



## **Real Estate Liens**

**A Practical Guide For Real Estate Professionals.**

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# Introduction



Welcome to “Real Estate Liens: A Practical Guide for Real Estate Professionals.” Whether you are a seasoned real estate professional, a property owner, or a first time home buyer, understanding liens is crucial for safeguarding your investment and ensuring smooth transactions. Liens, often perceived as complex and daunting, are a fundamental aspect of real estate that can significantly impact property ownership and value.

This guide is designed to demystify liens, providing you with the knowledge and tools necessary to navigate this essential facet of real estate confidently. We will explore the different types of liens, their implications. By the end of this guide, you will have a general understanding of how liens work, their legal ramifications, and how to protect your property from potential issues.

Let’s embark on this journey together and unlock the mysteries of liens to ensure your real estate ventures are successful and secure.

# What is a Lien?

A “lien” is a legal term for a security interest or legal claim against property that is used as collateral to satisfy a debt. Liens are a legal tool used to protect the interests of creditors and others who are owed money by property owners. They’re commonly used by banks, lenders, contractors and courts to ensure that property owners pay valid debts, such as mortgage notes or property taxes.

Property liens “encumber” a property, which means they create a barrier to selling the property. The homeowner can’t sell their home unless the lien is removed. In some cases, property liens can even lead to foreclosure. If, for example, a homeowner failed to pay their mortgage, the lender could seize possession of the house and sell the house to pay off the debt.

## General Liens vs. Specific Liens

There are two main categories to consider when it comes to property liens: general liens and specific liens. But what’s the difference? General liens apply to all a person’s properties and are typically associated with a court judgment. On the other hand, specific liens are tied to a particular property and often arise from an agreement contract.

## Voluntary Liens vs. Involuntary Liens:

Another important distinction to make is between voluntary liens and involuntary liens. In this section, we will explore the important distinctions between the two types of liens.

### Voluntary Liens: A Willing Agreement

Voluntary liens arise when a property owner willingly pledges their property as collateral to secure a debt. These liens are created through the property owner’s consent, with all terms and conditions agreed upon before the lien is established. Below are some examples of the most common Voluntary Liens.

- **Mortgage Liens:** The most common form of voluntary lien, a mortgage lien. When you take out a mortgage to purchase a home, you’re voluntarily entering into an agreement with a lender. The lender, in return, holds a lien on the property until the mortgage is fully paid off. This type of lien provides the lender with a security interest, allowing them to foreclose on the property if the borrower defaults on the loan.
- **Home Equity Liens:** Homeowners can voluntarily create liens on their property by tapping into its equity through loans or lines of credit. Home equity liens give individuals access to funds while using their property as collateral.

### Involuntary Liens: Imposed by Law

Involuntary liens, on the other hand, are placed on a property without the owner’s explicit consent. These liens typically result from unpaid debts or legal judgments. Common examples include tax liens, mechanic’s liens, and judgment liens.

- **Tax Liens:** When property taxes go unpaid, a government authority may place a tax lien on the property. This lien gives the government a legal claim to the property to recover the unpaid taxes.
- **Mechanic’s Liens:** Contractors or service providers who haven’t been paid for work done on a property may file a mechanic’s lien. This lien ensures they have a claim to the property until they receive payment.
- **Judgment Liens:** If a court issues a judgment requiring the payment of a debt, a judgment lien may be placed on the debtor’s property. This lien acts as security for the debt owed.

Voluntary and involuntary liens do essentially the same thing, but the difference is involuntary liens are considered derogatory as they are a result of non-payment. Voluntary liens—like your mortgage or auto loan—are just a side effect of borrowing, as they provide an avenue through which a debt can be collected if you default on your obligation.

# Types of Liens

## Voluntary vs. Involuntary Lien

Basis	Voluntary lien	Involuntary lien
<b>Consent</b>	The borrower willingly agrees to grant the lender a legal claim on the property as security for the loan or credit.	It is a right placed against the owner's consent. It is not voluntary and is placed due to legal compulsion.
<b>Establishment</b>	It is initiated by the borrower seeking a loan or credit and voluntarily agreeing to the terms of the lien.	It is typically initiated by a creditor or governing authority to enforce legal obligations or unpaid debts.
<b>Examples</b>	Examples include Mortgages, trust deeds, secured loans, etc.	Examples encompass Tax liens, mechanic's liens, judgment liens, etc.
<b>Purpose</b>	It provides security for a loan or credit transaction.	It allows the lender to have a legal claim on the property or asset in case the borrower defaults on the loan, ensuring that the lender has recourse to recover their funds.

