

REMINDERS & PRACTICE POINTERS RE: MECHANIC'S LIENS

A. The Substantive Elements:

(1) The Basics: In general, a mechanic's lien may be filed to secure payment to any person who furnishes material or labor upon any building or land for the improvement, alternation, or repair thereof under a contract with an owner, contractor, or subcontractor.

(2) "Material" is given a broad definition, and includes machinery, tools, fixtures, a variety of landscaping materials, and "the use of forms, accessories, and equipment." I.C.A. § 572.1(2). Items not listed in the statute, such as lodging, mileage, and meals, are lienable if they are set forth in the terms of the contract. Gasoline, diesel fuel, and petroleum are non-lienable items.

(3) "Furnishing" means "to deliver or supply for use in the making of the improvement."

(a) Where the claimant has contracted only to provide materials for the building or improvement, delivery to the premises will normally constitute furnishing the materials under the statute, and use of the materials is immaterial. In contrast, where the contract calls for deliver and install materials, the materials are not furnished until they are incorporated into the building.

(4) "Improvement" generally means visible improvement to the building/land. Thus, while a claimant may be able to enforce a lien for preliminary labor/materials eventually used in construction, there is no right to a lien if the project is abandoned before any improvement becomes apparent.

(a) In *Gollehon, Schemmer & Associates v. Fareway-Bettendorf Association*, the Iowa Supreme Court held an architect who, among others things, surveyed land and marked the location of a sewer easement to assist in preparation of maps and plans, and who produced plans and specifications for the project, secured approval for the platting, and prepared specifications for subcontractor bidding, was not entitled to a mechanic's lien on the property because the project was abandoned before any type of construction could begin.

(5) Substantial, but not full, performance is required by the person furnishing labor or materials.

(a) "Substantial performance allows only the omissions or deviations from the contract that are inadvertent or unintentional, not the result of bad faith, do not impair the structure as a whole, are remedial without doing material damages to other portions of the building, and may be compensated for through deductions from the contract."

(b) Under circumstances where the mechanic's lien claimant fails to complete the job through no fault of his own—for instance, when a subcontractor cannot complete the job when the contractor walks off the job site—the subcontractor is entitled to the reasonable value of the work done.

(6) Contract Required: To obtain a lien, the material or labor must be furnished "by virtue of any contract [either expressed or implied] with the owner, contractor, or subcontractor . . ."

(a) Caution - Contracts with lessees: There is a policy preference to ordinarily limit the risk of liens to the obligations of the property owner; therefore, "a tenant's authority to bind the land arises only when the improvement is in some way demanded by the lease." Further factors must also be shown. Mere knowledge of or consent to improvements made by a lessee do not ordinarily subject the lessor to a mechanic's lien.

Practice Pointer: Do not assume you have a right to file a mechanic's lien if your work is for anyone other than the owner/title holder of the realty, the contractor, or a subcontractor.

(7) Generally Secures Full Contract Price. A mechanic's lien claimant is not required to prove the reasonable value of services furnished; rather, the lien entitles the claimant to secure the full contract price (minus any deductions for proven deficiencies).

B. Perfecting/Filing a Lien and Notice/Procedural Provisions:

(8) Within 90 Days: A mechanic's lien must first be filed/perfected before any action to enforce or challenge it may be brought. A lien should be filed within 90 days from the date on which the last of the material was supplied or final labor completed in order to avoid additional restrictions and limitations on the ability to enforce the lien.

(a) To perfect a mechanic's lien during the initial 90 day period, the claimant must file a verified statement of account of the demand due the person, after allowing all credits, with the clerk of the district court of the county in which the property in question is located. The statement must set forth (1) the date the material or labor was first furnished, (2) the legal description of the property, and (3) the name and last known mailing address of the owner of the property.

(9) After 90 Days – Written Notice and Restriction on Extent of Lien. To perfect a mechanic's lien after the 90-day period, in addition to filing a claim with the clerk of the district court, the claimant must serve (e.g., via a sheriff or process server) the owner with written notice of the claim. At this point, the lien can only be enforced to the extent of the balance due from the owner to the contractor at the time notice is served (unless a bond was given by the contractor).

