust deed in the improvement but the same lien will not have priority over the same pre-recorded mortgage or trust deed in the land. Whether practical or not, Oregon's lien statutes provide for the improvement to be sold separately from the land at the foreclosure sale and for the purchaser to "remove the improvement" from the land. ORS 87.025(2).

Third, no lien claimant providing materials (meaning a material supplier, or a subcontractor or prime contractor providing materials itself or through a lower-tier party) can have priority over a pre-recorded mortgage or trust deed as to the materials provided unless the lien claimant gave a Notice of Right to Lien or similar notice to the mortgagee or trust deed beneficiary (see section on "pre-lien notices" above).

Fourth, if a subcontractor or prime contractor providing materials fails to give a Notice of Right to a Lien, it nonetheless can have priority over a pre-recorded mortgage or trust deed as to the non-materials portion of its lien if the lien claimant expressly states in its claim of lien the amounts that it is claiming for materials versus non-materials.

Finally, how do savvy lenders deal with these Oregon priority rules? They are aggressive about requiring waivers of liens from prime contractors, subcontractors, and suppliers to be submitted with each application for payment. They also are aggressive about requiring satisfactions of liens to be obtained or lien release bonds or deposits to be posted when claims of lien are filed. Lenders on Oregon projects generally used to obtain early issue extended ALTA title insurance policies paid for by the borrower, with a date down for each progress payment. However, such policies are no longer offered by some title insurance companies and those policies that still are available in the marketplace are very expensive.

Liability Insurance Crisis-Part 2 (con't)

competing with all other contractors for the best insurance coverage at the lowest available price. Some steps he should take include:

1. Execute a written agreement with each independent contractor indemnifying and holding the builder harmless for Bodily Injury or Property Damage sustained by a third person, arising out of the work of that independent contractor.

The purpose of this is to make the subcontractor agree to be responsible for any damages that he causes to third parties. It makes him responsible when the builder gets sued for something that the subcontractor did. It makes the builder a better risk and makes the subcontractor act more carefully.

2. Execute a written agreement with each independent contractor indemnifying and holding the builder harmless from liability arising from injuries to that independent contractor and/or its employees.

The purpose of this is to make the subcontractor agree to be responsible for any damages that he causes or happen to him or his employees.

3. Execute a written agreement with each independent contractor waiving all rights against:
   a. The builder and/or his agents and employees; and
   b. The owner of the property for which services are performed, if a separate entity from the builder, with exception of mechanic's or materials lien.

The purpose of this is to make the subcontractor agree that the only thing he will get out of the job is his fees for services and materials. He cannot go after the builder or his client for anything else.

4. Obtain certificates of Insurance from each independent contractor evidencing the following coverage and minimum Limits of Liability:

   a. Commercial General Liability ("CGL") coverage with an insurance carrier rated A- or better by A. M. Best with limits equal to or exceeding limits to be provided under this policy but not less than:
   $1,000,000 Combined Single Limit each occurrence
   $1,000,000 General Aggregate
   $1,000,000 Products/Completed Operations Aggregate

   b. For the period in which services are performed on the builder's behalf, the builder should be named as an additional insured on each independent contractor's CGL policy.

   c. Worker's Compensation coverage as required by the jurisdiction in which services are performed

   d. Automobile Liability coverage-$ 1,000,000 each accident

   e. Professional Liability coverage for Architects, Engineers and other Professional Vendors - $1,000,000 each claim, covering each independent contractor providing professional services to the builder.

The purpose of this is to make the subcontractor provide an adequate amount of insurance coverage to back up his agreement to be responsible for his own work. The builder's CGL carrier will be relying on this to price the builder's policy based on the builder assuming only his risk and not that of his subcontractors. If his subcontractors do not carry insurance, he shouldn't do business with them. They may be the low bidder, but they are for a reason. They're cutting costs which may adversely affect the builder. They can cause a problem on a job which could put the builder out of business and they have no way of compensating the builder. If the subcontractor has been doing business with the builder for twenty years and is the best plumber in town he should still have insurance. It only takes one accident to potentially ruin the builder's business.

