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OPINION NO. 80

LIENS - "First in time" rule for determining priority with federal mortgages and local tax liens;

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TAXATION - "First in time" rule for determining priority with federal mortgages and local tax liens;

TAXATION - Priority of local tax liens over private mortgages;

TAXATION - Priority of local tax liens over SBA liens;

- HELD: 1. Local tax liens on personal or real property have priority over liens of private mortgagees.
2. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: First in time is first in right, unless federal statute provides otherwise.
3. Under 15 U.S.C.A. § 646, SBA liens are subordinate to local tax liens.

5 November 1984

J. Allen Bradshaw
Granite County Attorney
Granite County Courthouse
Philipsburg MT 59858

Dear Mr. Bradshaw:

You requested an opinion concerning the priority of local tax liens in relation to federal and other mortgage liens.

Montana law expressly confers priority of tax liens on personal property. Section 15-16-402(1), MCA, provides:

Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner....
[Emphasis added.]

There is no such provision for liens on real property. The tax statutes read as a whole, and the federal case of United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963), however, lead me to conclude that tax liens on real property have priority over mortgage and other private liens.

Section 15-16-401, MCA, provides:

Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made.... The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof. [Emphasis added.]

Section 15-16-403, MCA, provides:

Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year. [Emphasis added.]

United States v. Christensen, supra, considered these statutes as well as others prescribing the procedures for tax sales, rights of redemption, and quiet title actions. (The pertinent language in the statutes is substantially the same today as in 1963.) The Court observed that in all instances, general tax liens remain against the property until the taxes are paid. The Court discussed the Montana cases of State ex rel. Malott v. Board of Commissioners, 89 Mont. 37, 296 P.2d 1 (1930), and Hartman v. City of Bozeman, 116 Mont. 392, 154 P.2d 279 (1944), which held the priority of general tax liens over special assessments. Both cases contained strong language implying the priority of general tax liens over other claims. For example, in Hartman the Court quoted a Utah case with approval:

"The necessity and importance of preferring the lien for general taxes over other claims are so impelling that the priority of the sovereign claims of the state will not be depreciated nor denied without warrant from the Legislature in clear and unmistakable terms...."

116 Mont. at 395.

I agree with the holding in Christensen that the foregoing statutes and cases compel the conclusion that tax liens on real property take priority over mortgages.

Your next question concerns the priority of local tax liens in relation to federal mortgages. The answer to this question depends on the particular federal mortgages involved.

Ordinarily, the rule regarding the priority of federal mortgage liens in relation to local tax liens is: The first in time is first in right. U.S. v. Ringwood Iron Mines, 251 F.2d 145 (3d Cir.), cert. denied, 356 U.S. 974 (1958). In certain cases, federal statutes override the "first in time" rule. Title 15 U.S.C.A. § 646 subordinates SBA (Small Business Administration) liens to state and local tax liens, when state law gives tax liens priority over mortgages. United States v. Christensen, supra, held that tax liens in Montana are superior to all other liens, and are therefore superior to SBA liens.

In conclusion, local tax liens have priority over private mortgages. When federal mortgages are involved, the rule is that first in time is first in right, unless federal law changes the rule, as with SBA liens. SBA liens are subordinate to local tax liens in Montana.

THEREFORE, IT IS MY OPINION:

1. Local tax liens on personal or real property have priority over liens of private mortgagees.
2. When federal mortgages are involved, the rule regarding priorities between local taxes and those mortgages is: First in time is first in right, unless federal statute provides otherwise.
3. Under 15 U.S.C.A. § 646, SBA liens are subordinate to local tax liens.

Very truly yours,

MIKE GREELY
Attorney General