



STATE OF MONTANA CONSTRUCTION LAW COMPENDIUM

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This Compendium provides a general overview of Montana construction law. We have attempted to provide as comprehensive a summary as possible, and the outline below summarizes major areas of law involved in construction disputes. This summary, of course, cannot cover every legal issue that may arise in a construction dispute, but we hope this compendium provides a helpful background for those engaged in construction disputes in Montana.

A. ECONOMIC LOSS DOCTRINE

The economic loss doctrine bars claimants from pursuing tort damages (economic losses) in lieu of losses for breach of contract. Montana has expressly rejected the economic loss doctrine in *Jim's Excavating Service, Inc. v. HKM Associates*, 265 Mont. 494, 878 P.2d 248, 252 (1994). In *Jim's Excavating*, the subcontractor sued the engineer for delay damages and the cost of extra work because of defects in the engineer's design of a project. The engineer argued that the subcontractor was not entitled to damages for economic losses, but the Supreme Court noted that the trend in other jurisdictions was to allow tort damages and held that a third party subcontractor could recover economic damages from a design professional who should have foreseen that the plaintiff was in a class of plaintiffs who were at risk for relying on the defective design information.

B. STRICT LIABILITY

Montana's strict liability statute, §27-1-719, MCA, establishes a cause of action for users or consumers who suffer bodily injury or property damage by a product in a defective condition unreasonably dangerous for the user. The statute provides for a cause of action against "sellers" which include manufacturers, wholesalers and retailers. Assumption of risk and product misuse are defenses to a strict liability claim. Strict liability actions can apply to property damage, even if the claim for damages is only the damage to the product itself. *Thompson v. Nebraska Mobile Homes Corp*, 198 Mont. 461, 647 P.2d 334 (1982). In *Thompson*, a mobile home was considered to be a product because it was mass produced and placed into the stream of commerce.

Strict liability can apply to construction projects if the focus of the claim is on a defective product. *Sunset Point Partnerships v. Stuc-O-Flex International, Inc.*, 287 Mont. 388, 954 P.2d 1156 (1998). In *Stuc-O-Flex*, however, the Court held that strict liability did not apply to the "application" of a product. Thus, since the testimony was that the stucco product itself was not considered defective but only the application on the building, the Court dismissed the strict liability claim. A building is not a "product." *Papp v. Rocky Mountain Oil and Minerals, Inc.*, 236 Mont. 330, 769 P.2d 1249 (1989). The constituent parts inside the building may be products. *Id.* A swimming pool is not a product in a strict liability failure to warn case. *Dayberry v. City of East Helena*, 318 Mont. 301, 80 P.3d 1218 (2002).

Montana recognizes that sellers of defective products may sue the upstream manufacturer or seller for indemnity. *Jones v. Aero-Chem Corp.*, 680 F.Supp. 338 (D.MT. 1987).

C. BREACH OF WARRANTY

1. BREACH OF EXPRESS WARRANTY

In Montana, all residential construction contracts must provide “**an express warranty** that is valid for a period of at least 1 year from completion of the construction project. The warranty must provide detailed descriptions of those components that are included or excluded from the warranty, the length of the warranty, and any specialty warranty provisions or time periods relating to certain components. The warranty provisions must also clearly set forth the requirements that must be adhered to by the buyer, including the time and method for reporting warranty claims, in order for the warranty provision to become applicable.” §§ 28-2-2201-2202, MCA (emphasis supplied).

2. IMPLIED WARRANTY OF HABITABILITY

Montana law recognizes an implied warranty of habitability in newly constructed homes. *McJunkin v. Kaufman and Broad Home Sys., Inc.*, 229 Mont. 432, 748 P.2d 910, 915 (1987). In *Chandler v. Madison*, 197 Mont. 234, 642 P.2d 1028 (1982), the Montana Supreme Court recognized that the doctrine of caveat emptor no longer reflects the realities of the modern home market and that builder-vendor of a new home impliedly warrants that the residence is constructed in such a manner as to be suitable for habitation. *Chandler*, 197 Mont. at 239, 642 P.2d at 1031. The implied warranty of habitability does not require that the home be defect free, however. *McJunkin*, 229 Mont. at 440. Montana’s implied warranty of habitability is limited to defects which are so substantial as to reasonably preclude use of dwelling as a residence. *Samuelson v. A.A. Quality Const., Inc.*, 230 Mont. 220, 223, 749 P.2d 73, 75 (1988).

3. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

In Montana, every contract, regardless of type, contains an implied covenant of good faith and fair dealing. *Story v. City of Bozeman*, 242 Mont. 436, 791 P.2d 767, 775 (1990). A breach of the covenant is a breach of the contract. *Id.* In common contract actions, tort-type damages are not available for breach of the implied covenant of good faith and fair dealing. *Id.*, 791 P.2d at 776. However, if a "special relationship" exists between the parties, tort-type damages are available. The Montana Supreme Court has adopted the following test in determining whether a special relationship exists:

(1) the contract must be such that the parties are in inherently unequal bargaining positions; (2) the motivation for entering the contract must be a non-profit motivation, i.e., to secure peace of mind, security, future protection; (3) ordinary contract damages are not adequate because (a) they do not require the party in the superior position to account for its actions, and (b) they do not make the inferior party whole; (4) one party is especially vulnerable because of the type of harm it may suffer and of necessity places trust in the other party to perform; and (5) the other party is aware of this vulnerability.

Id. citing *Wallis v. Superior Court*, 160 Cal.App.3d 1109, 207 Cal.Rptr. 123, 129 (1984).

D. MISREPRESENTATION AND FRAUD

1. ACTUAL FRAUD

To establish a prima facie case of actual fraud, the party asserting the claim must establish the following nine elements: (1) representation, (2) falsity of that representation, (3) materiality of representation, (4) speaker's knowledge of representation's falsity or ignorance of its truth; (5) speaker's intent that representation be acted upon by the person in the manner reasonably contemplated, (6) hearer's ignorance of representation's falsity, (7) hearer's reliance upon the truth of the representation, (8) hearer's right to rely upon the representation; and (9) hearer's consequent and proximate injury or damages caused by reliance on the representation. § 28-2-405, MCA. *Durbin v. Ross*, 276 Mont. 463, 916 P.2d 758 (1996).

2. CONSTRUCTIVE FRAUD

§ 28-2-406, MCA, provides:

Constructive fraud consists of:

(1) any breach of duty that, without an actually fraudulent intent, gains an advantage to the person in fault or anyone claiming under the person in fault by misleading another person to that person's prejudice or to the prejudice of anyone claiming under that person; or

(2) any act or omission that the law especially declares to be fraudulent, without respect to actual fraud.

For example, a builder and building company committed constructive fraud with regard to a contract to build a home where the builder exaggerated his credentials in written materials provided to the homeowners, the builder informed the homeowners that he could construct the home they wanted within their budget, the builder refused to hire

an architect after the homeowners requested him to do so, and the builder failed to disclose that the house was inadequate to support the roof, that the roof was not properly engineered, and that the materials he bought for the roof were inadequate. *White v. Longley*, 244 P.3d 753, 358 Mont. 268 (2010).

3. NEGLIGENCE MISREPRESENTATION

Negligent misrepresentation is coextensive with constructive fraud if the claim is based on the same misrepresentation where there is a breach of legal duty. If there is no breach of a legal duty but the misrepresentation is negligent, negligence is the basis of liability. § 27-1-701, MCA, § 28-2-406, MCA. *Bottrell v. American Bank*, 237 Mont. 1, 773 P.2d 694 (1989). The tort of negligent misrepresentation contains the following elements: a) the defendant made a representation as to a past or existing material fact; b) the representation must have been untrue; c) regardless of its actual belief, the defendant must have made the representation without any reasonable ground for believing it to be true; d) the representation must have been made with the intent to induce the plaintiff to rely on it; e) the plaintiff must have been unaware of the falsity of the representation; it must have acted in reliance upon the truth of the representation and it must have been justified in relying on the representation; f) the plaintiff, as a result of his or her reliance, sustained damage. *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 32, 318 Mont. 342, 80 P.3d 435.

E. BREACH OF CONTRACT

Breach of contract is a frequent claim in construction defect cases in Montana. *White v. Langley*, 2010 MT 254, 358 Mont. 268, 244 P.3d 753. Construction contracts, whether written or oral, contain an implicit term that the work will be performed in a reasonably skillful and workmanlike manner. *Chandler v. Madsen*, 197 Mont. 234, 642 P.2d 1028 (1982). Every contract entered into in Montana, regardless of type, contains an implied covenant of good faith and fair dealing, violation of which is breach of the contract. *Farris v. Hutchinson*, 254 Mont. 334, 838 P.2d 374 (1992). Breach of the underlying contract is not a prerequisite to a breach of the implied covenant of good faith and fair dealing, or to an award of damages for breach.

