

Ins and Outs of Mechanic's Liens

by Scott Wolfe

A few years ago I wrote a blog post titled “Filing a Lien Is a Discipline, not a Knee Jerk Reaction.” That title expresses an important truth about making a successful mechanic's lien claim — you need to do more than just shoot off an affidavit after you're already owed money.

Although specific requirements vary, every state has mechanic's lien statutes, which provide contractors, subcontractors, and other professionals with the means to force the sale of the property where materials or labor were furnished, in order to secure payment. All contractors should employ a lien policy so that complying with notice requirements and lien deadlines becomes a habit, even on jobs where trouble seems unlikely. I've broken the process down into three steps: preservation, perfection, and enforcement.

Preservation

A lot of contractors don't think about liens until they need to collect money owed to them for work they've done. That's too late. To qualify for lien protection, claimants must take certain actions to preserve their rights before any accounts are overdue, and indeed, before anyone is even owed money.

Preserving mechanic's lien rights requires that the property owner be notified that you may lien the property if you are not paid within the contract terms. If you don't notify the customer in writing at the start, you'll likely forfeit the right to lien the property should things go bad later on.

Often contractors don't want to bring liens into the discussion with customers for fear of souring a relationship right at the beginning. But notification is usually merely a precaution because if the customer pays you on schedule, you'll never actually have to act on the lien. Explaining this to customers at the contract stage should allay any concerns they may have, particularly if you tell them it's standard procedure.

States referred to as “notice states” typically require that all parties who have no contractual privity (a legal term meaning that one is a party to a contract) with the property owner send him or her a preliminary notice within a specific number of days after first furnishing labor or materials. Examples of such third parties include suppliers, like lumberyards, and subcontractors, like carpenters or electricians. The notice tells the owner what the third party will

provide to the project and what the approximate cost will be. In most cases, it also informs the owner that the third party can place a lien on the property if the prime contractor fails to pay the third party — even if the property owner has paid the prime contractor.

These preliminary notices are usually required within 10 to 45 days from the day that labor or materials are first furnished, and must contain certain information, which varies from state to state. Typically it must include the name, address, and telephone number of the third-party company; the identity of the party who hired the third party; a description of labor, services, and materials furnished to the job site; the job site's full municipal address; and the identity of the prime contractor. The notice must be sent by a certain method, usually certified mail with return receipt requested.

Failing to meet all of a state's requirements will forfeit lien rights, with limited exceptions.

While most states' notice requirements focus on third parties that do not contract with the owner, some states require notices from only the parties that do contract with the owner. For example, Louisiana requires general contractors to file a *Notice of Contract* before commencing work, to qualify for lien rights. On certain residential and commercial projects, Washington requires the delivery of a *Model Disclosure Statement*, which identifies the contractor and provides generic consumer warnings. On residential projects in Idaho, Iowa, Louisiana, and Oregon, a *Notice of Lien Rights* must be provided to the owner. Utah requires general contractors to file a *Notice of Commencement* at the start of work, and other states may have similar requirements. Failure to send these notices will forfeit your lien rights.

Most states require some notice. There are a few exceptions to this, notably New York.

Perfection

Perfection requirements come into play when the contractor, supplier, or professional has performed the work and is now due payment.

If lien rights were preserved, a contractor, supplier, or professional can “perfect” a lien claim by filing with the county recorder or clerk's office. Depending on the state, the filing

can go by a number of names: *Notice of Claim*, *Claim of Lien*, *Construction Lien Claim*, *Mechanic's Lien Claim*, *Statement of Claim and Privilege*, and the like. They're all the same. These documents outline the work you performed, where you worked and for whom, and the amount owed to you.

When you file a mechanic's lien claim, it's important to be very careful. Since these claims encumber real property, courts typically require strict compliance with the lien statutes, which means you'd better have all the required information in your claim. There are lots of traps for the inexperienced, with the most common mistakes being a failure to identify the property with the legal property description (in many states, this means the lot and block number, as well as the municipality wherein the property lies) and not including all of the statutorily required data.

Properly preparing and recording your mechanic's lien claim and serving a copy of the same on the property owner and all other required parties within the statutory required time frame will act to perfect your mechanic's lien rights. The lien claim will encumber the property until your deadline to enforce the lien claim rolls around.

Enforcement

The third and final step in the life of a mechanic's lien is enforcement. One common misconception about liens is that they encumber the property until the debt is paid. That's not true.

After a mechanic's lien claim is perfected by recording, it remains enforceable only for a specific period of time. Therefore, if filing the mechanic's lien alone doesn't produce payment, you will be required to file a lawsuit to foreclose upon the property, or "enforce" the claim.

The deadlines for this foreclosure action vary from state to state. California, for example, is on the short end, requiring a foreclosure lawsuit within 90 days from when the mechanic's lien is filed. Ohio is on the long end, giving lien claimants six years from filing to enforce the lien. The average is probably between eight and twelve months.

While the timing is different, the general requirement is the same: After a certain period of time, you're required to file a lawsuit to foreclose on the lien property. Therein, you'll need to prove your case and demonstrate you are owed the money you claim; if you win, the court will order the property sold to pay the debt. ❖

Scott Wolfe is an attorney (wolfelaw.com) and the founder of Zlien (zlien.com), a nationwide mechanic's lien filing service. He blogs at constructionlienblog.com and at constructionlawva.com, from which this piece was adapted.