5. Use a quality, insured third-party structural warranty. Such warranty will also include binding arbitration as an alternative dispute resolution.

The purpose of using an insurance-backed warranty on every home is to (1) define the builder's legal liability and relationship to the homeowner, (2) provide for definable performance standards, (3) provide for dispute resolution outside of a court, (4) provide valuable protection for the homeowner, (5) transfer the builder's liability for structural failure, and (6) it's a great marketing tool. It is difficult for an insurer to price a risk that cannot be defined. The use of the warranty helps define the universe of claims. The warranty is designed to approximate the builder's implied warranty liability which is a liability that he has by law in all states. The warranty allows the builder to define what is and isn't covered rather than leaving that up to a judge and jury. It is critical to use warranties on 100% of a builder's homes as an insurer may be basing his decision to provide insurance on this assumption.

6. Include the following provision in the builder's sales agreement: "In the event of a conflict between the provisions of your sales agreement and the provisions of the "Structural Home Warranty", the provisions of the "Structural Home Warranty" will apply."

The purpose of including this statement is to move all matters between the builder and his homeowner to the governance of the warranty. Otherwise, his warranty liability may be determined for him by a judge and jury.

7. Implement proper job site safety procedures and controls.

The purpose of this requirement is to make sure that the builder's employees, his subcontractors and any third parties who come to the job site are safe or have been put on notice that they should not be at the jobsite. This will significantly reduce the number of claims that the builder might get without such procedures and controls.

What happens if a builder doesn't implement a good risk management program?

A risk management program benefits primarily the builder and his customers and not the insurance company. Implementing a good risk management program will make him a better builder. Not implementing a good risk management program could cause him significant problems. He will be less attractive to insurers. He could be non-renewed and/or forced to switch to lesser coverage or more expensive insurance with an inferior insurance company. If a builder does not implement good risk management practices he may be canceled and have no insurance coverage. This may cause him to default on contracts with his clients as well as put him in default of loan agreements with his bank.

Lenders can provide a service to their builders by inquiring about the builder's risk management program and insisting that the builder implement good risk management practices. A builder with an otherwise good record of completing projects and repaying his loans may run out of luck one day without good risk management.

The Psychology of Manufactured Housing Finance: How Secure Are you?

By: Marc Lifset[3]

In Bulletin 2002-8, issued December 16, 2003, the Federal Home Loan Mortgage Corporation (Freddie Mac) identified 5 states where it would no longer purchase mortgages secured by manufactured homes (each, a "Land-Home Loan" or "Loan").

Recently, Freddie Mac began to require its Seller-Servicers to repurchase certain Land-Home Loans. Each of these Loans was in default. Following foreclosure proceedings under the related mortgage or deed of trust (each, a "Security Instrument"), Freddie Mac advised these lenders that the Loans did not comply with the eligibility requirements of Freddie's Mortgage Selling Guide. Freddie contended that the Homes were not "real property" under applicable law.

Fannie Mae and HUD have similar eligibility requirements. Fannie, Freddie, HUD, Ginnie Mae, VA and the Federal Home Loan Banks (each, an "Investor") each publish eligibility requirements for Land-Home Loans ("Investor Guidelines").

How does state law characterize as real property or personal property a manufactured home ("Home") and the real property to which the Home is or will be affixed ("Land")?

This article analyzes state law characterizing property securing Land-Home Loan (each, a "Land-Home Property") as "real property" in light of Investor Guidelines for Land-Home Loans.

The Investor Guidelines discuss different real property characteristics that determine eligibility ("Characteristics"). We note fifteen (15) different Characteristics in the Investor Guidelines. Fannie Mae Selling Guide Part VII, Chapter 1, Section 102.07 ("Fannie Mae Guidelines") states ten (10). Freddie Mac Mortgage Selling Guide Chapter 2, Section 21 ("Freddie Mac Guidelines") states seven. HUD, in 24 C.F.R. § 202.43f ("FHA Title II Regulation"), states five and HUD Mortgagee Letter 2002-19 adds two more to the FHA Title II Regulation.

