Lien Waiver Audit Worksheet Instructions\*

The attached Lien Waiver Audit Worksheet is a tool designed to assist practitioners organize and evaluate construction lien risk tied to one or more recorded Notice of Commencement (NOC) by conducting a lien waiver audit where there is a need to determine construction lien risk amount.

A lien waiver audit is intended to identify unpaid parties and amounts they may be due where construction is or was recently present. The Worksheet assists in identifying steps necessary to meet commitment requirements.

In order to use the Worksheet, the user will need to request information from a variety of sources including but not limited to the owner, lender, general contractor, and project manager. This tool is not intended to be used to assess the validity of a NOC, Notice to Owner or Claim of Lien, but instead a way to organize relevant information for analysis of any construction lien risk. Therefore, each of the foregoing items should be treated as valid for purpose of using the Worksheet.

Please note: There may be situations where there are not multiple lienors or a need for an in-depth lien waiver audit.

How to use the tool:

FIRST: Review the title commitment for B-I requirements reflecting there is a recorded NOC.

* + - Multiple sheets have been provided in the master spreadsheet for files with more than one NOC – See tabs along the bottom labeled “NOC 1”, etc.

SECOND: Save a copy of the Worksheet for fact gathering and completion as further described.

THIRD: SECTION ONE (Rows 2-7): Identify the project and party information contained in the NOC and insert in rows 2-7. Certain fields, such as “Type of Interest” have a dropdown list that can be accessed on the right-hand side of the field box.

* + TYPE OF INTEREST: Select: Fee, Tenant, Leasehold.
    - Pursuant to Sec. 713.10, F.S., a construction lien extends only to the right title and interest of the person who contracts for the improvement, with certain exceptions.
    - You may encounter NOCs related to tenant improvements. Tenant NOCs are not automatically ignored, and further analysis will be necessary:
      * Review the tenant lease to determine if the lien prohibition language under Sec. 713.10(2), F.S. is included.
      * Review title for a recorded Sec. 713.10(2), F.S. safe harbor notice.
      * Determine if the improvement under the NOC is pursuant to an agreement between the tenant and owner (pith of the lease).
      * Review the construction contract to determine if the owner is in privity with the lienor.
      * Consult Underwriting with your findings and for further analysis.
  + NOC RECORDING DATE: Insert recording date.
  + STATED EXPIRATION: Insert expiration date if specifically listed in the NOC (Typically on line 9 of the NOC).
    - A NOC is effective for one year, but can state that it is effective for an additional period of time, Sec. 713.13, F.S.
  + FILING PARTY: Insert the contractor information.
  + BONDED: If a payment bond is attached to the NOC under Sec. 713.23, F.S., type “Yes”.
  + B-I REQUIREMENT #: Insert the requirement number from the title commitment.

FOURTH: SECTION 2 (Columns A-O) In order to complete this section, request that owner provide a list of all parties in privity with the owner pursuant to a contract and all lienors serving notice to owner. The owner may also request a certified list from the contractor on the NOC pursuant to Sec. 713.165, F.S. Additionally, request contracts for each NOC, and most recent lien waivers from all lienors identified in the owner’s and/or contractor’s list.

* + PARTY TYPE: Select the party type from the dropdown list.
  + NAME(S): Insert the name of the lienor.
  + NOTICE TO OWNER?: Select yes or no from dropdown list.
    - A lienor who is not in privity with the owner (with the exception of lienors providing subdivision improvements/sitework and professionals) must serve a notice to owner in order to have lien rights on a particular project.
  + CONTRACT WITH OWNER?: Select yes or no from dropdown list.
    - Parties in privity have lien rights and are not required to serve notice to owner.
  + CONTRACT $ AMOUNT: Insert total contract amount.
  + WAIVER?: Select yes or no from dropdown list.
  + WAIVER TYPE: Select conditional or unconditional from dropdown list.
    - A conditional lien release is contingent upon the actual receipt and clearance of the payment.
    - An unconditional lien release is typically provided with the lienor receives the final payment, and they waive their lien rights immediately without any conditions.
  + FINAL OR PARTIAL WAIVER?: Select final or partial from dropdown list.
    - A partial lien release specifically identifies the extent to which payment claims have been waived and can also be known as a progress payment lien waiver per Sec. 713.20(4), F.S.
    - A final lien release under Sec. 713.20(5), F.S. is provided upon completion of a project, in which all payment obligations are satisfied at the time the release is executed. A final lien waiver should contain the full and final amount of lien rights being waived.
  + LIEN WAIVER DATE: Insert the date the lienor signed the lien waiver.
  + WAIVER GOOD THRU DATE: Type the date the lien waiver is good through.
    - This information may be contained within a partial lien waiver and indicates that the signing party is agreeing to waive their claims for all work completed on or before the date entered.
  + CLAIM OF LIEN?: Select yes or no from dropdown list.
    - Review the title commitment and title updates for a recorded claim of lien.
  + RELEASE OF LIEN?: Select yes or no from dropdown list.
    - Any recorded claim of lien must be released prior to closing.
  + LAST PAYMENT AMOUNT: Insert the last payment amount.
    - This information may be contained in a payment application (draw request from contractor), payment affidavit or waiver and release of lien upon interim or final payment.
  + AMOUNT REMAINING: Insert the amount remaining.

FINAL: COMMENTS: Any additional information pertinent to your review may be inserted in this field.

Any questions may be directed to Underwriting at (800) 432-9594.