

What is a Super Priority Lien in Real Estate Investing?

Most investors are familiar with what a lien is against a property. The most common liens are mortgages, equity lines, code liens and open permits for work not completed but originally permitted. More and more municipalities are using Super Priority Liens to make sure that investors take care of problems that exist in their properties.

The terms Super Priority Lien or Super Lien are terms used for a lien that attaches to more than one property, despite it originally being attached to only a single property. Before any of the properties in the owner's name can be transferred, the Super Lien must be paid or "cured".

A recent case we had was an REO purchase that we were making and when we got to the closing table we were alerted to a lien against the seller. The seller was a national bank but they had an unpaid elevator invoice at one of their branches locally. This was not a mechanic's lien and had become a Super Lien because it was attached to all their holdings – the first property of theirs that was sold had to pay off the lien.

This lien had originated when the bank got permits for an elevator in one of their buildings but their contractor did not close the permit out and a lien was issued. While the lien was less than \$300, we postponed the closing until the lien was paid (extinguished). Had we not, we would have taken the property with the lien attached even after the bank sold it to us.

In a more dramatic and common case, a student asked us to sell a duplex for him. It had a nice profit of \$40,000 and we found a buyer in a day. We chose the closing agent because of their thoroughness in doing title work. We were startled to find out that the student as the trustee of the land trust that owned the property had a Super Lien against him.

What had happened was that the student had sold a well known rehabber a property, again in a land trust by transferring the beneficial interest to the buyer. He had used the correct documents including a Resignation of Trustee which was recorded in the public record. The rehabber/buyer proceeded to rehab the property without pulling permits and soon was caught and the City imposed a lien on the property. However, the "owner" in the public record was the trustee of the land trust – our student so the Super Lien attached to his name.

The student did his part properly but the Clerk of the Court assumed and did not check that the student was no longer trustee of the trust. The rehabber/buyer owned about 170 other properties and the \$24,000 Super Lien was "removed" from the sale of the duplex, but not until a great deal of battling the City to remove the lien from the student's name.

This is a common problem with Super Liens and trustees for trusts. If you transfer a land trust's beneficiaries, always sign a letter of resignation that will be listed in the public record or simply use a Limited Warranty Deed to transfer the trust to a new trustee.

The other problem with this particular rehabber/buyer was he micro-managed his business and would record his purchases once a month. You don't have to use a closing to transfer the beneficial interest of a land trust and that's how he bought all his properties from us. I found about his issue of "bulk recording" of deeds because he called me from the Clerk's Office with five deeds he was recording. The Clerk was asking him the questions he couldn't answer so I talked to her directly and solved her issues with land trust transfers.