Fannie Mae Guidelines define the eligibility requirements for purchase by Fannie Mae of conventional mortgages secured by manufactured homes and land ("Fannie Mae Eligible Mortgages"). Two of the Characteristics in Section 102.07, in particular, seem automatically to preclude eligibility of Land-Home Loans originated in approximately fifteen (15) states. Section 102.07, effective in April 2002, carries forward from former Part V, Chapter 2, Section 225, the following eligibility requirement:

> The purchase, conveyance, and financing (or refinancing) of the land and the manufactured home, which must be evidenced by a valid and enforceable first lien mortgage or deed of trust that is recorded in the land records, must represent a single real estate transaction under applicable state law. (A combination chattel and real estate mortgage is not acceptable.)[4]

Freddie Mac Guidelines define the eligibility requirements for purchase by Freddie Mac of conventional mortgages secured by manufactured homes and land ("Freddie Mac Eligible Mortgages")[5]. These Guidelines reflect Freddie Mac's singular desire that "The land and improvements must be real estate under applicable law."[6]

The legal classification, as real property or personal property, of a Home and the Land to which the Home is affixed varies not only from state to state, but often within each state's law. State law typically regulates sales, consumer warranties, land use (eminent domain, zoning, restrictive covenants), conveying and encumbering, lender licensing, financing, taxation, health codes, creditor's remedies and homestead exemptions. Classifying a Land-Home Property as real property or personal property requires consideration of all relevant aspects of state law, not merely the formalities of conveying and encumbering. Whether or not a certificate of title is issued or surrendered should not be dispositive.

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[4] Discernable in this statement is the implication that a lien securing a Land-Home Loan may not be perfected, in whole or part, using a certificate of title.

[5] Freddie Mac Mortgage Selling Guide Section 2, Section 22.21.

[6] Freddie Mac Mortgage Selling Guide Section 22.21(a) provides:

> The land and improvements must be real estate under applicable law. The Seller must take any other steps it deems necessary or prudent to ensure that all of the property securing the Mortgage is real property. The Seller must be aware of all State, county and local laws, rules and regulations relating to converting the Manufactured Home to real property and must have completed all steps to ensure that the property has been converted.

The legal definition of "manufactured" or "mobile" home also varies from state to state, and within each state's laws.

While many state law definitions refer to the "HUD Code" definition found in the Mobile Home Construction and Safety Standards Act of 1974,[7] often these definitions vary substantially. (In New York State, for example "mobile home" or "manufactured home" is defined eight different ways in fourteen (14) different statutes). Some state certificate of title acts (each, a "COTA") do not define "manufactured home" or "mobile home."[8] Coverage of these COTAs is defined by reference to other statutes.[9]

The HUD Code became effective June 15, 1976. It preempts all state and local building codes.[10] It regulates Home design and construction, fire safety and thermal protection, installation and performance of heating, plumbing and electrical systems and transportation requirements (i.e., the ability of a Home to withstand rigors of highway movement).

State and local building codes regulate construction of prefabricated houses (such as "modular homes") that do not meet HUD Code standards.

State real property lending law poses few difficulties under the Investor Guidelines. This law applies to financing of Land-Home Property in virtually all instances.

State *ad valorem* tax laws characterize manufactured homes as real property, based, variously, on permanent affixation, owner occupancy and location on the homeowner's Land. In several states, classification of a Home as real property for *ad valorem* tax purposes is a prerequisite for classification as real property for conveying and encumbering. The fact that state law classifies a Home as real property for *ad valorem* tax purposes, however, does not necessarily mean that a Loan secured by the Home and Land satisfies the Investor Guidelines.

Every state has laws that govern conveying and encumbering Homes as personal property. In most states, those laws, in some way, dictate the application of real property law.

Currently, in forty-four (44) states, a certificate of title establishes ownership of and perfection of a security interest in a Home ("Title States"). In six states, filing a UCC-1 financing statement together with an UCC-1Ad perfects a security interest in a Home ("UCC States"). In three states, in transition from "UCC" to "Title", the method of conveyance and encumbrance depend on the Home's year of manufacture.

Many Title States provide a formal statutory procedure for electing to convey and encumber a Home as real property ("Conversion Procedure"). In those states ("Conversion States"), satisfying the Conversion Procedure legally converts the Home to real estate for all purposes.

