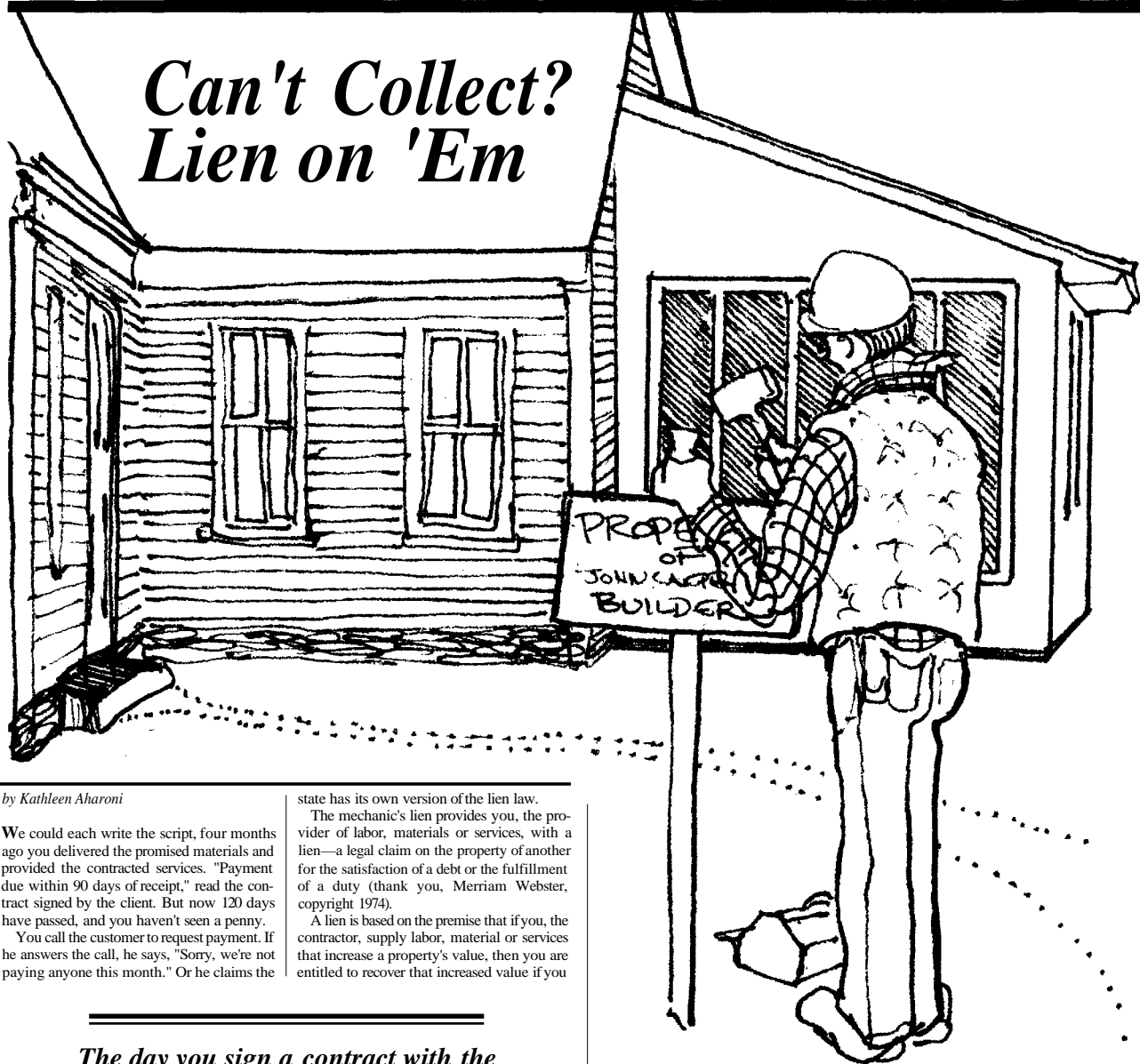


Can't Collect? Lien on 'Em



by Kathleen Aharoni

We could each write the script, four months ago you delivered the promised materials and provided the contracted services. "Payment due within 90 days of receipt," read the contract signed by the client. But now 120 days have passed, and you haven't seen a penny.

You call the customer to request payment. If he answers the call, he says, "Sorry, we're not paying anyone this month." Or he claims the

state has its own version of the lien law.

The mechanic's lien provides you, the provider of labor, materials or services, with a lien—a legal claim on the property of another for the satisfaction of a debt or the fulfillment of a duty (thank you, Merriam Webster, copyright 1974).

A lien is based on the premise that if you, the contractor, supply labor, material or services that increase a property's value, then you are entitled to recover that increased value if you

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work was not satisfactory.

Or, as you read your local paper and drink your coffee while waiting for the mail, you come across a small notice announcing that your customer has just filed for protection from creditors under Chapter 11 of the Bankruptcy Act.

You decide to get tough. So you phone your lawyer, who gives you an outrageous quote for fees and says, "But I can't promise you anything." Even if the courts rule in your favor, the funds you recover may not offset your legal fees.