General contract principles govern allegations of breach of construction contracts. Montana law requires that changes to written contracts be in writing, but that requirement can be waived by the parties. *Lewistown Miller Const. Co., Inc. v. Martin*, 2011 MT 325, 363 Mont. 208, 271 P.3d 48. Waiver can be explicit or inferred from the parties' conduct. Montana's Statute of Frauds requires that all agreements that are not to be performed within one year of their making and all agreements for the sale of real property or an interest in real property must be written. § 28-2-903, MCA.

F. NEGLIGENCE

Montana recognizes actions for negligent construction, as well as for negligent misrepresentation and negligent failure to disclose. For example, suit can be brought alleging negligent construction of a house, negligent misrepresentation by the builder regarding design elements of the house and soil and groundwater conditions in the area where the house was built, and negligent failure to disclose known conditions such as adverse soil and groundwater conditions. The standard elements of negligence (duty, breach, proximate causation, and damages) apply to construction related negligence claims.

G. RESIDENTIAL CONSTRUCTION DEFECT ACT

Montana has a Residential Construction Defect Act, found at MCA §§ 70-19-426 through 428. The Act provides a mechanism whereby a homeowner who alleges a construction defect puts the builder on notice of the claim and the builder is given an opportunity to inspect the alleged defect and then repair it, offer to settle the claim, or take no action. A homeowner who complies with the Act and subsequently brings a lawsuit for construction defects can recover the cost of repair, including engineering fees, temporary housing costs while remediation is performed, the diminution in house value due to the defect, and costs and attorney's fees. The homeowner can recover other damages under other theories, such as breach of contract or negligence.

H. STATUTE OF LIMITATIONS

The statute of limitations for breach of contract is five years for oral contracts and eight years for written contracts. MCA § 27-2-202. The statute of limitations for negligence claims is three years. MCA § 27-2-204. The statute of limitations for a claim of injury to real or personal property is two years. MCA § 27-2-207.

The statute of limitations does not begin to run on a construction defect claim until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if the facts constituting the claim are, by their nature, concealed, or if the defendant takes action that prevents the injured party from discovering the facts. MCA § 27-2-102. Construction defect cases in Montana frequently involve houses that are affected by soil conditions, resulting in house movement. The alleged defects in such cases are generally held to be concealed, thereby precluding the statute of limitations from starting to run as soon as construction is completed.

I. STATUTE OF REPOSE

Montana has a ten year statute of repose for construction defects. MCA § 27-2-208. However, if the injury occurred in the tenth year, the claim may be brought within one year of the injury occurring.

J. RECOVERABLE DAMAGES

1. DIRECT DAMAGES FOR BREACH OF CONTRACT

In Montana, the measure of damages in a breach of contract case is "... the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in both their nature and origin cannot be recovered for a breach of contract." § 27-1-311, MCA.

Under § 27-1-311, MCA, there are two kinds of damages recoverable for breach of contract. *Ehly v. Cady*, 212 Mont. 82, 687 P.2d 687, 695 (1984). "Damages 'for all the detriment caused thereby' include all damages which in the ordinary and natural course of things are proximately caused by the breach itself. These damages are the natural result of the breach. Damages under the statute may also be recovered 'which in the ordinary course of things would be likely to result therefrom.' Our court, and courts everywhere, recognize this provision as permitting recovery for consequential damages within the contemplation of the parties when they entered into the contract, and such as might naturally be expected to result from its violation." *Id.*, citing *Myers v. Bender*, 46 Mont. 497, 508, 129 P. 330, 333 (1913).

2. DELAY DAMAGES

Generally, damages for delay in performance of a construction contract are recoverable as a foreseeable consequence of a party's breach of contract. *Leigland v. Rundle Land & Abstract Co.*, 64 Mont. 154, 208 P. 1075 (1922). However, a subcontractor cannot recover damages for delay from contractor when the subcontractor works "as directed" by a contractor, according to a construction contract. See *Keeney Const. v. James Talcott Const. Co., Inc.*, 309 Mont. 226, 45 P.3d 19 (2002).

3. DAMAGES FOR NEGLIGENT MISREPRESENTATION

The Montana Supreme Court has adopted the Restatement (Second) of Torts § 552B, which provides the measure of damages for negligent misrepresentation.

(1) The damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the pecuniary loss to him of which the misrepresentation is a legal cause, including

(a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and

(b) pecuniary loss suffered otherwise as a consequence of the plaintiff's reliance upon the misrepresentation.

