



Can You File A Mechanics Lien Foreclosure Lawsuit Without An Attorney?

If unpaid on a construction project filing a mechanics lien is a best-practice, as mechanic liens are usually successful at getting construction debts paid. In fact, based on a survey we conducted last year, over 64% of mechanic liens are paid within just 90 days of filing without any further legal or collection action whatsoever.

What if, however, the lien isn't immediately successful? The next step is typically a lien foreclosure action, whereby you move forward in court to enforce or foreclose upon the mechanics lien. We are frequently asked whether you can represent yourself in court and file the lien foreclosure action without an attorney. The answer to this question is a bit more complicated than it first sounds.

Individuals Can Represent Themselves Everywhere In Court And Can File A Mechanics Lien Foreclosure Action

Representing yourself in court is a constitutional right in most states, and is a protected right when litigating in federal court. The legal term used to describe this type of representation is "Pro se," and we've discussed it in the past on this blog under the tag: Pro Se Litigant. Wikipedia defines a "Pro se legal representation" as:

...advocating on one's own behalf before a court, rather than being represented by a lawyer. This may occur in any court proceeding, whether one is the defendant or plaintiff in civil cases...Pro se is a Latin phrase meaning "for oneself" or "on one's own behalf."

Pro se representation is a growing phenomena in the United States, with many court systems reporting that over 70% of litigation involves at least one pro se litigant.

Therefore, if you are an individual, you very likely have the right to represent yourself in court in a mechanics lien foreclosure action. You can prepare the foreclosure action yourself (or with assistance), you can file the document yourself, and you can litigate the claim yourself without needing to hire an attorney. But...

You Cannot Represent Your Company In Most Jurisdictions In A Mechanics Lien Foreclosure Action

A vast majority of states have limitations on whether a company can represent itself in a court proceeding.

A corporation, limited liability company or other business entity is theoretically considered to be a separate juridical person under the law, separate and distinct from its officers, members, shareholders or employees. Therefore, an individual who is affiliated with a business cannot represent the business in court, because the individual is not representing him or herself in the action...he or she is representing the business. It is illegal for any non-lawyer to represent another in a court proceeding, and when an individual represents a business - even his or her own - he or she is representing "another."

There are few exceptions to this rule. I have seen two exceptions granted by trial courts, and on both occasions it occurred in the state of Louisiana. While the trial court allowed the individual to continue representing the company, the issue was

never appealed, and had it been, I think the appeals court would have been obliged to overturn the trial decision and force the company to get counsel. The two instances in Louisiana were when: (i) The company was small and had a single shareholder; and (ii) The company was not a business entity, but was a d/b/a ("doing business as") of the individual.

I can certainly see where one could argue that under these two circumstances self-representation should be allowed, but I think the argument ultimately fails because even under these two scenarios the litigant will want to avail itself of the protections granted by the law separating the business (even if a closely held company) from the person.

Who Is Going To Stop You From Representing Yourself?

Okay, Maverick. What if you just file the documents and start appearing in court, you ask, who is going to stop you? If you just decide to give a finger to the legal system and plow through representing yourself despite the pro se limitation, one of three things will happen:

- 1) **No one will ever know.** The first possibility is that no one will ever realize that you are representing yourself, and shouldn't. The case may settle quickly without a fight, or the other side may represent itself and not realize the limitation. Even if an attorney gets involved for your adversary, it's possible this attorney will not know about the limitation. So, you may get away with it.
- 2) **You'll be refused access to file your lawsuit.** The second possibility depends on the rigidity of standards at the court's clerks office. I've seen this go both ways in a single court jurisdiction, meaning that it sometimes depends on the actual person you get at the clerk counter. In a single county in California, I've seen a clerk steadfastly refuse to accept a lawsuit from a business trying to represent itself. In the same county I was involved in a case against a business

representing itself who not only filed the lawsuit successfully, but had acquired a default judgment!

- 3) **You'll get your lawsuit filed, but the other party will file a motion to throw you off the case, and potentially, to strike your lawsuit as invalid.** While the beginning of this sounds okay (after all, the lawsuit gets filed), this is the most dangerous scenario. If you get the lawsuit filed and a savvy attorney is hired to oppose your case, that attorney will file a motion to get you tossed off the case. As part of the same motion, the attorney will ask that your lawsuit get tossed because it did not meet the rules for filing (it wasn't properly signed). You could lose your lawsuit's filing date, which means, you could lose your entire claim if too much time has passed and the claim has prescribed.

Beware Of Filing In Small Claims Court

Even companies can typically represent themselves in small claims courts. Nevertheless, in the mechanics lien foreclosure setting, this is usually a no-go, as mechanic liens must usually be foreclosed upon in the regular courts and not in the small claims courts. The small claims courts, in other words, do not have jurisdiction over the foreclosure claims because they affect title to real property.

Therefore, while you may be able to file a regular lawsuit in small claims court on behalf of your company or yourself, this may not work in the mechanics lien setting.

Read this post on the Lien Blog at:

<http://www.zlien.com/blog/?p=9341>