After the homeowner completes Conversion Procedures, a Land-Home Property is conveyed by deed and encumbered using a standard form of Security Instrument with a fixtures clause and an appropriate description of the Home.

In Title States with no Conversion Procedures ("Title and Security Instrument States"), a Security Instrument with a fixtures clause and an appropriate description of the Home and a notation of the secured party's lien on the certificate of title to the Home perfects a security interest in a Land-Home Property. The certificate of title and a deed transfer title to the Land-Home Property.

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[7] 42 U.S.C. § 5402(b); 24 CFR § 3280.2(a)(16). The Uniform Commercial Code ("UCC") in Revised Article 9, §9-102(53), also defines "manufactured home":

> "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. 5401 *et seq*., and is intended to have the same meaning. UCC § 9-102 Comment 4(b).

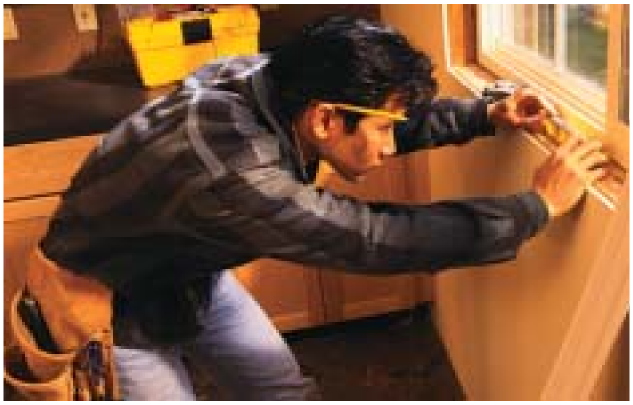
[8] E.g., Alaska Stat. 28.10.661 (Michie 2000); Ga. Code Ann. 40-3-2 (2001); Haw. Rev. Stat. 286-2 (1985 & Supp. 1992); Ky. Rev. Stat. Ann. 186.010, 186A.345 (Michie 1997 & Supp. 2001); Minn. Stat. 168A.01 (2001); Neb. Rev. Stat. 60-102 (1998); N.C. Gen. Stat. 20-38 to -71.1 (1999); N.J. Stat. Ann. 39:1-1 (West 1990 & Supp. 2001); Or. Rev. Stat. 803 (1997).

[9] See, e.g., Green Tree Fin. Servicing Corp. v. Sutton, 650 N. W. 2d 228 (Neb. 2002).

[10] In 1975, HUD issued the Manufactured Home Construction and Safety Standards ("Federal Standards") pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (the "Act"). Section 604(d) of the Act, 42 U.S.C.§ 5403(d), states:

> Whenever a Federal manufactured home construction and safety standard established under [the Act] is in effect, no State or political subdivision of a State shall have any authority ... to establish ..., with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

See Association for Regulatory Reform v. Pierce, 670 F. Supp. 1041, 1043 (D.D.C. 1987), *vacated on other grounds,* 849 F.2d 649 (D.C. Cir. 1988) (explaining scope and operation of preemption).



In UCC States, where certificates of title simply do not exist, a Home that is a fixture is conveyed by deed and encumbered by a Security Instrument with a fixtures clause and an appropriate description of the Home. A deed conveys a Home characterized as a fixture under state common law.

Currently twenty-nine (29) states are Conversion States, ten (10) states are UCC States (six with respect to all Homes and four with respect to Homes manufactured before specified dates), and fifteen (15) are Title and Security Instrument States. Thus, Land-Home Loans secured by new Homes and Land should satisfy Investor Guidelines in approximately thirty-four (34) states.

A policy of title insurance with an ALTA-7 (or equivalent) manufactured housing endorsement ("ALTA-7") covers both a homeowner's title to and a creditor's security interest in a Land-Home Property. An ALTA-7 is available in all jurisdictions. An ALTA-7 covering a Land-Home Property, however, does not necessarily mean that a Loan secured by the Home and Land satisfies the Investor Guidelines.

