

Five Things Every Construction Company Should Know About Lien Law

These days all of the laws and restrictions surrounding the construction business can make it difficult for construction companies to file a lien against consumers when necessary. If the states had embraced the [Uniform Construction Lien Act](#) that the National Conference of Commissioners on Uniform State Laws drafted in 1987, [construction management](#) companies would have an easy time using the legal protection. Unfortunately, lawmakers of the 50 states failed to adopt the [proposal](#).

This leaves the construction industry with varying state laws, which differ so significantly from one area to another that they not only confuse professionals but also homeowners. Thus, while construction laws are confusing, it is important that every company involved in the construction trade must at least know the basics when it comes to about lien law.

1. Keep written proof of the work authorization.

There used to be a time when a handshake sealed a deal and signaled a successfully negotiated contract. However under lien law, this way of doing business is insufficient. A construction company cannot file a lien against a home- or business owner, unless there is proof that an authorized party agreed to have the work done. While plenty of jurisdictions ([Colorado](#) is among them) make a concession for an oral authorization, common sense demands a streamlined approach that allows the construction company to produce a duly signed and dated document in case of a dispute.

2. Never file on behalf of a subcontractor or supplier.

It is tempting to try and smooth over the waters for a great subcontractor or supplier who has gone above and beyond what is necessary to make the construction company look good. Yet if the customer fails to pay up, do not file a lien on behalf of this professional. Lien law makes it possible for each professional who works with, or

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for, a construction company to file a separate lien and protect individual company interests. If the primary contractor gets involved, the company may quite possibly become embroiled in an extensive and expensive legal battle that could render the profits of the job negligible.

3. Cross all T's and dot all I's.

A lien statement is a legal document and gets filed with the county clerk. Failure to fill it out in its entirety results in delays and, in some cases, even in a dismissal with prejudice. The latter precludes any future lien filings against the consumer by the filer. Construction companies must err on the side of overdoing the filing by including the full name and address of the consumer, the full name of the business and its principals, the legal description of the home and also the full dollar amount, with an attached accounting, of all monies owed. In some cases, it is a good idea to also attach written communication to and from the consumer, such as e-mails or printed text messages that show the attempts to collect on the debt. Be mindful that states vary with respect to lien notifications; several jurisdictions have ruled that prior to placing a lien on a property, the construction company must issue a pre-lien warning to the owner.

4. Document the progress on the job site with photos and consumer signatures.

A homeowner essentially has three affirmative defenses when attempting to fight a construction company's lien. First, the party may assert that the company was never duly authorized to do the work on the home or business in question. However, if the construction company got the authorization in writing, this defense will not succeed. Secondly, the homeowner may assert that all monies owed were paid; proper accounting practices, issuing of receipts and showing a complete accounting of customer account debits and credits all work in favor of the business. Finally, the consumer may also claim that the work was not done as contractually agreed. Taking photos of the work as it is being completed and having the consumer sign off on the progress, is a good way to contradict a homeowner who alleges that the construction company failed to deliver as promised.

5. Be careful with codicils to the contract.

Consumers have gotten quite savvy about lien law. To be honest, there are plenty of shady businesses that have made it a necessity for homeowners to learn how to

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protect themselves when commissioning work to be done on their home. This leaves the reputable contractor in a bind, especially if the consumer insists on adding verbiage to the contract that effectively takes away the company's right to file a lien. For example, a consumer may add terms that state an arbitrator must settle any fiscal disagreements and that the contractor expressly waives any right to file a lien against the property. If the customer succeeds in placing this term on the contract, and if everyone who does work on the project signs off on it, then the company will lose its legal protection.

Clearly, lien law can oftentimes make life difficult for construction companies. The latter point in this list illustrates that there are occasionally situations when a construction business should consider walking away from a job. A business that is committed to employing all legal means to receive payment must stick to its guns, even if this means that another company gets the contract. If there are compelling reasons to loosen the rules for one particular consumer, it is best to discuss the potential ramifications this decision may have with a construction law attorney.

Read this article on the Construction Lien Blog here:
<http://constructionlienblog.com/?p=2337>

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