

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2019-022

TO: City Council, Mayor John Engen, Dale Bickell, Leigh Griffing, Scott Paasch, Steve Johnson, Jeremy Keene, Dennis Bowman, Kevin Slovarp, Troy Monroe, Monte Sipe, Marty Rehbein, Kirsten Hands, Kelly Elam, Department Attorney

FROM: Jim Nugent, City Attorney

DATE: August 22, 2019

RE: Lienholders are entitled to enforce liens as security for the performance of obligations that exist in the lienholder's favor against the owner of property.

FACTS:

Recently in a city council committee there appeared to be an expression of concern pertaining to the city possessing liens against someone's property concerning nonpayment of work ordered in by city staff.

ISSUE:

Are local governments allowed to assert liens against real property as security for real property owner performance of obligations owed in favor of the local government?

CONCLUSION:

Yes, local governments are entitled as a lienholder to enforce liens as a security for collection of unpaid obligations owed local government by a real property owner.

LEGAL DISCUSSION:

A lien is a legal right that a creditor/lienholder has to another's property lasting until a debt or duty that the lien secures is satisfied. Typically, the creditor/lienholder does not take possession of the property on which the lien has been obtained. Black's Law Dictionary, Eighth Edition, page 941. Also, see section 71-3-101 MCA in title 71, chapter 3, MCA entitled "LIENS".

Liens are a legally common mechanism for securing an unpaid obligation that is owed by a real property owner to the lienholder. The index for the Montana Code Annotated sets forth nearly twelve pages for the word "lien". Governments may be lienholders holding a lien against real

property. Numerous state laws empower governments to levy a lien against real property for unpaid real property owner obligations.

For example, perhaps the most commonly identified liens are government tax liens against property. See section 15-16-402 MCA pertaining to a tax levy levied against real property owned by a personal property owner that has unpaid personal property tax obligation. Also, see section 15-16-403 MCA entitled “LIEN ON REAL PROPERTY AND IMPROVEMENTS”.

Some specific examples of statutory local government legal authority to levy a lien against real property for collection of an unpaid obligation owed local government include municipal utility delinquent bills as well as delinquent weed bills. Municipal utilities includes water and “storm or sanitary sewerage systems”. See subsection 7-13-4301(1)(a) MCA. Section 7-13-4309 MCA entitled “PROCEDURE TO COLLECT SEWER OR WATER CHARGES” pertains to city collection of sewer or water charges, including a tax lien against the real property being provided the municipal water or sewer services. Another statutory local government example would be section 7-22-4101 MCA pertaining to municipal weed control. Section 7-22-4101 MCA is entitled “CONTROL OF NUISANCE WEEDS WITHIN MUNICIPALITY”.

CONCLUSION:

Yes, local governments are entitled as a lienholder to enforce liens as a security for collection of unpaid obligations owed local government by a real property owner.

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/s/ Jim Nugent

Jim Nugent, City Attorney
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