In all states, a provision of the Uniform Commercial Code permits a secured creditor to foreclose a Land-Home Loan in accordance with state real property law.[11] In bankruptcy, a Chapter 13 debtor may not modify a loan secured by a lien on a Home that is "real property" under state law. This characterization also results in protection of the lien on the Land-Home Property as a lien on real property, even if the Home is subject to a certificate of title. This characterization also permits foreclosure of a Land-Home Property in accordance with state real property law.

As of May 16, 2003, nineteen (19) states have introduced legislation purporting to fix the "Freddie Problem." Eight of these states were not identified in Freddie's Bulletin 2002-8. Four states (Indiana, Mississippi, Minnesota and Tennessee) already have enacted legislation. Indiana's new law is effective July 1, 2003. The new laws in the other states are effective now.

Unfortunately, many of these bills do not adequately address all of the issues related to the lien perfection and enforcement process. Institutions that sell Land-Home Loans to Investors still face a conundrum: Investor Guidelines and prudent lending practice require a properly perfected, valid and enforceable security interest in a Land-Home Property. Unfortunately, in many states, proper lien perfection violates Investor Guidelines. A certificate of title precludes eligibility.

Nonetheless, ambiguities in the law, as well as the Guidelines leave room for arguments that classification of Land-Home Properties as real property under tax, lending or default servicing laws is compliance with the Investor Guidelines – so long as the Home has good and marketable title and lender's security interest is valid and enforceable.

Developments with The National Association of Residential Construction Lenders (NARCL)

By Richard W. Nirk[12]

The primary purpose of the National Association of Residential Construction Lenders (NARCL) is to provide education, information, and to develop procedural standards for the benefit of the construction lending industry. Comprised of borrowers, lenders, builders, investors, and others in the residential construction community, NARCL has created a forum for information and has made tremendous strides in bringing the lending community together.

Originally founded in October 2001, NARCL is involved in significant training programs throughout the construction lending industry as well as the development of the first standardized "Builder Questionnaire". NARCL also provides its members key competitive information in the areas of product design and human resource administration.

NARCL's website, which is under the final stages of development, will provide education to consumers, builders and others in need of financing. There will also be a distinctive section for our association members to review competitive information or to obtain the latest news in best practices for construction lending. If you would like more information about NARCL and their activities, please contact Richard Nirk at www.rwnirk@narcl.org.

[11] Under UCC § 9-604(b) a security interest in fixtures may be enforced either under real-property law or under any of the applicable provisions of Part 6, including sale or other disposition either before or after removal of the fixtures.

[12] Richard W. Nirk has over 20 years of commercial, construction and mortgage lending experience. He has been employed by a number of firms such as CitiGroup, American Express, and for many years was the National Construction Product Manager for Chase Manhattan Banking Corporation. He currently is the Executive Director for the National Association of Residential Construction Lenders and is a National Construction Advisor for the Excell Management Group, Ltd.

Mark Your Calendar:

Strategies for Success in Construction Lending

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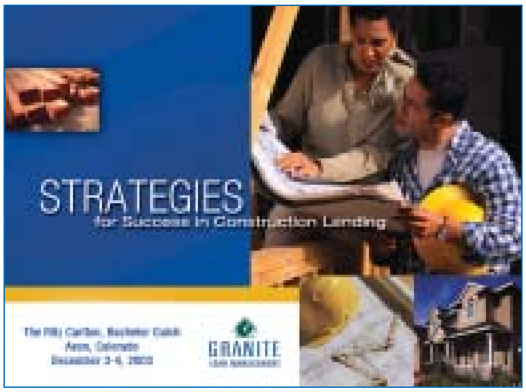
December 3-4, 2003



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In This Issue:

- *Oregon Construction Lien Law*
- *Liability Insurance Crisis - Part 2*
- *The Psychology of Manufactured Housing Finance: How Secure Are you?*
- *Developments with The National Association of Residential Construction Lenders (NARCL)*

Construction at a Glance

	April 03	April 02
Monthly Housing Starts*	1,356	1,275
Permits-Single Family*	434	416
Monthly New Home Sales*	1,028	916
Unemployment Rate	6.0%	5.9%

**Thousands of Units*

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