## Common Types of Liens in California

In California, there are various types of real estate liens. Examples of property liens include the following:

Lien Type	General	Specific	Voluntary	Involuntary
Mortgage Lien		X	X	
Solar Agreement Contract		X	X	
Judgment Lien	X		X	X
Estate Tax Lien	X			X
Federal Tax Lien	X			X
State Tax Lien	X			X
Mechanic's Lien		X		X
Bail Bond Lien		X		X
Notice of Substandard Lien		X		X

# Why is it Important to Understand Liens

Understanding liens is crucial for anyone involved in real estate. They can significantly impact property ownership, financial stability, and the ability to buy, sell, or refinance a property. By being informed about liens, you can protect your investment, make informed decisions, and ensure smooth real estate transactions. Whether you're a property owner or a potential buyer, taking the time to understand liens can save you from legal headaches and financial losses in the future.

Real estate transactions and ownership can be affected by liens in the following ways...

## 1. Impact on Property Transactions

- **Clouded Title:** Liens create a "cloud" on the property's title, which means there are legal claims against the property. A clear title is crucial for selling or refinancing a property. Buyers and lenders require a clear title to proceed with the transaction.
- **Delayed or Canceled Sales:** If there are unresolved liens, it can delay or even cancel a property sale. Buyers are unlikely to purchase a property with outstanding liens, and lenders won't approve loans for such properties.

## 2. Financial Implications

- **Foreclosure Risk:** Certain liens, like mortgage and tax liens, can lead to foreclosure if not addressed. This means you could lose your property if the debt is not paid.
- **Legal Costs:** Resolving liens often involves legal processes that can be costly. Understanding liens beforehand can help you avoid unnecessary legal expenses.

## 3. Negotiation Power

- **Informed Decisions:** Knowing about existing liens can give you leverage in negotiations. As a buyer, you can request the seller to resolve liens before completing the transaction. As a seller, being aware of liens allows you to address them proactively, ensuring smoother transactions.
- **Preventing Surprises:** Surprises in real estate transactions can be costly and stressful. Understanding liens helps prevent last-minute surprises that could derail a sale or refinancing.

## 4. Protecting Your Investment

- **Due Diligence:** For buyers, conducting a thorough title search to check for liens is part of due diligence. This ensures you are fully aware of any existing claims against the property and can make informed decisions.
- **Maintaining Property Value:** Unresolved liens can decrease the value of your property. Ensuring all liens are resolved maintains the value and marketability of your property.

## 5. Legal and Financial Responsibility

- **Understanding Obligations:** As a property owner, knowing about liens helps you understand your financial and legal obligations. This includes paying property taxes, mortgage payments, and any other debts that could result in a lien.
- **Avoiding Penalties:** Unresolved liens can lead to penalties, additional interest, and legal action. Understanding liens helps you avoid these consequences by addressing debts promptly.

# Common Types of Liens

## General Overview

This section will offer a general overview of the most prevalent lien types, highlighting their nature and the implications for property owners.



# Voluntary Liens | General Overview

## Mortgage Lien

A mortgage lien is a legal claim against a property by a lender, established when a borrower takes out a mortgage loan. This lien secures the lender's interest in the property, ensuring that the loan will be repaid. In essence, the property serves as collateral for the mortgage loan. If the borrower defaults on the loan, the lender has the right to initiate foreclosure proceedings to recover the outstanding debt by selling the property. The mortgage lien remains in effect until the loan is fully paid off, at which point the lender releases the lien. The priority of a mortgage lien is typically determined by the recording date, meaning that the first mortgage recorded has the highest priority over subsequent liens. This ensures that in the event of foreclosure, the primary mortgage lender is paid first from the proceeds of the sale.

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## Property Bail Bond

In California, a property bond is a way to post bail that allows the court to place a lien on a property. This means that the property owner pledges the value of their real estate to the court to guarantee that the defendant will appear in court. If the defendant doesn't appear, the court can take the property as if it were cash bail.

