

Understanding Lien Law

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1. What is a Mechanic's Lien?

Statutes of the various states set forth the scope and requirements for perfecting a mechanic's lien. A lien is effectively a right arising out of statutes in favor of contractors, materialmen, subcontractors and others to secure payment for labor, materials or services provided to a construction project. The mechanic's lien must be in writing and recorded in the local recorder's office.

The principal underlying a mechanic's lien is that those that have their land improved should pay for the labor, services and materials that are used to improve that land.

2. Who is entitled to a Mechanic's Lien?

Normally, there is a threshold amount that is determined by a legislature for any person who provides work, materials or services of a value which are used or to be used in the construction, alteration or repair of an improvement to property often times referred to as a "work of improvement." The statutes will identify specifically who is entitled to a mechanic's lien and may include the following:

- Artisans • Builders • Contractors • Laborers • Lessors or renters of equipment • Materialmen • Miners • Subcontractors • Architects • Engineers • Land Surveyors • Geologists • Any claimant who provides work, material or equipment

3. Who is a proper Mechanic's Lien claimant?

A proper mechanic's lien claimant is a person who provides labor, services, equipment or materials for a work of improvement. Normally, the labor, services, equipment or materials are provided to the property. Many states also recognize design services as a proper subject for a mechanic's lien. Materials that are intended for use on a construction project may also be subject to a mechanic's lien. Normally, it is intended that the work of improvement be a permanent work and not personal property that is improved.

4. What Property is Subject to a Mechanic's Lien?

Normally, mechanic's liens attach to the property where improvements are made. The property includes the raw land, improvements to the land and sometimes a convenient space around the improvements.

5. What amount is a lien claimant entitled to receive?

Normally, a lien claimant is entitled to receive the unpaid balance of the contract. There are alternative measures of the amount that a lien claimant may receive, such as the fair market value of the labor, services and materials if the contract amount is not established.

6. What priority does a Mechanic's Lien have against the property?

Under most states statutory schemes, the mechanic's lien time commences when the first visible work of improvement appears on the property that is observable to a reasonable person. Whether the mechanic's lien claimant's work (services, materials or labor) start before or after the visible work of improvement commences, the priority of the mechanic's lien claimant normally relates back to the first visible work of improvement. The importance of the visibility becomes a lynch pin of the priority determination.

As a mechanic's lien may be considered similar to a forced deed of trust, the priority, relating back to the first visible work of improvement, may precede a lender's deed of trust or mortgage.

7. Selected procedural aspects of a Mechanic's Lien.

- Most states require that a mechanic's lien claimant send a pre-lien notice to the owner and copy the contractor. Often there is an exception for the requirement of the notice if either the owner has actual knowledge of the work performed by claimant or the mechanic's lien claimant has a contract directly with the owner. The timing of the pre-lien notice varies from state to state, but most states require that the notice be sent early enough to permit the owner to obtain appropriate releases when making progress payments.
- A mechanic's lien claimant must make its claim (via Mechanic's Lien) in writing and normally records the document in the County or burrough in which the work is performed. A copy of that mechanic's lien claimant must normally be served on the owner within a time frame established by the statutes.
- There are different requirements for contents of the mechanic's lien. The most common requirements are that the mechanic's lien must state with whom the mechanic's lien claimant contracted, the total amount being claimed and identify the original contract amount and any additional amounts being charged, as well as payments received. The lien claim must also identify the property owner and the property description. Other requirements are identified in the particular state statute in question.
- The lien claim must be recorded within a particular time frame after the completion of the work. The identification of the completion of the work varies from state to state and may include the completion of the entire work of improvement or the completion of the work of that particular mechanic's lien claimant. A typical time frame to record the mechanic's lien claim is sixty -

ninety days after the property is occupied by the owner or a final certificate of occupancy is issued by the governing authority inspecting the property.

8. The duration of a Mechanic's Lien varies from state to state.

Mechanic's liens are not effective against the property forever. Most states provide a period of time, typically three months to one year within which a proper lawsuit must be commenced to foreclose on the mechanic's lien. Following the statutory requirements of the particular state, when a foreclosure action is commenced, the lien claim usually continues until the completion of that litigation.

9. Licensing.

Many states require that a contractor or design professional must be licensed in order to take advantage of the statutory mechanic's lien. Those states with such a requirement normally have a statutory prohibition against permitting the contractor or design professional from enforcing a mechanic's lien, unless such license has been issued by the appropriate state agency.

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OWNER

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CONTRACTOR**

SUBCONTRACTOR

MATERIAL SUPPLIER