

Attachment of special assessment liens

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Subject:
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TAXATION--WHEN SPECIAL ASSESSMENT LIEN ATTACHES

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

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QUESTION:

When does a special assessment lien attach to real property subject to said lien pursuant to Ch. 170, F. S.?

SUMMARY:

A special assessment lien attaches to real property subject to said lien at the time the governing body of the municipality equalizes and approves the special assessment by resolution or ordinance, pursuant to s. 170.08, F. S., even if the improvements have not been completed.

Your question is answered by the following discussion.

Section 170.08, F. S., provides in pertinent part:

"Equalizing board to hear complaints and adjust assessments; rebate of difference in cost and assessment.-- At the time and place named in the notice provided for in s. 170.07, the governing authority of the municipality shall meet as an equalizing board to hear and consider any and all complaints as to such special assessments, and shall adjust and equalize the said assessments on a basis of justice and right, and when so equalized and approved by resolution or ordinance of the governing authority, such assessments shall stand confirmed, and remain legal, valid and binding first liens, upon the property against which such assessments are made, until paid"

Pursuant to the above-quoted statute, the governing body of the municipality must convene, after proper notice is given to property owners whose real property is subject to special assessments in accord with s. 170.07, F. S., to consider complaints of said property owners and to adjust and equalize said assessments. Upon so equalizing and upon approval by resolution or ordinance of the governing body of the municipality, the assessments provided for in Ch. 170, F. S., stand confirmed as legal liens upon the property against which made.

At the time the governing body approves and confirms the special assessments in the manner specified in s. 170.08, F. S., said assessments become "legal, valid and binding first liens"

attaching to real property subject to said assessments. The assessment liens so attach and take priority from that date as first liens upon the property against which the assessments are made and are superior to existent mortgages and other private liens, regardless of priority of time, 29A Fla. Jur. *Special Assessments* s. 50, even if the improvements have not been completed. *Also* see *Gailey v. Robertson*, 123 So. 692 (Fla. 1929).

Although s. 170.08, F. S., requires the city clerk to record the assessments in a special "lien improvement book," recordation is directed toward preserving prima facie evidence of the validity of said liens rather than to the validity of the liens themselves. Therefore, special assessment liens attach to real property subject to said liens upon the equalization of the assessments and the approval thereof by resolution or ordinance of the governing body of the municipality.