Before applying for a bail bond that will be secured by a lien, the bail bond licensee must provide the property owner with a written disclosure statement. This statement must include the following:

*"DISCLOSURE OF LIEN AGAINST REAL PROPERTY DO NOT SIGN THIS DOCUMENT UNTIL YOU READ AND UNDERSTAND IT!" "THIS BAIL BOND WILL BE SECURED BY REAL PROPERTY YOU OWN OR IN WHICH YOU HAVE AN INTEREST"*

If the defendant appears in court as scheduled and is found not guilty or the charge is dismissed, the court will exonerate the bail and return the full amount to the bail-bond company. The bail-bond company must then record a Full Reconveyance. However, if the defendant doesn't appear in court, the bail-bond company may demand that the property owner pay the full bail amount or foreclose on the property.

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## SBA Loan Agreement

An SBA loan agreement can create a lien on property in California when a business owner uses their property as collateral for the loan. This means that if the loan is not repaid, the lender has the legal right to take the property to recover the money owed. The process involves the business owner signing a loan agreement that specifies the terms and the use of the property as collateral. The lender then files the lien with the county recorder's office, making it a public record. This lien must be cleared before the property can be sold or refinanced, ensuring that the lender's interest is protected. Once the loan is fully repaid, the lender will remove the lien, releasing their claim on the property.

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## Solar Agreement Contract

A solar agreement, such as a solar lease or power purchase agreement (PPA), can create a lien on a property. This type of lien arises because the solar company retains ownership of the solar panels and equipment installed on the property until the agreement's terms are fulfilled, typically through lease payments or energy purchases. The lien ensures that the solar company can secure its financial interest in the equipment. For property owners, this means they must address the solar lien if they wish to sell or refinance the property, as the lien must be satisfied or transferred to the new owner. It's important to be aware of such liens because they can affect title insurance, potentially complicating real estate transactions. Understanding and managing solar agreement liens is essential to maintain clear property titles and facilitate smooth property sales or refinancing.



# Voluntary Liens | Deed of Trust as a Mortgage Lien

A Deed of Trust is a legal instrument used in real estate transactions in California, it functions as a security for a loan. It is similar to a mortgage but involves three parties instead of two. Here's how a Deed of Trust operates as a lien:

## How a Deed of Trust Functions as a Mortgage Lien

### 1. Agreement and Signing:

When the borrower takes out a loan to purchase or refinance real estate, they sign a Deed of Trust. This document creates a lien on the property, meaning the property is pledged as security for the repayment of the loan.

### 2. Title Transfer to Trustee:

The borrower transfers the legal title of the property to the trustee, who holds it in trust for the benefit of the lender. The borrower retains equitable title, meaning they have the right to use and occupy the property.

### 3. Lien Creation:

The Deed of Trust is recorded in the county recorder's office, creating a public record of the lien. This protects the lender's interest in the property by ensuring that the lien is officially noted.

The trustee holds the legal title until the loan is fully repaid. If the borrower repays the loan according to the terms, the trustee will reconvey the title back to the borrower, releasing the lien..

### 4. Foreclosure Process:

If the borrower defaults on the loan, the lender can instruct the trustee to initiate foreclosure proceedings. The trustee has the authority to sell the property at a public auction to satisfy the debt. This non-judicial foreclosure process is typically faster and less costly than a judicial foreclosure used with mortgages.

## Conclusion

A Deed of Trust serves as a lien on a property by transferring legal title to a trustee, who holds it as security for a loan. This arrangement provides the lender with a mechanism to recover the loan through foreclosure if necessary while allowing the borrower to retain equitable title and use of the property. The Deed of Trust ensures that the lender's interest is protected, making it a critical component of real estate financing in many states.



# Involuntary Liens | General Overview

## State and Federal Tax Liens

State and federal tax liens are claims placed on a property by the government due to unpaid taxes. When property taxes or income taxes are not paid, the state or federal government can place a lien on the property. This lien becomes a public record and must be resolved before the property can be sold or refinanced. It creates a cloud on the title, meaning the property's ownership is encumbered by the debt. The lien ensures that the government can recover the unpaid taxes from the proceeds if the property is sold. This can complicate real estate transactions, as potential buyers or lenders will see the lien and require it to be cleared before proceeding.

