

A Construction Law Update

04/23/10

Court Rules That Construction Lien Claim Fails for Lack of Proper Acknowledgment

The Washington Court of Appeals has re-emphasized the perils of failing to strictly follow the statutory requirements of perfecting construction liens. On April 7, Division Two of the Court of Appeals ruled in *Williams v. Athletic Field, Inc.*, that recording a mechanic's lien without the proper authentication clause results in a void lien.

Athletic Field provided construction services to Williams for an estimated value of \$420,000. Disputes arose between the parties regarding the value of the work and the percentage of work completed. Williams refused to pay Athletic Field its full invoiced amounts, and Athletic Field retained a lien filing service, LienData USA, Inc. ("LienData"), to prepare and file a Claim of Lien for an unpaid balance of \$276,825.

Washington's lien statute requires that a Claim of Lien be acknowledged pursuant to Chapter 64.08 RCW, Acknowledgments, which requires specific language for individual and corporate acknowledgments. Corporate acknowledgments require statements declaring that execution of the Claim of Lien is a free and voluntary act of the corporation, that the signatory is authorized by the corporation to execute the Claim of Lien, and that the seal affixed to the acknowledgment is the corporate seal.

In *Williams*, the Claim of Lien identified LienData as the agent for claimant Athletic Fields, and an individual from LienData signed the acknowledgment clause. However, the acknowledgment did not identify her as an officer or employee of LienData, failed to declare execution of the Claim of Lien as a free and voluntary act of the claimant, and failed to set forth her authority to act on behalf of LienData. Consequently, the court ruled that the Claim of Lien was invalid for lack of a proper acknowledgment.

Use of the improper acknowledgment in the *Williams* matter apparently resulted from a misinterpretation of the lien statute. The sample Claim of Lien form provided in the lien statute includes the acknowledgment "subscribed and sworn to me before this ... day of" This acknowledgment, however, does not comply with the statute's mandate that the acknowledgments of Chapter 64.08 shall be used for Claim of Lien. It appears that LienData may not have reconciled the required statutory language with the sample form, resulting in an invalid lien.

Failure to properly acknowledge a Claim of Lien as required under the lien statute, Chapter 60.04 RCW, is just one of the numerous technical pitfalls awaiting anyone filing a lien. Others include:

- failure to timely provide pre-claim notice;
- failure to record a lien within 90 days of the last provision of services;
- failure to provide notices to customers as required both under the Contractor Registration Act, Chapter 18.27 RCW, and the lien statute;
- recording a lien in excess of the amount actually owed; and
- failure to file a foreclosure lawsuit within eight months of lien recording.

Any one of these mistakes can be fatal, but as the *Williams* case painfully demonstrated to the claimant, the failure to use the proper form of acknowledgment is not a trivial error. It not only invalidates the lien, but it also may become a basis for claiming that the lien was frivolous, which then exposes the losing party to a judgment for their opponents' attorneys' fees. Thus, when it comes to lien claims, strict compliance not only is the best approach, it is the only approach.

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