

MECHANIC'S LIENS

(Reprinted with permission from NACM's *Manual of Credit and Commercial Laws*, 102nd Edition)

INTRODUCTION

Mechanic's liens are governed by specific statutory provisions in each of the 50 states and the District of Columbia to provide additional protection of payment for workers and suppliers who perform services to improve real or personal property. These laws vary from state to state and are often complex and technical. Mechanic's lien laws require strict compliance.

Anyone who supplies materials or services for the improvement of property needs to learn the basic rights afforded under applicable mechanic's lien law in each state. These laws can help a creditor obtain payment for materials and services by providing a lien on the improved property. These statutes are intended to pay contractors and material suppliers who contribute to the value of the owner's property by furnishing work or materials to a construction project where such materialmen would otherwise be left without recourse.

While the basic concept of the mechanic's lien is universal, every state has created a different statutory scheme to govern who is entitled to a lien, when and how a lien is to be filed or recorded, what information must be provided and what notices must be given and how to protect the lien rights afforded.

Common to all lien statutes is the requirement that a supplier seeking the benefits of the lien law must comply with the strict provisions of the law. This chapter is designed to provide a short synopsis of each state's requirements and is not intended to substitute for the advice and services of qualified legal counsel.

PRIVITY OF CONTRACT

"Privity of contract" exists between the parties to a contract. In the case of a mechanic's lien, the supplier of goods or services may not be in privity with the owner, but the law allows the materialman to impose a lien on the owner's property that has been improved by the goods or services.

The rights granted under mechanic's lien statutes are an exception to the legal principle of privity of contract. The parties to a contract are said to be in privity. The property owner is in privity with the general contractor; the general is in privity with those subcontractors (and only those) with whom the general has dealt directly, and so on down the chain of subcontractors and suppliers.

If there is a dispute between parties to one of these contracts, either one may bring suit to enforce the rights granted under the contract. However, there is no common law right for an unpaid subcontractor or supplier to bring suit directly against the owner absent a direct contractual relationship with the owner. Where the owner, general contractor, or even a subcontractor fails or refuses to pay someone further down the chain for the work that has been done, a subcontractor or supplier's sole right or remedy may be against the general contractor or another subcontractor who has also not been paid.

Mechanic's lien statutes eliminate the need for privity for a subcontractor or supplier to act directly against the owner's property. Typically, these statutes do not award monetary damages (a money judgment directly against the owner); instead they create rights *in rem* against the owner's property. While it does not assure payment, the lien does allow the subcontractors and suppliers to look to the specific property of the owner in order to collect for work done to improve the owner's property.

Virtually all of the states permit a payment bond to be substituted for the right to file for a mechanic's lien. If a payment bond is posted by the owner or general contractor, a subcontractor's or supplier's rights extend to the bond, and not to the owner or the general contractor, as another exception to privity of contract, and the remedy is strictly limited to collection against the available proceeds on a bond.

HOW MECHANIC'S LIENS WORK

The basic questions to determine whether a lien is proper are who is entitled to assert a lien, how it is filed or recorded and what notice is required. These basic issues are addressed more fully in the state-by-state compilation.

Those Entitled to Assert Liens

Contractors, subcontractors, material suppliers, equipment renters, workers, architects, engineers, surveyors and others who contribute services or materials to a construction project are typically entitled to enforce mechanic's lien claims for the value of their work. The ability to file a lien, however, is a right as defined by an individual state. There are generally three criteria that must be met in order to determine if rights exist. First, a claimant must be within three tiers of the owner of the project. (Texas is example of an exception to the three tier rule.) Second, if supplying a tangible product, it must be affixed or become a permanent part of the improvement. Third, no suppliers to suppliers. If the claimant is providing a tangible good, either the claimant or its customer must be installing the good. Again, these are general rules of thumb, and exceptions do apply.

Mechanic Liens 50 State Survey

Richard Bailey



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