(2) the damages recoverable for a negligent misrepresentation do not include the benefit of the plaintiff's contract with the defendant.

a. LOST PROFITS

In *Bokma Farms, Inc. v. State*, 2000 MT 298, ¶¶ 11-13, 14 P.3d 1199, the Montana Supreme Court found § 552B does not preclude an award of damages for lost profits. "Section 552B specifically provides for the recovery of consequential damages sustained as a result of the plaintiff's justifiable reliance upon the defendant's negligent misrepresentation." *Id. citing* Restatement (Second) of Torts § 552B(1)(b) (1976). Section 552B does not preclude the possibility that consequential damages may include lost profits. "If a plaintiff can prove that it lost profits on account of its justifiable reliance upon the defendant's negligent misrepresentations, and the plaintiff can also prove the amount of lost profits with reasonable certainty, we see no reason why lost profits should not be awarded as consequential damages for negligent misrepresentation." *Id. citing* Robert L. Dunn, *Recovery of Damages for Fraud* § 4.3 at 167 (2d ed.1995).

4. PUNITIVE DAMAGES FOR ACTUAL OR CONSTRUCTIVE FRAUD

Section 27-1-221, MCA, allows punitive damages for fraud. Section 28-2-404, MCA, specifically defines fraud as including constructive fraud. *Purcell v. Automatic Gas Distributors, Inc.*, 207 Mont. 223, 230, 673 P.2d 1246, 1251 (1983). If the conduct of a particular defendant is tortious, the fact that there was an underlying contract does not defeat an award of punitive damages. *Id.* at 1250. Although the legal duty which often exists in constructive fraud cases is a fiduciary one, the Montana Supreme Court has held that Montana's constructive fraud statute "does not require that the plaintiff demonstrate a fiduciary relationship, [but] merely requires the establishment of a duty." *H-D Irrigating, Inc. v. Kimble Properties, Inc.*, 2000 MT 212, ¶25, 8 P.3d 95.

K. ATTORNEY FEES AND COSTS

Montana follows the general rule that absent a contract or statutory basis, the prevailing party in a suit is not entitled to attorney fees. Litigation costs awarded to a prevailing party in a suit are allowed by statute, §§25-10-103, 25-10-201, MCA.

Litigation costs include filing fees, service fees, costs of depositions when the transcripts are used at trial and other incidental costs but not expert fees.

If a statute or contract permits an award of attorney fees to the prevailing party, then the Court must determine an attorney's fee by requiring the proponent of the fees to establish the reasonableness of the fee. *First Security Bank of Bozeman v. Tholkes* (1976), 169 Mont. 422, 547 P.2d 1328. Attorney fees shall be awarded to the prevailing party in a construction lien foreclosure. §71-3-124(1), MCA. When a party prevails on some, but not all, claims or defenses in a lien foreclosure or other construction case and not all claims or defenses allow an award of attorney fees, the Court may award all reasonable attorney fees based on the time spent on the claims which allow attorney fees if the time can be segregated. *Donner v. Orlando* (1986), 221 Mont. 356, 720 P.2d 233. If it is not possible to disentangle the hours worked on some claims from the hours worked on other claims and the facts and theories of recovery or defense overlap, then the Court may award the attorney fees for all work. *Blue Ridge Homes v. Thein* (2008), 345 Mont. 125, 191 P.3d 374.

L. INDEMNITY

Indemnity arises under common law (equitable indemnity) or by contract. Equitable indemnity is the principle that one compelled to pay for damages caused by another should be able to seek recovery from the responsible party. *State v. Butte-Silver Bow County* (2009), 353 Mont. 497, 220 P.3d 1115. Montana courts have limited the right to equitable indemnity based on concepts of "active" and "passive" negligence or "primary" and "secondary" negligence; however, the general rule is that a negligent party whose negligence contributed to the damage may not seek indemnity from another at-fault party. *Poulsen v. Treasure State Industries, Inc.* (1981), 192 Mont. 69, 626 P.2d 822; *Town Pump, Inc. v. Diteman* (1981), 191 Mont. 98, 622 P.2d 212 (no implied duty of indemnity by contractor who built gas station where tanks leaked but gas station owner's negligence resulted in spread of gas plume over time).

