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legal

Understanding Maryland's Mechanics' Lien Law

BY DAVID B. APPLEFELD, ESQ.

If you are a builder, subcontractor, supplier or design professional who does work in Maryland, it is critical that you understand Maryland's Mechanics' lien law. With certain exceptions such as government property, Maryland's Mechanics' lien statute gives persons who supply labor and materials to a construction project the right to establish liens on the property and, if necessary, to force a sale of the property if payment is not received. However, the law has very specific notice and filing requirements. If those deadlines are missed, your ability to establish a lien may be jeopardized.

In Maryland, a Mechanics' lien may be established against newly constructed buildings or houses and also against any project which involves an existing building which is repaired, rebuilt, or improved by 15 percent or more of its value. This 15 percent ratio applies to the total improvement (not simply your scope of work). Thus, a contractor who supplies \$10,000 worth of labor or materials to a \$100,000 renovation project for a \$500,000 home is able to file a Mechanics' lien because the total scope of the renovation is more than 15 percent of the value of the existing home, even though the value of the subcontract is not. Likewise, a contractor who supplies labor or materials for new construction may file a lien without regard to the value of the contract because the project involves new construction.

The notice requirements of Maryland's Mechanics' lien statute are controlled by the nature of the relationship between the party asserting the lien and the title owner of the property. Filing a Mechanics' lien claim involves two phases and each phase has specific time require-

ments. The first phase involves giving the owner notice of intention to file a Petition to establish and enforce a Mechanics' lien. The second phase involves actually filing the Petition in Court. Parties who contract directly with the owner can skip the first phase. Parties who do not contract directly with the owner cannot.

Filing a Mechanics' lien claim involves two phases and each phase has specific time requirements.

Parties who do not have a direct contract with the owner must deliver a specific written notice of intention to file a Petition to establish a Mechanics' lien to the owner of the property within 120 days after completing their work or furnishing their materials which are the subject of the lien. In the case of a single family dwelling, notice must *also* be given to the owner before the owner makes final payment to the general contractor. The rationale behind this notice requirement is that an owner may be unaware that there are unpaid subcontractors or suppliers on the project. The notice gives the owner the opportunity to investigate and withhold payment to the general contractor until assurances are provided

that subcontractors have been paid. The required notice must be in writing. The Mechanics' lien statute provides a format which identifies the information which must be included. Critical information includes: a) the names of the petitioner and the party who contracted for the work or materials; b) a description and time work was completed or materials furnished; c) a simple description of the building; d) the total amount earned; e) the amount due; f) a statement affirming veracity of the notice; g) and signature of the petitioner. Written notice is effective if given by registered or certified mail, return receipt requested, or personally delivered to the owner.

Because the owner should know whether he has or has not paid the general contractor, a party who has a direct contract with the owner *does not* need to provide the 120 day notice and may skip to phase two — filing the Petition.

Regardless of whether the party has contracted directly with the owner or whether a subcontractor or supplier has no contract with the owner, any party wishing to establish a Mechanics' lien must file a Petition to establish a lien in the appropriate Court within 180 days after the work has been completed or the materials have been furnished. The Mechanics' lien statute sets out in detail the specific contents which must be included in the Petition.

The procedure following the filing of a Petition is essentially a four-step process. During the first step the Court will review the Petition and supporting documents, and will make a determination of whether a lien should attach. If this is the case, the Court will issue an order that directs the property owner

to show cause why the lien should not attach. The order will also set a preliminary hearing date within forty-five (45) days of the Order. After the order has been issued by the Court, the second step requires the owner to file an Answer to the Petition. The Answer must include an affidavit refuting the lien. After the owner's Answer is filed, the third step involves a preliminary hearing which is designed to provide the claimant with interim lien protection until a full trial can be held. This interim lien is called an "interlocutory Mechanics' lien," and is designed to keep the status quo and prevent the owner from selling or encumbering the property before the trial. If the Court finds probable cause that the claimant is entitled to a Mechanics' lien, the Court will issue this interim lien. Finally, stage four of the lien process is a full trial, at which the parties will present witness testimony and evidence, and the court will determine whether a final lien should be issued. Once a final lien is issued, a lien claimant has the ability to force the sale of the property to satisfy the judgment if payment is not made.

While the Mechanics' lien laws of Maryland provide a valuable tool for assisting parties involved in the construction process when payment is not received, it is important to understand that there are very specific deadlines and requirements imposed by the statute which must be followed or your ability to establish a lien will be foreclosed. ■

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