

## MECHANIC'S LIENS

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### 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

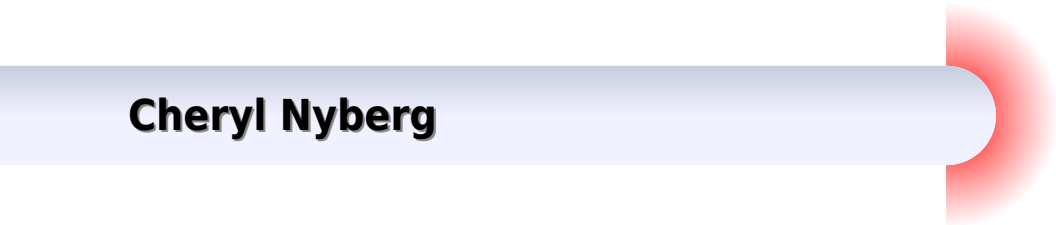
The basic questions to determine whether a lien is proper are who is entitled to assert a lien, how it is filed or recorded and what notice is required. These basic issues are addressed more fully in the state-by-state compilation.

#### 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

**Cheryl Nyberg**



## **Mechanic Liens 50 State Survey:**

**Manual of Credit and Commercial Laws** -, NACM's Manual of Credit and Commercial Laws is the number one source of legal information for trade credit professionals Stay ahead of the quickly changing legal environment and order your volumes now Pacific States Reports ,1906 Colorado Revised Statutes, 1973 Colorado,1974 *Fifty State Construction Lien and Bond Law* Robert Frank Cushman,Stephen D. Butler,1995-12-01 Many experienced construction lien and bond attorneys have learned the hard way that a failure to comply with a seemingly minor requirement of a particular statute may threaten to void contractor's or supplier's rights under that statute *Fifty State Construction Lien and Bond Law* Second Edition is the first and only in depth state by state guide To The law and business of construction liens and bonds This valuable reference covers not only the legal issues but also essential instructions and unique procedures for proper filing and follow through steps *Fifty State Construction Lien and Bond Law* Second Edition guides you through similar and contrasting requirements both between public and private projects within the same state and among the different states You'll get complete coverage of Bid bonds Payment bonds Performance bonds Mechanics liens Forms for preserving both lien and bond rights in each of the 50 states This indispensable three volume reference is written by leading construction lien and bond experts from each of the fifty states as well as District of Columbia Puerto Rico Guam and American Samoa it provides authoritative coverage of mechanics liens payment bonds performance bonds and bid bonds along with comprehensive coverage of the statutes and analysis of the key cases in each state There's even a chapter on federal payment bond law You also get an entire volume with the necessary forms for preserving liens and related payment remedies in all fifty states

Reports of Cases Determined in the Supreme Court of the State of California California. Supreme Court,1906 *Pacific States Reports: v. 1-63. California* ,1906 **Mechanic Lien Toolkit For Material Suppliers** Scott Wolfe Jr.,2012-11-30 Building material suppliers have unique credit challenges While these challenges can be mitigated with mechanics lien rights those rights are held hostage to a fragmented compliance scheme across the country More than any other party on a construction project those furnishing supplies have complex notice requirements and proof challenges to take advantage of lien rights This book focuses on the challenges with mechanics lien laws unique to the material supplier It takes a big picture nationwide look at the laws and educates credit managers for building material suppliers on overall themes that will help point credit policies and procedures in the best direction **The American State Reports** Abraham Clark Freeman,1898

*A Practitioner's Guide to Construction Law* John G. Cameron,2000 *Wilson's Mining Laws, United States, Arizona, California, Nevada and Utah* Calvert Wilson,1909 *A Treatise on the Law of Mechanics' Liens and Building Contracts* James Manford Kerr,1908 **The Revised Statutes of the State of Illinois, 1909** Illinois,1910 Acts and Joint Resolutions Passed at the ... General Assembly of the State of Iowa Iowa,1874 Appropriations general laws special acts joint resolutions and rules passed by the General Assembly *Subject Compilations of State Laws, 2001-2002* Cheryl

Nyberg,2003      *Confirmation Hearings on Federal Appointments* United States. Congress. Senate. Committee on the  
 Judiciary,2011      The American Contractor ,1924      **The Codes of California ...** California,1922      **Mills Colorado**  
**Digest** Jared Warner Mills,1901      **The United States Catalog** Mary Burnham,Carol Hurd,1928      **United States Code**  
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 of America The Code was first published in 1926 and a new edition of the code has been published every six years since 1934  
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 First Session enacted between January 2 2013 the date it convened and January 15 2013 By statutory authority this edition  
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 discrepancy In 1947 Congress began enacting individual titles of the Code into positive law When a title is enacted into  
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 titles in the Code have been so enacted These are identified in the table of titles near the beginning of each volume The Law  
 Revision Counsel of the House of Representatives continues to prepare legislation pursuant to 2 U S C 285b to enact the  
 remainder of the Code on a title by title basis into positive law The 2012 edition of the Code was prepared and published  
 under the supervision of Ralph V Seep Law Revision Counsel Grateful acknowledgment is made of the contributions by all  
 who helped in this work particularly the staffs of the Office of the Law Revision Counsel and the Government Printing Office  
 Preface

The book delves into Mechanic Liens 50 State Survey. Mechanic Liens 50 State Survey is a vital topic that needs to be grasped by everyone, ranging from students and scholars to the general public. This book will furnish comprehensive and in-depth insights into Mechanic Liens 50 State Survey, encompassing both the fundamentals and more intricate discussions.

1. This book is structured into several chapters, namely:
    - Chapter 1: Introduction to Mechanic Liens 50 State Survey
    - Chapter 2: Essential Elements of Mechanic Liens 50 State Survey
    - Chapter 3: Mechanic Liens 50 State Survey in Everyday Life
    - Chapter 4: Mechanic Liens 50 State Survey in Specific Contexts
    - Chapter 5: Conclusion
  2. In chapter 1, the author will provide an overview of Mechanic Liens 50 State Survey. This chapter will explore what Mechanic Liens 50 State Survey is, why Mechanic Liens 50 State Survey is vital, and how to effectively learn about Mechanic Liens 50 State Survey.
  3. In chapter 2, the author will delve into the foundational concepts of Mechanic Liens 50 State Survey. This chapter will elucidate the essential principles that need to be understood to grasp Mechanic Liens 50 State Survey in its entirety.
  4. In chapter 3, this book will examine the practical applications of Mechanic Liens 50 State Survey in daily life. The third chapter will showcase real-world examples of how Mechanic Liens 50 State Survey can be effectively utilized in everyday scenarios.
  5. In chapter 4, this book will scrutinize the relevance of Mechanic Liens 50 State Survey in specific contexts. The fourth chapter will explore how Mechanic Liens 50 State Survey is applied in specialized fields, such as education, business, and technology.
  6. In chapter 5, the author will draw a conclusion about Mechanic Liens 50 State Survey. This chapter will summarize the key points that have been discussed throughout the book.
- This book is crafted in an easy-to-understand language and is complemented by engaging illustrations. It is highly recommended for anyone seeking to gain a comprehensive understanding of Mechanic Liens 50 State Survey.

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