

## 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

**O García**



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**Pacific States Reports** ,1906      **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      **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      **The American State Reports** Abraham Clark Freeman,1898

**Pacific States Reports: v. 1-63. California** ,1906      *Reports of Cases Determined in the Supreme Court of the State of California* California. Supreme Court,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      **A Treatise on the Law of Mechanics' Liens and Building Contracts** James Manford Kerr,1908      **Priority of Federal Tax Liens and Levies** United States. Congress. House. Committee on Ways and Means,1966 Considers H R 11256 and related H R 11290 to amend Internal Revenue Code of 1954 to redefine the rights and responsibilities of government and creditors of individuals when tax liens are levied Includes American Bar Association Final Report of the Committee on Federal Liens Feb 23 1959 p 75 213      *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      **The Cumulative Book Index** ,1913      *Subject Compilations of State Laws, 2001-2002* Cheryl Nyberg,2003      **A Practitioner's Guide to Construction Law** John G. Cameron,2000  
     **United States Code** ,1998      Mills Colorado Digest Jared Warner Mills,1901      **Colorado Revised Statutes, 1973**  
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