(a) For Subs: A sub who files a lien after the 90-day period is only entitled to a lien to the extent of the balance due from the owner to the contractor at the time notice is served. Therefore, where the owner has already paid the full contract price to the contractor, the late-filing subcontractor is unable to secure any portion of the contract price (unless a bond exists).

i. If payments are made to the general before the end of the 90-day period, even a timely filing subcontractor may not be able to recover the full amount due. In the case of non-owner-occupied dwellings, such payments do not affect the subcontractor's rights under the lien, and the subcontractor is still entitled to the full payment as long as the lien is timely filed, even though owner may face a double payment. See next section.

ii. Additional Notice Required by Subs With Owner-Occupied Dwelling: Thus, in the case of an owner-occupied dwelling, the subcontractor can only enforce the lien to the extent of the balance due the principal contractor at the time the written notice is served on the owner-occupant. The notice given must inform the owner-occupant of the subcontractor's lien and rights and advises the owner-occupant to withhold any further payments to the contractor until a waiver of the subcontractor's lien is provided. If an owner-occupant makes payment to the contractor after receipt of this notice, he does so at his own risk. **Additional notice may be required of a sub-subcontractor (Such notice generally does not apply to single or two-family dwellings).*

Practice Pointers:

- Deliver to homeowner or mail via certified mail (return receipt requested).
- Deliver immediately upon beginning your work on the project.
- If in doubt as to whether the structure is owner-occupied, provide this notice.

(10) Additional Notice Requirement for Generals Using Subs On Owner-Occupied Dwellings: If the contract is for work or material on an owner-occupied dwelling, and the contractor plans to contract with subcontractors for the job, the contractor must meet further notice requirements.

(a) With a written contract, a copy must be given to the owner and must contain the following notice: "Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner."

(b) Absent a written contract, the contractor must provide written notice within 10 days of commencement of the work informing the owner of all subcontractors intended to be used and their right to a lien, and the contractor must keep this notice updated.

(c) A contractor who fails to provide the required notice under this section loses some of its right to a mechanic's lien. Specifically, if written notice required under Chapter 572 is not provided to the owner in a timely manner then the contractor is only entitled to a lien for the work or materials that it actually performed or the materials that it actually provided and would not be entitled to a lien as it pertained to any labor performed or materials furnished by a subcontractor.

(11) General Contractor Seeking Payment Within 90 Days. To require payment before 90 days, the contractor must furnish the owner one of two things: (1) signed waivers of claims for liens by all subcontractors (and sub-subcontractors), or (2) good and sufficient bond approved by the owner conditioned that the owner will be held harmless from any potential loss due to mechanic's liens filed by subcontractors.

(12) General Contractor's Obligation to Pay Within 30 Days. Once the principal contractor receives full payment from an owner-occupier, the contractor must pay subcontractors in full within 30 days, unless noted in the contract. Failure to make payment "without due cause" will expose the contractor to an action to recover amount due by the subcontractor, or by owner by subrogation.

•Prior to bringing such an action, written notice of nonpayment must be delivered to the general contractor. Exemplary damages will be awarded against the contractor unless the contractor: (1) shows that all proceeds received have been applied toward the cost of labor or material for the project, or (2) posts a sufficient bond with the clerk of the district court within fifteen days of the notice of nonpayment.

C. Enforcing a Lien and Actions to Foreclose Upon a Lien:

(13) Two Years (After 90-Day Period). There is a two-year statute of limitations on an enforcement action, running from the expiration of the initial 90-day filing period.

(14) Exception: 30-Day “Sue or Shut Up” Letter. Notwithstanding the above, an owner may at any time serve a written demand for suit on the lienholder. The lienholder must commence an action to enforce the lien within 30 days to avoid forfeiture. If no action is brought, filing the demand with proofs of service for record with the clerk of the district court will serve as constructive notice of the due forfeiture and cancellation of the lien.

(15) Attorney’s Fees May be Awarded to:

(a) Prevailing Plaintiff With Direct Contract. A prevailing plaintiff in an enforcement action may be awarded fees if he furnished labor or materials directly to the defendant in the action.

(b) Prevailing Defendant-Owner. In an action to challenge a lien filed on an owner-occupied dwelling, if person challenging the lien prevails, the court may award fees and actual damages.

(16) Priority - Relation Back. The lien predates the filing, and the filing relates back to the commencement of the claimant’s work giving rise to the lien.

(17) Satisfaction of a Lien. Is a notice confirming the satisfaction of a lien required in Iowa?

o Yes. A lien holder is required to provide a written acknowledgment of lien satisfaction after the payment of the lien claim. The owner or other party in interest may issue a written demand for such an acknowledgment. Failure of the lien holder to do so within thirty (30) days of receipt of the demand shall result in the lien holder being held liable as a result of any damages that result from the refusal.

