

# Timing Is Critical When Filing a Lien

by Quenda Behler Story

**C**ontractors and subcontractors in most states have a powerful legal tool at their disposal. If they're not paid, they can file a lien on the real property where the work took place. That lien can serve as at least a partial guarantee that the contractor will be paid for work done on the property.

Generally, the requirements for filing a valid lien are similar to those in my home state of Michigan. Here in Michigan, you must file your Claim of Lien with the Registrar of Deeds within 90 days of the last day that you worked there or, if you supplied materials, the last day you supplied them.

Some states use 45 days, some 60, but the one thing that remains constant is that the limit is strict. There is no grace period if you miss the deadline. That deadline is the actual count of days, so you need to remember that sometimes 90 days is the same as three months, but not always. Sometimes three months is 91 days, and that's one day too late for a valid lien.

## When the Clock Starts

Okay, the number of days is the easy part. We all own calendars and we can all count to 90, but on what day do we start counting? The statute says the last day of work. But that last day might not be the day you think it is.

People with material liens seldom have a problem with this issue (unless they're storing the material for the contract, which affects time lines in some states) because suppliers know exactly what day that truck went out to the job site and unloaded. But when does the countdown begin for contractors or subcontractors?

Let's assume that you're the general contractor and, at long last, you're finished with your work on the Smith remodel. Well, almost. Everything in your scope-of-work clause is done except for the fireplace mantel. Your interior finish subcontractor hired a trim subcontractor who, in turn, ordered a custom-milled fireplace mantel that hasn't arrived yet. Everything else is done, and the customers have moved into the house. That mantel is the only outstanding item on the punch list.

So what is the date of your last day of work? It's the date the trim sub installs the mantel. That's because he's your subcontractor, and your last date is the day you *and* your subcontractors are finished with the job.

**Sub's last day.** Same job, but let's assume that you're the foundation subcontractor, and you finish your work long before the entire job is done. Is your last date of work the same as the general contractor's last date of work? No, it isn't. The general contractor's last date is when all of the work on the job site is finished, but the last date of any subcontractors is the day they finish with their part of the job, even if that day is long before the actual completion of the job. So the time limit for the foundation subcontractor's lien rights starts to expire before, for example, the drywall subcontractor's time limit starts to expire, and long before the general contractor's time limit starts to expire.

## What About Warranty Work?


Let's take this example a little further and assume that the Smith job is

entirely finished. About two months later, the homeowner walks into the kitchen, slams the door, and the ceiling fixture falls to the floor. What does returning to the job site to reinstall that fixture do to the definition of the contractor's last date of work?

**The answer is nothing.** Warranty work is not the same as work provided under the contract and will not extend the countdown. That's pretty clear, so just for fun, let's muddy this up a bit. Let's assume that during the final walk-through, with punch list in hand, the homeowner informs you that he watched the light fixture being installed and is convinced that it will never stay up there. If you reinstall it a week later, is this now warranty work or part of the original job? Most of the time, it's part of the original job and extends the date that you start counting down from.

## The Lesson

All of this means that along with all of the other things you have to keep track of, you need to track the last day of work on your job sites, and you need to mark the day your allowed time to file a lien expires in big red letters on your calendar. Above all, don't wait until the last minute to file. If you make a mistake filling out a form, you don't want to find out that your lien wasn't valid because the form wasn't accepted and it's too late to correct it and refile.

The specifics of various state lien laws vary, so consult with someone locally about the time line requirements for your local jurisdiction. Make sure that you and your key people understand this process and don't let time and opportunity slip by you. 

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