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Admitted to Practice in Minnesota State and Federal District Courts

Minnesota Mechanics Liens

In rough terms, a mechanic's lien is a means of securing a contractor's right to payment for work performed that benefits real property. Failure to perfect a lien does not mean the contractor loses the right to payment for work performed, it just means that the remedy of a lien foreclosure is not available. Other legal avenues to recovery, including action on the contract or an equitable action for unjust enrichment remain available.

Mechanics liens are creatures of statute, and lien claimants have only those rights carved out by the statutory language. *Kirkwold Construction Co. v. M.G.A. Construction, Inc.* 513 N.W.2d 241, 244 (Minn. 1994). The statutes governing the creation and enforcement of lien rights in Minnesota can be found in Chapter 514 of the Minnesota Statutes.

Creating Lien Rights

The requirements for the attachment and creation of a mechanics' lien are to be strictly construed. *Dolder v. Griffin*, 323 N.W.2d 773, 780 (Minn.1982). Mechanics' liens are statutory in nature and are intended to protect unwary owners from having to pay twice for a single improvement. *Wallboard, Inc. v. St. Cloud Mall, LLC*, 758 N.W.2d 356, 360 (Minn. App. 2008). To establish your lien, you must closely follow the notice, filing and service requirements of Minn. Stat. 514.011.

General or Primary Contractor. Anyone who enters into a contract with an owner for the improvement of real property, and who has contracted or will contract with any subcontractors or materialmen to provide labor, skill or materials for the improvement, must give the owner the notice described in Minn Stat. § 514.011, subd. 1. Any person or entity that has a contract with an "owner" is a "contractor" for the purpose of notice under the statute. Notice requirements are strictly construed, and failure to timely give the contractor's notice results in a bar to enforcement.

Where there is a written contract, the statutory notice must be included in the written contract. For oral agreements, notice must be delivered personally or by certified mail to the owner or registered agent within 10 days of the oral contract. Either way, the notice must be written in at least 10-point bold type or typewritten in capital letters. A computer-generated document containing the statutorily mandated language in 10-point, bold-type font will be classified as "printed" and deemed to satisfy the prelien-notice requirements of Minn Stat. § 514.011, subd. 1. See *Wong v. Insterspace-West*, 701 N.W.2d 301, 304 (Minn. App. 2005).

Subcontractors, materialmen, other lien claimants. Every person who contributes to the improvement of real property and wants the benefit of filing and enforcing a mechanic's lien must give notice to the owner as described in Minn. Stat. § 514.011, subd. 2 by certified mail not

later than 45 days after the lien claimant has first furnished labor, skill, or materials for the improvement.

Owner. An owner is the owner of any legal or equitable interest in real property whose interest in the property (1) is known to one who contributes to the improvement of real property, or (2) has been recorded or filed of record if registered land, and who enters into a contract for the improvement of the real property. Minn. Stat. § 514.011, subd. 5.

* Under this definition of owner, different lien claimants may be required to give notice to different owners depending upon when the work begins. Also, if a lien claimant has actual knowledge of an unrecorded ownership interest, notice must be given to the owner of that interest.

Enforcing Lien Rights

To establish your lien, you must closely follow the statutes. After the lien is created, however, courts liberally construe the lien statutes as remedial acts. *Griffin*, 323 N.W.2d at 780. This is because the statute is intended to provide a remedy to unpaid contractors - once you have established your lien rights, you should be able to recover the value you have added to the property. Even if some work has been performed without properly giving notice, proper notice should be given at the earliest possible time to secure lien rights to that portion of work performed from that point forward. Note that a mechanic's lien is not an exclusive remedy, and other common law bases for recovery of the value of work performed may be available if lien rights are not perfected.

Generally, lien rights are enforced by an action to foreclose the lien. You may assert a lien claim in a foreclosure action by either complaint (if you initiate the action) or by an answer in a foreclosure action initiated by another party. When the suit is filed, all parties with an interest in the property must be joined. To identify persons or entities with an interest in the subject property, you may order an "owner & encumbrancer report" from a title company. The suit must include all other lien claimants, owners, bond holders, leaseholders, mortgagees, judgment creditors, tax lien claimants, etc. Unlike other lawsuits, the foreclosure action must be filed first, then a summons served upon interested parties. Minn. Stat. § 514.11. The action must be commenced within one year after the day of the last item set forth in the recorded lien statement. Minn. Stat. § 514.12, subd. 3. Anyone not made party to the action within one year is not bound by any judgment in the action. *Id.* The claimant must also file for record a notice of *lis pendens* with the registrar of titles or county recorder as appropriate for the property. Minn. Stat. § 514.12, subd. 1. Failure to do so will result, among other things, in a judgment on the lien that is unenforceable as to any bona fide purchaser, mortgagee, or encumbrancer without notice.

Example: Failure to serve process upon both entities in an alleged joint venture.
Ryan Contracting, Inc. v. JAG Investments, Inc., 634 N.W.2d 176 (Minn. 2001).

