



## [A Twist on Mechanic's Liens and Bankruptcy](#)



We have discussed [mechanic's liens](#) and their [advantages relating to bankruptcy](#) on several occasions here at Musings. As I warmed up from a cold weekend of camping with my son's Boy Scout troop, I remembered a recent case out of the Fairfax County, Virginia Circuit Court that provides an

explanation of yet another wrinkle in the mechanic's lien/bankruptcy interaction.

In [Heritage Contracting LLC v. Vasquez](#), the Court considered the effects of a filing of bankruptcy by one of two joint tenants upon the lien enforcement rights of a material supplier to the property owned by those joint tenants. In *Vasquez*, Chopp & Company recorded its lien against the property 5 months prior to *one* of two joint tenants with right of survivorship filing bankruptcy. Once the stay was lifted 9 months after the lien was recorded (and well outside of the 6 month statute of limitations for filing suit to enforce the lien), Chopp attempted to enforce its lien. While this, in and of itself, is relatively straight forward, Chopp did not file within the 30 days post bankruptcy required by [the bankruptcy code](#).

Despite this failure to meet the bankruptcy code deadline, Chopp argued that, because one of the two joint tenants did not file for bankruptcy, it was still allowed to enforce its lien. The Court disagreed. After an analysis of the various cases relating to severance of joint tenancies and the [Fourth Circuit's](#) "unusual circumstances" test (found in [A. H. Robins v. Piccinin, 788 F.2d 994 \(4th Cir. 1986\)](#)), the Court concluded that Chopp had blown its opportunity to enforce its lien when it failed to file the enforcement action within the 30 days.

In short, the cautionary tale of this case is that, despite mechanic's liens surviving bankruptcy, several statutes (state and federal) are at play in every bankruptcy. Contractors and subcontractors that file these liens need to be aware of these interactions themselves or consult with an [experienced construction attorney](#) who is. Failing to do so could send your Virginia mechanic's lien to the "dismissed" pile in a hurry.

Image via [Wikipedia](#)

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