



Mississippi Legislature Expands State's Lien Law to Protect Subcontractors, Suppliers, and Materialmen

In the wake of the Fifth Circuit Court of Appeals' long-awaited ruling in *Noatex Corp. v. King Construction of Houston, LLC*, Case No. 12-60385 (5th Cir. Oct. 10, 2013), which struck down Mississippi's now-repealed Stop-Notice statute as unconstitutional, the State legislature has revamped and expanded lien rights on construction projects.

Previously, traditional lien rights were limited to parties who directly contracted with the project owner. Other parties performing work and/or providing services in Mississippi were left to rely upon the Stop-Notice statute, which allowed unpaid subcontractors or materialmen to bind money in the hands of a project owner, thereby preventing those funds from being disbursed to the non-paying prime contractor. However, the Stop-Notice statute's protections were limited, as an owner's responsibility to bind funds only applied if, and to the extent, funds were still owed to the project's prime contractor. Under the new statute, Miss. Code Ann. § 85-7-401 *et seq.*, which was signed into law and took effect on April 11, 2014, traditional lien rights have now been extended to now include contractors, registered architects, engineers, surveyors, first and second tier subcontractors, and material suppliers performing work and/or providing services in Mississippi.

While these changes deliver much-needed protections to down-stream parties providing services in Mississippi, the new lien law requires compliance with strict notice and filing requirements. An error in complying with these requirements could lead to lien rights being ineffective or unenforceable. Critically, a lien will not create an enforceable interest encumbering the property and/or improvements unless: (1) certain notices are provided by the party seeking to assert a lien, and (2) a written claim of lien is recorded in in the property court, and in accordance with the statute. As is the case in other jurisdictions, statutory requirements for the contents of notices and claims of lien are strictly construed under Mississippi law because liens are statutory creations permitted in derogation of common law.

The first step a subcontractor, supplier, or materialman must undertake to perfect lien rights is to provide the contractor (or owner if there is no contractor) with a Pre-Lien Notice. This Pre-Lien Notice should include all the "facts" necessary to put the receiving contractor or owner on notice as to the basis for the forthcoming lien. Specifically, the Pre-Lien Notice should state: (1) the name, address, and telephone number of the lien claimant; (2) the name and address of the first tier subcontractor/supplier at whose direction the labor or materials were furnished; (3) the name and location of the project (description of the affected real estate sufficient to identify it); (4) a general

description of the labor and/or materials furnished; and (5) if known, the contract price or anticipated value of labor or materials.

For commercial projects, the Pre-Lien Notice must be provided to the appropriate party “within thirty (30) days following the first delivery of labor, services or materials to the property,” and may be provided either by e-mail with a confirmed receipt, registered or certified mail, or statutory overnight delivery. If a second tier subcontractor or supplier does not provide the required Pre-Lien Notice to the commercial contractor (or owner), then any lien rights under the law are forfeited. The Pre-Lien Notice requirements for residential projects are less stringent, as the lien claimant must only provide the owner with written notice at least ten (10) days before filing a claim of lien. Delivery of residential Pre-Lien Notice can be made by any “reliable means,” and the use of registered or certified mail is recommended, but not required.

Critically, the Pre-Lien Notice does not act as a substitute for the filing of a claim of lien in the manner required by statute. Instead, a Pre-Lien Notice only protects the ability of the potential lienor to file a claim of lien within the ninety (90) day period following the last supply of materials and/or labor to the project. A claim of lien should include the following five elements: (1) the correct name of the lien claimant and a description of its business (mechanic, contractor, subcontractor, etc.); (2) the amount owed; (3) the correct name of the property owner; (4) the date the claim was due (which is the last date labor and/or materials were supplied); and (5) a description of the real property and/or improvement with sufficient specificity so as to clearly identify the affected real property and/or improvements. Because failure to file the claim of lien within the time required will dissolve the Pre-Lien Notice, the lien claimant must file a claim of lien in the chancery court where the property is located within ninety (90) days after the claimant last performed work or provided materials to the project. Remember, 90 days does **NOT** equal three (3) months, so the claimant must take care in counting the days. Thereafter, a copy of the claim of lien must be sent “by registered or certified mail or statutory overnight delivery to the owner of the property...” and “to the contractor or to the contractor’s registered agent” no more than two (2) business days after filing the claim of lien.

Finally, the lien claimant’s payment action must be initiated within one hundred eighty (180) days from the date of the filing of the claim of lien. Again, 180 days does **NOT** equal six (6) months, and care should be taken to properly count the days.

As with any new law, Mississippi’s lien statute will continue to evolve through practice and judicial interpretations. Accordingly, it is important to continually consult with your counsel to ensure that you are up-to-date on changes and current best-practices.

If you have any questions or need further information, please contact:
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