

Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

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Mechanics' Liens: A Primer

Most contractors and subcontractors know that if they are unpaid on a project, then, a mechanics' lien is a useful option to pursue collection. But most do not know, exactly, how the lien and litigation process work.

1. How does a lien work? A mechanics' lien acts as a lien on the real estate where the work was performed. Similar to a judgment lien, or a mortgage, it creates a "cloud" on the real estate title. Most owners/lenders desire the lien to be resolved because, among other reasons, the real estate may have difficulty being refinanced or conveyed if the lien is not resolved.

2. Who can lien? Generally, laborers and suppliers who furnished work/materials to the project can lien the real estate that was improved by the work. Know that mechanics' lien rights are created by state statute. Thus, the specific persons who have lien rights (and the process) can be different in each state.

3. Are there preconditions to filing a lien? Often there are preconditions and notices prior to filing a lien. Again, each state has the right to create its own procedure. Most frequently, subcontractors and suppliers must give advance notice to the owner prior to filing the lien. The deadlines for satisfying preconditions are strict and must be followed.

4. What deadlines govern? Each state has its own procedures and deadlines. Common deadlines include (a) notice of furnishing labor/materials at the commencement of your work, such as the Pennsylvania Construction Notices Directory; (b) notice at the end of your work; (c) advance notice prior to filing the lien; (d) deadline for the lien filing; and (e) deadline for prosecuting the lien to a judgment. Prior to signing a contract, all contractors/subcontractors should confirm whether any initial deadlines require notice filings at the beginning of the project and any future deadlines. **Generally, lien rights must be noticed or filed within a few months of the last date of work. Know that bond deadlines are often different. A good rule of thumb: As soon as the invoice is 40 days unpaid, you should consult your attorney to confirm deadlines and next actions for pursuing bond or lien claims.** The deadlines are strict and additional buffer time may be necessary to determine the exact identity of the real estate owner or the bonding company.

5. Lien claims are simple, right? Sometimes they are; but not always. Lien claims can have irregular litigation procedures, such as the need for multiple filings (e.g. a filing for the lien claim; a separate filing of the complaint to enforce it; and a separate filing for the breach of contract claim). Also, there may be unique deadlines for service of process. Finally, lien claims can become absorbed into a comprehensive construction project dispute that may involve other trades or events that were outside your scope of work.

6. Can lien rights be waived in advance? Yes, depending on the state. Most states only allow partial lien waivers as the payments are received for the work. Know that with each partial lien waiver you should be careful to clarify whether any other amounts (including extras, changes, etc.) are owed and preserved. Some states, such as Pennsylvania, allow for lien rights to be waived in advance, prior to the work; however, several processes need to be followed and a payment bond is often (but not always) required on the project for a valid waiver.

When payment is owed on a project, mechanics' liens are an excellent tool for pursuing recovery. Properly noticing and filing mechanics' liens can be complicated, however, and attorney advice should be sought in each instance.

The Numbers:

3.7%

- The U.S. unemployment rate. (seasonally adjusted).
- Construction employment added 23,000 in September 2018.
- Construction employment has added 315,000 jobs over the past 12 months.

Source(s): Bureau of Labor Statistics, The Employment Situation—September 2018 (Oct. 5, 2018).



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