In April 1997, Jagodzinski Development Corporation (JDC) hired Ryan to perform clearing, grading, sewer and water main installation, and street construction for the Fairway Hills residential development project in Chaska, Minnesota. JDC was a Minnesota corporation whose

president and sole shareholder is Joe Jagodzinski. JAG was a Minnesota investment company that owned much of the Fairway Hills property that JDC planned to develop. Jim Jagodzinski was JAG's sole shareholder and Joe Jagodzinski's father.

Ryan served and filed a mechanics' lien against the Fairway Hills property to recover amounts allegedly due from JDC. The lien statement listed Ryan's last day of work as December 16, 1997. On December 4, 1998, Ryan filed a lawsuit to foreclose on its lien. Ryan personally served JDC on the same day by serving the summons and complaint on Joe Jagodzinski. Ryan did not personally serve JAG at this point. Nonetheless, JAG served Ryan with an answer on December 23, 1998, and raised the affirmative defense of lack of personal jurisdiction, asserting that Ryan failed to serve JAG within the one-year time limit imposed by section 514.12, subd. 3. According to JAG, the one-year limit expired on December 16, 1998, because Ryan stated in its lien statement that it last performed work on December 16, 1997. The court dismissed Ryan's mechanics' lien action against JAG for lack of personal jurisdiction.

Note: the existence of an actual joint venture between JAG and JDC was never established at trial.

Defending Against Liens

The best way to defend a lien claim is to take proper steps to avoid having a claim filed. If a claim is filed, then the first step is to determine whether all of the statutory requirements were met to create and enforce the lien.

- Were services provided for lienable improvement of the property?
- Were improvements "at the instance" of the owner? Minn. Stat. § 514.01
- Was proper notice given? Minn. Stat. § 514.011
- Was the lien statement timely filed? Must be within 120 days after last service or materials were provided. Minn. Stat. § 514.08
- Was the lien statement filed in the proper place? A lien statement for Torrens property filed in the county recorder's office is ineffective (must be with registrar of titles).
- Was the lien statement properly served? Must be either personal service or certified mail. Minn. Stat. § 514.08
- Was the lien foreclosure action timely? Must be within one year after last service or materials were provided. Minn. Stat. § 514.12

Example – Builder acquires property from developer as site for future construction. Builder subsequently receives a lien statement from a contractor with whom it had no prior contact, advising of lien rights related to street and sewer improvements on the property. Is the lien effective, and can the lienholder foreclose, even though Builder had no notice of the lien?

Answer: Yes, provided notice was properly given to the developer at the time of contracting for the street and sewer improvements, and the lien statement and foreclosure action are timely. The Builder was not an "owner" at the time the first work on the improvement was performed and not entitled to notice from the contractor performing work for the developer.

Avoiding mechanic's liens/foreclosure sales:

- 1) If you find out before or during construction of an unauthorized improvement to your property, advise any party performing unauthorized work in writing within 5 days.
- 2) Check the land sale contract to determine what rights and remedies exist against the developer for conveying clouded title.
- 3) The owner or another interested party may have to defend lien enforcement action and/or pay lien in order to avoid foreclosure sale.

Attorney's Fees

Lien claimants may also seek to have attorney's fees paid by the owner. Minn. Stat. § 514.14 provides for judgment in favor of a lienholder in the amount proved, "with costs and disbursements to be fixed by the court at the trial." Costs and disbursements has been interpreted such that the court may allow reasonable attorney's fees. *Hughes v. Patrick & Assocs.*, 220 N.W.2d 347, 348 (Minn. 1974). This is not a guaranteed recovery of fees - it is discretionary with the court. The owner's ability to defend against and reduce the lien is a significant factor in determining the fee award. *See Asp v. O'Brien*, 277 N.W.2d 382, 385 (Minn. 1979); *see also Blair v. Pey, Inc.*, 1998 WL 747163 (affirming refusal to award fees to successful lien claimant where lien value reduced from \$80,000 to \$7,000). If the lien claimant proves the entire amount or even a significant portion, however, the court may award the entire amount of fees sought. Awards of fees have been upheld on appeal even where the fees incurred in prosecuting the lien enforcement action exceeded the value of the lien itself. In an unpublished case, the court of appeals upheld an award of \$8,947.50 in fees for a lien of \$4,411.97. *Valley Rich Co., Inc. v. Holmes Park Village Apartments*, 2001 WL 118541 (Minn. App. 2001). Conversely, fees may be denied in full if the value of the lien is intentionally overstated.

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Preserving and Prosecuting Mechanic's Lien Rights in MN Residential Projects

Action	When	
Pre-lien notice	Time of written contract, or within 10 days if verbal agreement	Minn. Stat. § 514.011
Lien statement	Serve and file within 120 days of date last work performed or material provided; <i>must be verified under oath</i>	Minn. Stat. § 514.08
Foreclose lien	Commence action to foreclose lien and determine priorities within 1 year of date last work performed or material provided (as set forth in the lien statement)	Minn. Stat. § 514.12
Notice of lis pendens	File/record at the beginning of the foreclosure action	Minn. Stat. § 514.11