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## Child Support Lien

Child support liens are legal claims placed on a property when a parent fails to pay court-ordered child support. Here's how they work:

When a parent does not pay child support, the state child support enforcement agency can take action to collect the unpaid amounts. One way they do this is by placing a lien on the parent's property. This lien is recorded with the county recorder's office, making it a public record and attaching to any real estate the parent owns.

The lien must be resolved before the property can be sold or refinanced, meaning the unpaid child support must be paid off to clear the title. This ensures that the child support payments are prioritized, and the custodial parent and child receive the support they are entitled to. Child support liens help enforce the payment of overdue child support by creating a legal claim on the non-paying parent's property.

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## Alimony Lien

Alimony liens are legal claims placed on a property when a person fails to pay court-ordered alimony or spousal support. When a court orders one spouse to pay alimony as part of a divorce or separation agreement and the payments are not made, the recipient spouse can request a lien to secure the overdue amounts. This lien is filed with the county recorder's office, making it a public record and attaching it to any real estate owned by the paying spouse. The lien encumbers the property, meaning it must be resolved before the property can be sold or refinanced, ensuring that any proceeds from such transactions are used to cover the unpaid alimony. This process helps enforce the payment of alimony by creating a legal claim on the property of the non-paying spouse.

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## Weed Abatement

A weed abatement lien is a legal claim placed on a property when the owner fails to remove hazardous weeds or overgrown vegetation as required by local regulations. These regulations are designed to prevent fire hazards and maintain public safety. If a property owner neglects to address the issue after receiving a notice from the local government, the authorities may hire a contractor to perform the necessary weed removal. Once the work is done, the local government records a lien against the property to recover the costs of the abatement. This lien becomes a public record and attaches to the property, meaning it must be paid off before the property can be sold or refinanced. The weed abatement lien ensures that the costs of removing the weeds are covered and enforces compliance with local maintenance regulations.

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# Involuntary Liens | General Overview

## Mechanics Lien

When a prime contractor is hired to do construction, he or she typically hires laborers and subcontractors to do some of the work, and purchases materials for the job from materials suppliers. No one would dispute that a property owner should pay for goods or services provided to improve their property. If the contractor - or the subcontractors, workers or suppliers - who provide goods or services to improve a property aren't paid, they can file what is called a mechanic's lien on the property.

A mechanic's lien is a tool that ensures payment for contractors, subcontractors, or laborers who have worked on a structure, project, or property and who has not been paid for their work. If the lien is not paid, the property owner could face foreclosure and the sale of the property. Effectively, it guarantees payment for workmen in the event of liquidation procedures, as typically mechanic's liens have higher priority than other forms of debt. Liens are against the property, even in cases where contractors—rather than owners—have failed to pay their subcontractors. This forces property owners to get involved when liens are filed in response to unpaid costs.

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## Substandard Housing Lien

A substandard housing lien is a legal claim placed on a property by a government authority or other entity when a property fails to meet established health and safety standards. This type of lien is typically enforced after a property owner neglects to address significant code violations or repairs required to bring the property up to standard. The lien ensures that the necessary work to rectify these deficiencies is completed, either by the property owner or by the government, with the costs incurred becoming a lien against the property. If the property owner does not repay the costs, the lien may lead to foreclosure or other legal actions to recover the funds. This mechanism is crucial in maintaining housing quality and protecting tenants from unsafe living conditions, while also holding property owners accountable for maintaining their properties in accordance with local regulations.

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## Lis Pendens

A lis pendens, which means "pending litigation" in Latin, is a notice filed in the public record that indicates there is a lawsuit involving a claim on a property. While it is not a lien itself, a lis pendens functions similarly by alerting potential buyers, lenders, or other interested parties that the property's title is under dispute due to ongoing litigation. This notice effectively clouds the title, making it difficult for the property to be sold or refinanced until the legal matter is resolved.

In essence, a lis pendens serves as a warning that the outcome of the litigation could affect the property's ownership or use. It protects the party who filed the lawsuit by preventing the property owner from transferring clear title to the property until the dispute is settled. Therefore, while not a lien, a lis pendens has significant implications for property transactions and can impact the property's marketability similarly to how a lien would.



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