



Mechanic's Liens

by Jeffrey G. Gilmore and Karen E. Harrison

When a contractor is not paid for work or materials, the primary legal remedy is, perhaps, the mechanic's lien. Basically, a mechanic's lien gives you a way to collect a debt from someone whose property you've improved.

This discussion will focus on fundamental concepts of most mechanic's lien statutes. Potential claimants, however, should speak to a lawyer to make sure they comply with local requirements, which vary from state to state.

There are generally three classifications of lien claimants: 1) principal contractor; 2) subcontractors; and 3) laborers, lower-tier subcontractors, or suppliers. In many states, including Connecticut, Maine, and Massachusetts, the claims of subcontractors and suppliers cannot exceed the amount owed to the general contractor by the owner. In New Hampshire, Rhode Island, and Vermont, however, subcontractors

claimant must observe the dates prescribed for seeking enforcement of the lien. In most states, mechanic's liens are not "self-enforcing," so an action must be brought for sale of the property.

Once the lien is established and enforcement proceedings begin, the court will determine the priority among other lien holders. Most jurisdictions, however, give mechanic's liens priority over other claims placed on the property after construction began.

In some situations, the mechanic's lien may not be available—for example, on property owned by federal, state, or local governments. Federal projects are regulated by the Miller Act, enacted by Congress in 1935. Most states have similar statutes that require prime contractors for government construction projects to furnish a performance-and-payment bond executed by a surety company. Instead of lien rights, subcontractors

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and suppliers can assert a lien against the owner's property for the entire amount of the claim regardless of the status of payments from the owner to the prime contractor.

Anyone who chooses this avenue must examine the relevant lien statute carefully to determine: time for filing; place of filing; notice requirements; filing fees; contents of notice of lien; extent of the lien; enforcement requirements; and priority of the lien.

The most common problem with lien claims involves the timeliness of notice and filing. You must carefully consult the statute to figure out deadlines. Also, claimants may lose their right if they try to rely on punch-list work for computing deadlines. Many states consider the time of completing "contract" work as the operative date.

Since a lien claim must identify the owner, you must be certain of the owner of record by reviewing land records. Many potential lien claimants think they are dealing with the owner, only to learn that their contact is an agent, or that the ownership of the property has changed prior to filing the lien.

The land records must be consulted, also, to precisely describe the property. Additional problems can arise when work or materials have been furnished for multiple lots or multiple condominium units. Some jurisdictions allow "blanket" liens, but many statutes require lien claimants to apportion their claim among the lots or units.

Assuming the lien has been properly filed and includes all the information called for by statute, a

and suppliers can sue on the bond if they are not paid.

A contractor's lien rights may be further restricted if they are waived in the prime contract (or in other agreements to perform work or furnish materials). If a prime contractor agrees to waive its right to assert a mechanic's lien, it can never assert those rights. Similarly, subcontractors and suppliers cannot claim a lien if they waive those rights by contract. However, many states, including Maine, will not deprive subcontractors, laborers, and suppliers of their lien rights if the claimants were *unaware* that the prime contract waived the rights.

Although the mechanic's lien provides a secure means to collect an unpaid debt, selecting this remedy does not shut out other legal remedies, such as a lawsuit on the contract. Unlike a common-law collection action, the lien has the advantage of providing a recovery against *property*, even if the owner is insolvent.

Contractors and suppliers must systematically keep track of payments on individual projects. Their collection procedures should abide by statutory requirement and also consider whether other remedies, such as a payment bond, exist. In any event, don't ignore the many technical requirements for perfecting lien rights. Small errors can be costly.

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