



Mechanics Lien and Bond Claim Best Practices

Through the years of consulting with folks in the construction industry about mechanics lien and bond claims, I've unearthed a set of principles to help navigate the very complicated world of liens. These principles form a set of "best practices" for the company interested in preserving its lien rights on every construction, and ultimately therefore, avoiding bad debt.

Understand What Type of "Lien" Is Available

The term "mechanics lien" is overused in the construction industry, with companies presuming they can file a mechanics lien on any type of project. That's part true, and part untrue.

The truth in this statement is that there is a lien-like remedy available on every construction project. The untrue part of the statement is that it's not always a "mechanics lien" per se, it could be, for example, a state bond claim or a miller act claim.

This can get confusing to the contractor or supplier who considers them all one in the same. The other day, for example, I had an equipment rental company ask me whether they could file a mechanics lien on a state project in Florida. I referred them to some Florida attorneys who answered the question, but those attorneys got hung up on the terminology and not the goal of the client.

Rather than answering the equipment rental company by saying "yes, you can encumber the project" by filing a bond claim, they emphatically told the company that they couldn't file a mechanics lien claim. They barely even mentioned that they could file a bond claim, and that this is commonly even referred to as a lien.

The long and short of this discussion is that the industry uses the term "lien" pretty loosely. But, if you're on a state project, you're likely filing a bond claim; on a federal project you're filing a miller act claim; and on a private project you're filing a traditional mechanics lien. They work differently, there are different rules, but they are all fundamentally the same.

The first best practice is to understand what lien remedy is available to you, because it will help you get that type of lien document filed when the time comes.

Know All Relevant Project Information

If you're furnishing labor or materials to a construction project, you should know all the critical data about that project. This includes:

- The address where your furnishing
- The name of the property owner
- The name of the general contractor
- The name of the bonding company (if any)
- The name of the lender (if any)

You'd be surprised how often I'm approached to help someone file a lien claim without this basic project information. This information is critical to not only filing an accurate mechanics lien claim, but also to sending out the required preliminary notices. If you don't have this information, figure out a way to get it.

Most of the time you can politely request the data, and get it without much effort. Other times, you may need to send in a formal request. On state and federal projects, the identity of the bonding company and the general contractor is public information, and you can typically request this directly from the contracting department.

If you're in Tennessee, a great place to start is with Matthew Devries' checklist, originally published on his Best Practices Construction Law Blog: [Information Needed To Prepare A Lien](#).

The second best practice is to have good information about your construction projects.

Understand Preliminary Notice Requirements and Lien Deadlines

In most states, filing a mechanics lien or bond claim is a discipline, and not something you can do impulsively. That's because many states require you take actions right at the beginning of furnishing to preserve your right to file a mechanics lien or bond claim. It's very important that you understand these requirements.

If you furnish in one state only, it should be fairly simple for you to get educated about that state's notice requirements. Take the time to learn this information and follow it diligently. If you furnish to multiple states, organizing and understanding the information may be a bit more complex, and you may need to consult with a mechanics lien service or attorney to help you comply with the varying notice requirements. Remember, these mechanics lien laws and nuances will vary not only between states, but also between projects.

The third best practice, therefore, is to understand the requirements applicable to your project to preserve your lien claim rights, and then to follow those requirements.

Conclusion

While most companies don't want to file lien claims lightly, it is a very effective way to get paid on a construction project, and therefore, a remedy you always want available. If your customer doesn't pay its debt, if money gets misappropriated on a job, or if your customer files for bankruptcy, you're going to wish that you had preserved and enforced your lien or bond claim rights.

It's very difficult to comply with lien and bond claim requirements on every project, because there are so many layers of complexity. However, these best practices will help your company wade through those requirements and set itself up to successfully protect its lien rights...and, hopefully, always get paid.

Read this post on the Construction Lien Blog at:

<http://www.zlien.com/blog/?p=6193>