

A Short History of The Mechanic Lien

Since launching [my first law blog](#) in 2005, and this construction lien blog in 2007, I've talked a lot about mechanic lien laws. I've never addressed where these laws originated, and why our United States has some of the most unique lien and security laws in the world.

So I hit the books, reading cases construing mechanic lien laws from the 18th and 19th Century, and some treatises on the subject written in the 1800s. What I found, in short, is that the idea of the mechanic lien may have roots in the Roman Empire, that it was modernized and brought to the US by Thomas Jefferson, and that the reasoning and interest of these laws have changed drastically since introduction.

Where The Mechanic Lien Idea Comes From

A lot of folks attribute the invention of the modern Mechanic's Lien to American hero, [Thomas Jefferson](#).^[1] Such credit is not completely inaccurate. After all, the founding father did introduce the first Mechanic Lien legislation, and no such lien rights existed in England (where America's legal concepts are rooted).

It makes sense that England didn't have such laws. There, land ownership was an indicator of class status, and it would be an absurdity to provide a low-class builder any ownership rights in property simply because he contributed to its construction.^[2] But with land supply so abundant in America that it was given away, it's clear the circumstances there were quite different.

America's problem was not a shortage of land. It's problem was the shortage of materials and labor to improve the land.

As for the concept of the mechanic lien, it's not likely that Mr. Jefferson single-handedly dreamed up the idea.

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Instead, at the time Jefferson promoted the law, a lien-like privilege already existed in civil law countries like France, Belgium and Spain, with some even tracing its roots to the Roman Empire. And since Louisiana had passed control between the French and Spaniards, and had largely adopted the French Napoleonic Code, there was a similar privilege concept in that territory.[3]

It seems highly likely that the legislators working on the first U.S. Mechanic Lien laws had knowledge of, and referenced these civil law concepts.

This is not to say that the United States version was unoriginal. The contrary is true, as the American version of the lien gave builders a much more robust right into the land itself (versus just the improvement's value).

Why Colonial America Needed Lien Laws

The colonial period in America presented many challenges for developing land and building homes. Before independence, for example, the [Nonimportation Act](#) made supplies and materials of all sorts (even those organic to America) very expensive and difficult to obtain. Aside from this, the credit markets were in dismal condition, meaning that while the access to land was unprecedentedly simple, the finances to develop that land were very difficult to come by.

If the country was going to continue its expansion and develop all of its land, some solution was required. And that solution was created by Thomas Jefferson to get land development moving along in one specific and very important location: Washington D.C., the nation's new capital.

In 1791, he introduced the Mechanic Lien Act to the Maryland legislature (where DC was then located), and it was passed rather immediately. We do not have record of any significant opposition to the concept, and there likely was none considering how uniformly and quickly similar laws were adopted elsewhere in the United States.[4] After just one year of action, a similar law was passed in Pennsylvania, and in no time every state had its own lien law.

The Development of Lien Laws

The mechanic lien laws turned out to be an enormously important piece of legislation for the developing country, as without it, it's hard to conceive how the nation would have developed so rapidly and successfully. Assuring builders that they would have an ownership interest in the developed land itself gave them the security to move

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forward with projects, and gave owners the flexibility to do so without intervention and regulation by financing groups.

The success of these laws is evidenced by their quick adoption across the country, and the way the laws expanded in scope. While originally applicable to only states and towns, for example, the laws soon included the agricultural regions and then the entirety of the states.

As the mechanic lien laws were used, problems were exposed and the legislation was quickly refined. At first designed to simply protect builders contracting with the owner, protection for subcontractors and suppliers followed when builders fraudulently left those parties unpaid. Additionally, the original laws lacked complexity of any sort, allowing a builder to acquire the lien automatically and without notice, and to maintain it for seemingly forever. This was quickly made more complex by notice requirements and time limitations.[5] As anyone in today's construction industry certainly knows, the lien laws are no longer lacking in complexity.

Why Is It Called A "Mechanic" Lien?

As an aside, it is interesting to consider the term "mechanic lien" itself, as statutes across the United States almost uniformly refer to it as such (and the term does appear to be an American invention).

While it seems unnatural to us today, in the parlance of Jefferson's time the term "mechanic" had nothing to do with machinery. Of course, very little machinery even existed then. Instead, the term mechanic had been nestled in the English language for centuries and referred to folks who perform work with their hands...specifically, builders and tradespeople.

In fact, the association of the term with machinery did not exist until the invention of the automobile. This is a source of a small amount of misunderstanding today, as "mechanic lien" can refer to a lien placed by a builder against a construction project, or a lien placed by a mechanic against an automobile or airplane.[6]

Footnotes for this Blog Post:

[1] [A Practitioner's Guide to Construction Law](#), John G. Cameron, Jr., 2000, American Law Institute-American Bar Association Committee on Continuing Professional Education; see also [A Treatise on the Law of Mechanics' Liens](#)

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[Including The Procedure For Perfecting and Enforcing Such Liens, Together With Complete Forms](#), William M. Rockel, The Bobbs-Merrill Company, 1909.

[2] Cameron, Jr., supra, §16.02(a) Origin and Purpose

[3] [A Treatise on the Law of Mechanics' Liens on Real and Personal Property](#), Samuel L. Phillips, Boston: Little, Brown and Company, 1883 (Second Edition), p. 10-11, § 4-5

[4] [The Mechanic's Lien Law of Illinois](#), Chas E. Davidson, A Lawyer's Brief Upon The Topic, Copyright by Chas. E. Davidson, A.D. 1922.

[5] Samuel L. Phillips, supra.

[6] <http://dictionary.reference.com/browse/mechanic>

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