D. Lien Waivers:

(18) Practice Pointers on Waivers (and Partial Checks):

- Lien waivers may be partial, i.e., you do not have to always use a final lien waiver.
- Read the lien waiver form you are using and be sure it correctly sets forth your intentions and releases only what you intend to release.
- Do not give a final lien waiver unless (1) you have been paid in full, (2) you will be paid in full out of escrowed funds, (3) pursuant to an appropriate binding contract if represented by counsel, or (4) if a bond (for twice the amount of the lien) has been posted by the general contractor.
- Do not cash a partial check if there is any indication that the person submitting the check believes it is a final payment or there is an indication on the check or accompanying paperwork that the check is anything other than a partial check.

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The information contained herein is not intended to be an all-inclusive summary or discussion of Iowa construction law or mechanic’s lien law. Further, this information is not intended to be legal advice and should not be relied upon in analyzing your specific issues or legal questions. Please consult an attorney for your specific legal needs.

1. See Crane Co. v. Westerman, 8 N.W.2d 412, 413-414 (Iowa 1943).
2. Farmers Co-op Co. v. DeCoster, 528 N.W.2d 536 (Iowa 1995).
3. A.E. Shorthill Co. v. Aetna Indemnity Co., 124 N.W. 613, 615 (Iowa 1910).
4. A.E. Shorthill Co. v. Aetna Indemnity Co., 124 N.W. 613, 615, 617 (Iowa 1910).
5. 268 N.W.2d 200, 202–203 (Iowa 1978) (Although the Court agreed that the marking was visible, it held it did not improve the land, as it was merely “preliminary to rather than part of the contemplated improvement of the land.”)
6. Bidwell v. Midwest Solariums, Inc., 543 N.W.2d, 293, 295 (Iowa App. 1995).
7. Bidwell v. Midwest Solariums, Inc., 543 N.W.2d, 293, 295 (Iowa App. 1995).
8. Knudson v. Bland, 113 N.W.2d 242, 245 (Iowa 1962).
9. 2007 Acts ch., § 3 (codified at I.C.A. § 572.2(1)).
10. A & W Elec. Contractors, Inc. v. Petry, 576 N.W.2d 112, 113 (Iowa 1998).
11. A & W Elec. Contractors, Inc. v. Petry, 576 N.W.2d 112, 114 (Iowa 1998).

12. Rohlin Constr. Co. v. Lakes, Inc., 252 N.W.2d 403, 406 (Iowa 1977).
13. I.C.A. § 572.24.
14. I.C.A. §§ 572.10–572.11. I.C.A. §§ 572.18, 572.20.
15. I.C.A. § 572.31.
16. I.C.A. § 572.8.
17. I.C.A. § 572.8.
18. I.C.A. § 572.10.
19. I.C.A. § 572.11.
20. I.C.A. § 572.11.
21. Griess & Ginder Drywall, Inc. v. Moran, 561 N.W.2d 815, 817 (Iowa 1997).
22. I.C.A. § 572.14; I.C.A. § 572.16.
23. I.C.A. § 572.14(2).
24. I.C.A. § 572.14(3).
25. I.C.A. § 572.16 (“nothing in this chapter shall . . . require the [owner-occupant] to pay a greater amount or at an earlier date [than in the principal contract] unless the owner pays a part or all of the contract price to the principal contractor after receipt of notice under section 572.14, subsection 2”); see also Conrad v. Coop. Grain, 488 N.W.2d 450, 452-453 (Iowa 1992).
26. An owner-occupied dwelling refers to the homestead of an owner actually occupied by the owner or owner’s spouse, and by definition includes new construction that will be occupied as a homestead. I.C.A. § 572.1(4).
27. I.C.A. § 572.13(2).
28. I.C.A. § 572.13(2).
29. I.C.A. § 572.13(2).
30. I.C.A. § 572.13(2).
31. I.C.A. § 572.13(1).
32. I.C.A. § 572.30.
33. I.C.A. § 572.30.
34. I.C.A. § 572.30.
35. I.C.A. § 572.30.
36. I.C.A. § 572.27.
37. I.C.A. § 572.28.
38. I.C.A. § 572.28(1).
39. I.C.A. § 572.28(2).
40. I.C.A. § 572.32(1).
41. I.C.A. § 572.18(1); Northwestern Natl. Bank v. Metro Ctr., Inc., 303 N.W.2d 395, 398 (Iowa 1981).