Lien on Me

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What rights, you ask? There are two major payment protections—bonds and liens—that are the best ways to ensure payment if you file them correctly.

A bond is a legal document that guarantees payments for labor and materials used on public jobs. The federal government and most states have laws covering bonds.

Mechanic's liens are available for private projects. They are legal in all 50 states, but each

are not paid. It's like a mortgage: The lien must be satisfied before the property can be purchased. Thus, the building will sit idle unless somewhere down the line someone pays you.

Filing the Lien

The day you sign a contract is the day you have a right to a mechanic's lien. The filing procedure differs from state to state, but the basic steps are similar:

- To begin legal proceedings, you must file a mechanic's lien memorandum in the land-records office where the project is located. Generally, this is a short document listing your name, the amount owed, the property owner's name and a legal description of the property.

- You then will be asked to sign a statement swearing to the amount you are due. Don't try to seek compensation for damages above the initial amount due, or you may invalidate your lien.

- Finally, you will be required to pay a filing fee.

Once this procedure is completed, the clerk will put the lien in land records with deeds, mortgages and similar documents. Anyone looking at the property's legal status will find the lien as a charge against the property.

- If you are a sub or supplier and you file a

lien, you must notify the owner and general contractor.

Filing Suit

If you have filed for the lien, notified the involved parties and still not received payment, it's time to foreclose on your claim. This procedure involves a court suit and, unfortunately, legal fees.

Your foreclosure suit must state that your lien is valid and specify the amount of money you are owed. To win your case, you must prove that you are due this amount and that the lien was properly filed against the right owner, the right property and at the right time. If you're successful, you're entitled to a foreclosure.

Although in some jurisdictions an owner is liable only for the amount he is actually holding, in other jurisdictions an owner may lose in court to a double-jeopardy or double-liability ruling.

For example, an owner may discover that the general contractor, having been paid and craving for white sandy beaches, has headed for Tahiti, leaving his subs and suppliers in the land-records office filing liens. In this case, the owner must pay twice—once to the sunbathing general contractor, and again to the subs and suppliers.

Bum deal for the owner, you say? Well, the courts think so, too. They have granted owners safeguards against this double indemnity. These protections, however, can restrict your rights to collect payment.

Look Out for Loopholes

In some states, you may have to follow cer-

tain procedural requirements to file a valid claim.

Filing time limit: If you want to file a lien, you usually must do it within a certain number of days after fulfilling your part of the contract. In many states liens must be filed within 90 days, but check your own state's requirements before filing.

"We don't even look at accounts receivable until they are 90 days old!" you may exclaim. If this is the case, you might want to rework your billing procedure. An accounting system that allows 90 days to pass may cost you your right to file for a mechanic's lien.

Filing against the right property: This can be a bit tricky when a project has no street address. When filing against a subdivision or phased project, be sure you identify the specific lot or phase in which you supplied your product or service. Your lien may be invalid if this information is not completely accurate.

You also must be sure to name the right property owner in your claim, because land records usually are indexed according to the owner's name. Be wary of signs stating project owners; they may not be technically or entirely accurate.

If you have trouble discovering the owner or you want to double check the facts, try finding the information in the tax-assessment office. Often, if the assessor's staff is given the property location, they can give you the owner's name. Sometimes this information can be obtained over the phone.

Foreclosing within time limitations: In most states, you must foreclose on your lien within a year after it is filed. If you are even one day late, your lien will be void. This time limit

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varies from state to state, so be sure to check on it.

Catching the owners before they pay the bills: In many jurisdictions, you must file a lien before the owner pays even part of his or her bills if you are to receive total payment.

Suppose, for example, that six subcontractors file \$12,000 worth of liens against a mall project. If the owner has \$6,000 in outstanding payments, this is the only amount for which he or she is liable in some states. As a result, the subs will receive only a percentage of their claims.

Watch Your Language

To avoid wasting your time and effort filing a claim, make sure you do not sign a contract containing a clause similar to this:

It is agreed that no lien shall at any time be filed against the premises upon which the work is performed, or any part thereof, by the contractor and any of his subcontractors or other persons employed by or furnishing labor, services, equipment or materials to the contractor or any of the subcontractors for, in or about the performance of the work.

On the other hand, you may want to protect yourself by adding a clause similar to the one found in Article 5 of the "Standard Form Agreement Between Owner and Contractor" (American Institute of Architects Document A101).

This clause reads: "Payments due and unpaid under the contract document shall bear interest from the date payment is due at the legal rate of (entered below) or, in the absence thereof, at the legal rate prevailing at the place of the project."

Lest you are discouraged by the complicated procedures, pitfalls and possible legal costs involved in filing a lien, there is a ray of hope.

Usually, once a lien is filed, there is a settlement. And many times, just the threat of a lien is enough to get that check promptly into your hands. ●

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Looking for someone in your state who knows all the details concerning the filing of a lien? Call the Lien and Bond Claim Network 50 at 800-432-7799. In Illinois call 312-432-6900.