



FACT SHEET

WYOMING LEGISLATIVE SERVICE OFFICE

MONTANA AND TEXAS STATUTORY LANGUAGE ON LIEN PRIORITY

November 2019

The following are the Montana and Texas statutes on lien priorities.

15-16-402, MCA Tax on personal property lien on realty – separate assessment – filing of mortgage satisfaction.

- 1) The tax due on personal property is a prior lien upon the personal property. The lien has precedence over any other lien, claim, or demand upon the personal property. Except as provided in subsection (2), the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.
- 2) The taxes on personal property based on a taxable value up to and including \$ 10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of \$ 10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property appearing of record in the office of the clerk and recorder of the county where the real property is situated, at or before the time the personal property tax attached to the real property, has filed a notice as provided in subsection (3). If the notice is filed, the personal property taxes on the taxable value in excess of \$ 10,000 are not a lien upon the owner's real property. The county treasurer shall, at the request of a mortgagee or lienholder, issue a statement of the personal property tax due on the taxable value up to and including \$ 10,000. Personal property taxes on a taxable value up to \$ 10,000 may be paid, redeemed from a tax lien sale as provided by law, or discharged separately from any personal property taxes in excess of that amount. Payment of the taxes on a taxable value up to \$ 10,000, as provided in this subsection, discharge the tax lien upon the personal property of the owner to the extent of the payment in the order that the person paying the tax directs.
- 3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file each year in the office of the county treasurer of the county and with the department a notice giving:
 - a) the name and address of the mortgagee and holder of the mortgage or lien;
 - b) the name of the reputed owner of the land;
 - c) the description of the land;
 - d) the date of record and expiration of the mortgage or lien;
 - e) the amount of the mortgage or lien; and
 - f) a statement that the holder claims the benefit of the provisions of this section.

- 4) The notice is ineffectual as to any taxes that are a lien upon real property prior to the filing of the notice as provided in subsection (3).
- 5) A holder of a mortgage on real property upon which personal property taxes are a lien under this section, when the owner of the real property and personal property has failed to pay taxes due on the real property and personal property for 1 or more years, may file with the department a written request to have the personal property and real property of the owner separately assessed. The request must be made by certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department of the request, the department shall make a separate assessment of real and personal property of the owner of the property, and the personal property taxes may not be a lien upon the mortgaged real property. The personal property taxes must be collected in the manner provided by law for other personal property.
- 6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment of filing the certificate, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:
 - a) the county treasurer if the holder has filed a notice under subsection (3); and
 - b) the department if the holder has filed a written request under subsection (5).
 - c) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

15-23-704, MCA Lien of tax – enforcement of payment.

The tax on gross proceeds from coal must be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien as provided under 15-16-119 and 15-17-911.

Tex. Tax Code § 32.05. Priority of Tax Liens over Other Property Interests.

- a) A tax lien on real property takes priority over a homestead interest in the property.
- b) Except as provided by Subsection (c)(1), a tax lien provided by this chapter takes priority over:
 - 1) the claim of any creditor of a person whose property is encumbered by the lien;
 - 2) the claim of any holder of a lien on property encumbered by the tax lien, including any lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime under a restrictive covenant, condominium declaration, master deed, or other similar instrument that secures regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property; and
 - 3) any right of remainder, right or possibility of reverter, or other future interest in, or encumbrance against, the property, whether vested or contingent.
- b-1) The priority given to a tax lien by Subsection (b) prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien.
- c) A tax lien provided by this chapter is inferior to:

- a) a claim for any survivor's allowance, funeral expenses, or expenses of the last illness of a decedent made against the estate of a decedent as provided by law;
- b) except as provided by Subsection (b)(2), a recorded restrictive covenant that runs with the land and was recorded before January 1 of the year the tax lien arose; or
- c) a valid easement of record recorded before January 1 of the year the tax lien arose.

- d) In an action brought under Chapter 33 for the enforced collection of a delinquent tax against property, a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime that holds a lien for regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property is not a necessary party to the action unless, at the time the action is commenced, notice of the lien in a liquidated amount is evidenced by a sworn instrument duly executed by an authorized person and recorded with the clerk of the county in which the property is located. A tax sale of the property extinguishes the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime for all amounts that accrued before the date of sale if:
 - 1) the holder of the lien is joined as a party to an action brought under Chapter 33 by virtue of a notice of the lien on record at the time the action is commenced; or
 - 2) the notice of lien is not of record at the time the action is commenced, regardless of whether the holder of the lien is made a party to the action.

- e) The existence of a recorded restrictive covenant, declaration, or master deed that generally provides for the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime does not, by itself, constitute actual or constructive notice to a taxing unit of a lien under Subsection (d).

If you need anything further, please contact LSO Research at 777-7881.

