

Filing a Mechanic's Lien for a Private Improvement in New York State

David A. Blansky , Esq.
LaMonica Herbst & Mansicalco, LLP

If you performed work or provided materials in connection with the private improvement of real property and have not been paid, you may be able to pursue payment by filing a Mechanic's Lien and taking the steps necessary to foreclose on that lien. The following is a brief overview of this process.

What is a Mechanic's Lien?

As articulated in one monograph on the subject, "a notice of mechanic's lien is a security device, publicly filed, that lets others know that one is claiming entitlement to payment on a construction project." A Mechanic's Lien protects those contractors, suppliers and materialmen who performed work or provided materials in connection with the improvement of real property. While the primary contractor, its subcontractors, direct suppliers and sub-subcontractors or suppliers to the subcontractor fall under the protection of the Lien Law, subcontractors to sub-subcontractors and suppliers to sub-subcontractors are not protected by the Lien Law and may not utilize a Mechanic's Lien. Lien Law § 3.

Who can file a Mechanic's Lien?

A contractor, supplier or materialmen may file a Notice of Mechanic's Lien on its own. However, as there exist strict statutory requirements concerning the contents of the Notice of Mechanic's Lien, when it must be filed and served, and what steps must be taken afterwards, a party may wish to utilize the services of counsel or a firm specializing in the preparation and filing of Mechanic's Liens.

How do I file a Mechanic's Lien?

A Notice of Mechanic's Lien must be filed in the county where the real property is situated, in the office where the land records are maintained. Commonly, this is the county clerk's office. Lien Law § 9 outlines what must be included in a Notice of Mechanic's Lien for a private improvement. A lienor must identify: (a) itself and its counsel, if any; (b) the owner of the property and describe the owner's property interest; (c) the party by whom it was employed or with whom it contracted; (d) the labor performed or materials provided and the agreed upon price, or the materials manufactured for, but not delivered to, the property and the agreed upon price; (e) the amount unpaid to the lienor; (f) when the first and last items of work and material were provided; and (g) the property (try to include section, block and lot). The Notice of Mechanic's Lien must be verified and the lienor should

take pains not to intentionally exaggerate its claim as penalties for this may be severe.

When must I file the Notice of Mechanic's Lien?

A Mechanic's Lien on a private improvement may be filed at any time during the performance of work and provision of materials, but not later than eight (8) months after the last date of work or material provided. Lien Law § 10. However, if the property improved is a single family residence, the Mechanic's Lien must be filed not later than four (4) months of the last date of work or material provided. A failure to file the Notice of Mechanic's Lien within this time will be fatal.

What do I do after preparing a Notice of Mechanic's Lien?

The Notice of Mechanic's Lien must be served on the property owner and contractor (unless the contractor is the lienor, then only the property owner need be served). Service must be made no earlier than five days before or thirty days after filing the Notice of Mechanic's Lien and proof of service must be filed in the office where the Notice was filed within 35 days of the filing of the Notice. Lien Law §§ 11, 11-b. A failure to properly serve the Notice or timely file the proof of service will result in the termination of the Mechanic's Lien.

How do I foreclose on my Mechanic's Lien?

In order to perfect your Mechanic's Lien, you must both commence an action and file a notice of pendency (also known as a *lis pendens*) within one (1) year of the filing of the Notice of Mechanic's Lien. A failure to take both these steps will result in the Mechanic's Lien being discharged. Lien Law §§ 17, 19. Note that a notice of pendency is only valid for three years, unless you seek and obtain a court order extending the notice of pendency before the initial three year period expires. The notice of pendency permits you to maintain your lien against the property while the lawsuit is proceeding until such time as it is discharged by payment or cancelled by the court. In addition to requesting to foreclose on the Mechanic's Lien, it may be prudent to seek alternative forms of relief in case your Mechanic's Lien is somehow invalid. For example, you might consider making a claim for breach of contract or for the fair and reasonable value of the work and material provided.

Additional Resources

New York State Bar Association General Practice Monograph Series: Mechanic's Liens, by George Foster Macket and Norman D. Alvy, Esqs. (2007-2008 ed.)

Disclaimer: The foregoing is provided for informational purposes and should not be construed as legal advice or to create an attorney/client relationship. It should not substitute for direct reference to the applicable provisions of the Lien Law. Further, you should seriously consider consulting with counsel as the failure to strictly abide by the Lien Law may render your Mechanic's Lien ineffective as a "security device".