Contractual indemnity for construction contracts is controlled by Section 28-2-211 MCA:

- (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.
- (2) A construction contract may contain a provision:
 - a. requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers,

employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

- b. requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

M. INSURANCE COVERAGE FOR CONSTRUCTION CLAIMS

The construction and interpretation of contracts including insurance policies is a question of law for the court to decide. If the language of the contract is clear and unambiguous, the language of the contract controls, and there is nothing to interpret. A contract is not ambiguous merely because parties disagree over interpretation. An ambiguity exists where the language of the contract as a whole is reasonably subject to different interpretations. *In Re Estate of Burrell* 245 P.3d 1106 (MT. 2010). Courts examine insurance contracts as a whole with no special deference to specific clauses. *Modroo v. Nationwide Mutual Fire Ins. Co.* 191 P.3d 389 (MT. 2008). A policy's language governs if it is clear and explicit. *Marie Deonier & Associates v. Paul Revere Life Ins. Co.* 9 P.3d 622 (MT. 2000). Doubts about the interpretation are strictly construed against the insurer in favor of coverage, but the courts are not to rewrite the policy terms, but to enforce the terms as written. *Generalli-U.S. Branch v. Alexander* 87 P.3d 1000 (MT. 2004).

Apart from the duty to indemnify, it has been held in Montana that the duty to defend is broader than the duty to indemnify. *Northwestern National Casualty Co. v. Phalen* (1979), 182 Mont. 448, 597 P.2d 720. However, if the allegations in the complaint and the facts known to the insurer show that the claims do not come within the coverage of the liability policy, there is no duty to defend the insured. *McAlear v. St. Paul Insurance Company* (1972), 158 Mont. 452, 493 P.2d 331; *Burns v. Underwriters Adjusting Co.*, (1988), 234 Mont. 508, 765 P.2d 712. However, an insurer cannot ignore facts in its possession obtained outside of the complaint which give rise to coverage and trigger a duty to defend. *Revelation Industries, Inc. v. St. Paul Fire & Marine Insurance Co.* (2009), 350 Mont. 184, 206 P.3d 919.

Exclusions from coverage will be narrowly and strictly construed because they are contrary to the fundamental protective purpose of an insurance policy. *Wellcome v. Home Insurance Company* (1993), 257 Mont. 354, 849 P.2d 190, 192. Policy exclusions are subject to a rule of narrow construction. *Farmers Union Mutual Insurance Company v. Oakland* (1992), 251 Mont. 352, 825 P.2d 554, 556. For example, a building code

exclusion of coverage for loss resulting from enforcement of a building code does not release the insurer from having to pay the increased costs of complying with building codes during reconstruction. Id. (removal of asbestos after fire damaged building was not a “loss or damage caused by or resulting from” the enforcement of any ordinance or law).

N. CONSTRUCTION LIENS

1. WHO MAY CLAIM A CONSTRUCTION LIEN

“A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of the person's contract price.” § 71-3-523, MCA.

2. WORK/MATERIALS SUBJECT TO LIEN

Under Montana law, a lien for furnishing materials arises only if : (1) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and (2) the materials are (a) incorporated in the improvement or consumed as normal wastage in construction operations; (b) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement; (c) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or (d) tools, appliances, or machinery used on the particular improvement.

However, a lien arising for the supplying of tools, appliances, or machinery is limited as follows: (a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and (b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used. § 71-3-524, MCA.

3. NOTICE OF FILING A CONSTRUCTION LIEN

A person who may claim a construction lien shall give notice of the right to claim a lien to the contracting owner in order to claim a lien. The notice of a right to claim a lien may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is

enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given. § 71-3-531, MCA.

However, when payment for services or materials furnished pursuant to a real estate improvement contract is made by or on behalf of the contracting owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given. *Id.*

The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner and filed with the clerk and recorder of the county in which the improved real estate is located. A notice form is provided at § 71-3-532, MCA. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner. The notice filed with the clerk and recorder must be signed by the person filing the notice or by a person authorized to sign for the person filing the notice.

a. EXCEPTIONS TO NOTICE REQUIREMENTS

The following are not required to give notice of the right to claim a lien: (a) an original contractor who furnishes services or materials directly to the owner at the owner's request; (b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract; (c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and (d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character. § 71-3-531, MCA.

4. LIEN PRIORITIES

a. PRIORITY AMONG HOLDERS OF CONSTRUCTION LIENS

Mont. Code Ann. § 71-3-541, provides:

(1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which the claimant filed the notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant must receive a pro rata share of the proceeds based on the amount of the claimant's respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

b. PRIORITY OF CONSTRUCTION LIENS AGAINST OTHER CLAIMS

Generally, a construction lien has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located, that is filed after the construction lien attaches. See § 71-3-542, MCA.

5. TIME LIMITS TO FORECLOSE A CONSTRUCTION LIEN

Mont. Code Ann. § 71-3-562, provides: “[a]ll actions under this part must be commenced within 2 years from the date of the filing of the lien.”

This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.