



Liening on a Customer

by Quenda Behler Story

When you work on a house or a commercial building, your labor and materials enhance the value of that building. But if you have a problem getting paid for your work, you don't have the same kind of remedy you would have if you were, say, selling used cars: You can't repossess your labor and materials.

All is not lost, however. Most states have mechanics lien or construction lien laws that allow you symbolically to recover your costs — in effect, to “repossess” the value of your materials and labor. The requirements are strict but clear and there is no reason you cannot file a mechanics lien yourself. Since requirements vary from state to state, it's

important that you find out what the procedure is in your state.

Preparing a Lien

A mechanics lien is a legal document that describes the work that was done on a building and specifies how much money is still owed for that work. The document itself is filed at the place where mortgages and deeds are filed — in many states, that's the registrar of deeds. The lien records the value you have added to a building onto the title of that building. This means that you now have a security interest similar to a mortgage and a right to force the sale of the property to satisfy the unpaid debt.

You can't, however, improve your underlying rights with a lien. If your work didn't match the specs in the contract, for example, the owner of the property can raise that fact as a defense to your claim.

Follow directions. To make a mechanics lien stick, you must follow the procedure in your state law exactly. The details of that procedure vary from state to state, so call your registrar of deeds to find out how to proceed. Since the requirements include strict time limits, investigate the requirements *before* you find yourself in a situation that calls for a lien.

Many states also require notice to the property owner of your *intent* to file a lien before you actually do so. Some states require you to give a copy to the agency with whom the actual lien will be filed as proof that you gave the owner notice.

Time limits. There is only a limited window of time in which to file a lien — usually less than 60 days. Different states have different requirements to trigger the clock, usually either completion of the work that you contracted to do or a demand for payment. You absolutely must complete your paperwork and get your lien filed within the specified time frame. Be sure to call and ask about the time limits and triggers in your state — if you don't meet the time limits, your lien is dead in the water.

In some states, the property owner is entitled to ask for an itemized list of what is owed and what has been already paid. If you don't provide that list, your lien will fail. The itemized list should include a breakdown from all of your invoices, time cards, and material receipts, as well as a record of statements presented and amounts paid, with the dates of each transaction.

Waiver of lien. There are several ways a property owner can avoid having a lien placed on their property. The simplest is to get the general contractor and all of the subcontractors to agree to waive their rights to a lien. Anyone who is entitled to a mechanics lien is also entitled to agree not to use it.

Sample Pre-Lien Notice

To: (OWNER)
(ADDRESS)

Notice is hereby given that the undersigned, (both your personal and company name), intends to claim a mechanics lien for (total contract amount) on real property owned by you and located (address of site where work was performed), which property is described as follows: (insert legal description).

This lien is claimed to secure payment of amount due for (specific description of the work) performed or furnished by the undersigned within the last (number) days, pursuant to an oral or written contract with (identify party with whom you contracted).

After deducting credits and offsets, there is still unpaid and owing to the undersigned (dollar amount).

(your signature)

(your title)

State of _____
County of _____

(your name), being first duly sworn, states that s/he has read the foregoing notice of lien and knows its contents, and that the statements contained in the foregoing notice are true to his/her personal knowledge.

Date _____ (your signature)

The need to file a pre-lien notice, as well as the specific language contained in the notice, varies from state to state. Ask the appropriate state agency about your state's requirements. The last part of this sample form is a verification; don't sign it until you're in the presence of a notary.

Follow Through

Once you have filed your lien, you can hire an attorney to foreclose on the property or you can sell your security interest, — to a broker, for exam-

Sample Claim of Lien

Notice of a claim of lien is hereby given by *(your name and company name)*, as follows:

1. Lien claimant is licensed under the laws of *(state)* as a general contractor.
2. On *(date)*, lien claimant entered into a contract with *(property owner's name)* to *(specific description of the work)* on property described below. A copy of the contract is attached and made a part of this notice.
3. The property for which this labor was performed and materials supplied, and to which this lien will attach, is described as follows: *(insert legal description)*. The owner of the property is *(property owner's name)*.
4. Performance of labor and delivery of materials under the contract was commenced on *(date)*, 19___. All work under the contract was completed on *(date)*, 19___, and only *(number)* days have elapsed since completion. **[Note: If the contract was not completed, explain why here.]**
5. In the course of performing the contract, the lien claimant furnished labor and materials as follows:
Date _____ Description _____ Price or value _____

[Note: This must be a detailed list. If you omit an item from this list, you are risking not being able to claim that item as part of your lien. The total amount on this list may differ from contract amount, if for example, you didn't finish the job because you weren't fully paid.]

6. All the materials listed above were delivered to *(address of the building site)* and were used in the performance of the contract.
7. The agreed price and the reasonable value of services rendered by the lien claimant is *(dollar amount)*. A payment was due on *(date)*, 19___, but has not been received by the lien claimant despite repeated demand. **[Note: If partial payment has been received, substitute the following: "but only *(dollar amount)* has been received despite repeated demand."]**

Date _____ *(your signature)*
_____ *(your title)*

State of _____
County of _____

(your name), being first duly sworn, states that s/he has read the foregoing notice of lien and knows its contents, and that the statements contained in the foregoing notice are true to his/her personal knowledge.

A formal lien like this one should contain a detailed list of all materials, labor, and subcontracts for which you want to recover costs; full documentation should be attached. Once a lien has been filed, you can foreclose on the property, sell your security interest, wait for the debt to be discharged when the owner sells the property, or negotiate a settlement.

ple. (In the latter case, however, you will probably not receive full value.) Or you can wait for the owner to sell the property, because when property changes hands the financing institution usually requires that existing liens be paid off.

Often, however, the act of filing a mechanics lien prompts the property owner to contact you to find out what can be done to get you to discharge that lien. The simple answer is "Pay me," but you can also negotiate the amount. If you have the records to

back up your claim, a mechanics lien is a very powerful negotiating tool — you can actually force the sale of the property to satisfy your lien. But foreclosure is a complicated, time-consuming, and expensive legal procedure. If you decide to take this route, this is a good time to call your lawyer.

Once you are paid, you must file a discharge of lien at the same place where you filed the original lien. Otherwise, the owner may have grounds for a lawsuit against you for "clouding" title to the property.

Sample lien forms. The two sample forms shown here (at left and on the previous) contain language that should work in most states. Again, you need to find out what your state requires.

The first sample form is a pre-lien notice, which alerts the property owner that you are about to file a lien (not all states require this notice); the second is a claim of lien. If you are unsure about how to fill in the blank lines, ask the state or county office that handles liens for help. One source of confusion, for instance, is that the two "amounts" asked for in each notice may not have to agree. The first is usually the total value of the contract; the second is the amount still owing. The description of the work must also be much more detailed in the claim of lien than in the pre-lien notice, and will probably require full documentation of all transactions, just as if you were preparing a bill.

Finally, almost all states require the papers to be sworn and verified. In other words, you must take the documents claiming the lien to a notary and sign the notice and the verification portion of the document in front of the notary. (The verification portion appears at the bottom of each sample form.)

A lien is a powerful tool for contractors and can be executed with almost no help from an attorney. I recommend seeking advice the first time out, and thereafter inquiring about changes to the requirements. ■

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