



## ADMINISTRATIVE RULES OF MONTANA



### 6.6.2201 LIENS, ENCUMBRANCES, AND STANDARDS OF INSURABILITY

(1)

- (a) The provisions of subsections (2) and (3) of ARM 6.6.2201 do not apply to defects in title. Defects in title arise when a document or proceeding upon which title depends fails to accomplish its stated purpose. Defects of title include, but are not limited to, a break in the chain of title, a defective probate proceeding, an improperly acknowledged deed, or an error in a legal description.
- (b) The provisions of subsections (2) and (3) of ARM 6.6.2201 apply to other interests against the property. "Other interests against the property" means those interests created by documents the purpose of which is to encumber title. "Other interests against the property" include recorded liens or encumbrances.

(2) "[I]ssuing an owner's title insurance policy or commitment to insure" includes issuing a title insurance policy or commitment to insure to the person who is or will be the owner or tenant in possession of the property to which title is insured, but does not include issuing a title insurance policy or commitment to insure to a lender or other party whose insured interest concerns the validity, enforceability, or priority of a lien securing a financial obligation.

(3) The requirements that a title insurer show all outstanding enforceable recorded liens or other interests against the property title to be insured under an owner's title insurance policy and make a determination of insurability as to possible liens and encumbrances shall not be construed as prohibiting a title insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Specifically, an insurer may issue a policy without taking exception to a specific recorded, inchoate, or death tax item in the following situations:

- (a) where a lien securing an obligation, though not released of record, to the satisfaction of the insurer has been discharged, and the insurer or its agent has documentary evidence in its file that the obligation has been paid in an amount which the holder of such obligation has accepted in full satisfaction of such obligation;
- (b) where funds are in escrow to pay said item, and a recordable release in form for filing or recording is

available for recording in the ordinary course of business;

- (c) where liens are barred by the statute of limitations;
- (d) where inchoate liens arise from improvements to the described property and have priority over an interest being insured, and a sufficient indemnity made by a person or persons other

than the named insured, the makers of the obligation secured by the insured mortgage, or a guarantor thereof, has been delivered to and accepted by the insurer, or where collected or cleared funds have been deposited with the insurer or its agent to assure ultimate payment and release of such liens; provided, an exception as to such inchoate liens shall be shown on the policy with a provision insuring against the enforcement thereof;

- (e) where the insurer has previously issued a policy without taking exception to the specific item and is called upon to issue an additional policy where it is already obligated to the insured under such prior policy and where the new policy will not increase the insurer's liability or exposure; provided, an exception as to such item shall be shown on the policy with a provision insuring against the enforcement thereof;
  - (f) or with reference to federal estate taxes and state inheritance taxes which have not been paid, where the insurer has examined a balance sheet of the estate and determined that more than adequate funds are on hand to pay such taxes, and the insurer has taken an indemnity from a responsible person protecting itself against such unpaid taxes, or where sufficient moneys or other securities to pay such taxes have been placed in escrow-pending the payment thereof or pending receipt of waiver of lien from the taxing authority.
- (4) For purposes of ARM 6.6.2201(3) (d) , "sufficient indemnity" means a direct obligation to pay such liens in an amount judged adequate by the insurer and executed by a financial institution regulated by the state or federal government or executed by a responsible person except where the provisions of 71-3-516, MCA are applicable.
  - (5) ARM 6.6.2201(3) (d) shall apply to recorded liens being contested if the indemnity is 150% of the claim, is executed by a financial institution regulated by the state or federal government, or is in an amount judged to be adequate by the insurer.
  - (6) For purposes of ARM 6.6.2201(4) , "responsible person" is any person, or persons if they are jointly and severally liable, whose currently verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent.

**Authorizing statute(s):** Sec. 33-1-313, MCA

**Implementing statute(s):** 33-25-214, MCA

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**History:** NEW, 1986 MAR p. 783, Eff. 5/16/86.