



# Mechanics' Liens: Making Them Stick

by Mimi M. Lines

A mechanic's lien — a lien permitted by statute which secures payment for work done or materials furnished in connection with a construction job — can be a very important tool for a contractor, subcontractor, or materials supplier attempting to collect payment. It will get the immediate attention of not only the property owner, but the owner's mortgage lender. But it must be executed and filed correctly to be effective.

Here's an example of how a mechanic's lien works: Harry Homebuilder is developing a residential subdivision. Frank's Foundations poured the foundation for the first home built. Harry has contracted to sell the home to Bob and Barbara Buyer. But Harry is having some cash flow problems, and has not paid any of his subcontractors. Harry's reputation for not paying bills is legend, and Frank is concerned.

Then one of the other subs on the site calls Frank and tells him that Harry has scheduled a closing with the Buyers in two weeks. To ensure payment, Frank files a mechanic's lien (more on "how to" later) on the property before the closing. The next day, he receives a call from Harry's lawyer, who tells him that he can pick up a check for his payment at the closing if he will then sign a release of lien and a mechanic's lien waiver. Frank agrees, shows up at the closing, signs the release, and gets his check. The mechanic's lien worked. It might work the same way for any other sub, or even for a contractor seeking payment from the owner.

## State Laws Differ

Mechanics' liens are creatures of statute, and each state has its own unique law. It's important to know the law in your state before you attempt to file a lien.

There are two basic types of mechanic's lien laws: the Pennsylvania system and the New York system.

Under the New York system, a subcontractor who files a lien

cannot recover more than the amount due from the owner to the contractor. This protects the property owner from being liable for more than he receives: if the owner has already paid the contractor in full, he or she will not be obligated to pay the claim of a subcontractor filing a lien. The sub must try to get the money from the contractor.

Under the Pennsylvania system, the amount of the lien and the subcontractor's recovery are not limited by the amount owed by the owner to the general contractor. This puts the owner more at risk, but ensures that the sub will have a fair chance to be paid.

## Who Can File a Lien?

This varies by state. Some states specify exactly what classes of subs and suppliers can file liens. Others simply state that contractors, subs, and material suppliers can file liens. In those states, judicial decisions may further define and clarify these categories.

## Consent of the Owner

In most states, a mechanic's lien may only be asserted by virtue of a valid contract with, or consent of, the property owner. This does not mean, however, that the plumbing subcontractor must have a separate contract with the owner. It merely means that he must be on the job pursuant to the direction or consent either of the owner, or of someone acting on the owner's behalf, such as the general contractor.

The issue of whether a contract or consent exists is generally a question of fact. In some states, the fact that an owner knowingly permits improvements to be made may be sufficient to permit a subcontractor's lien.

## How to File a Lien

Again, you must find out about the law in your own state before trying to file a lien. In some states, you must file a notice with the land records before work is started. This means you need to either file on every job as a matter

of course, or have good instincts for those jobs that might give you trouble. In other states, you must file a lien within a certain number of days after your work is completed. If that's the case, you may want to make sure your required payment period is shorter than the lien-filing period, so you'll have time to file if you don't get paid.

In either case, failure to comply with the proper procedures may invalidate your lien.

## The Effect of the Lien

If you file your papers successfully, you will have a lien on the property which can be foreclosed in the same manner as a mortgage lien — that is, a considerable piece of the house is yours, and you have the power to force sale of the property to get payment. In some states, the effective date of the lien dates back to the date the subcontractor began work. This means that you may have a lien that has priority over the developer's mortgage.

As a practical matter, only a small percentage of mechanics' liens are foreclosed. Generally, the property owner or the bank and the party claiming will enter negotiations to resolve the dispute and remove the lien.

## Get Some Good Advice

Mechanics' liens are very effective at bringing the parties to the table. The temptation to find a form and do it yourself may be great, but is often shortsighted. Each state has its own rules and procedures, sometimes with hidden pitfalls. Before you start littering the land records with invalid liens, seek out some good legal advice so you'll be sure to do things correctly. ■

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