



BY NANCY A. CHILLAG

Don't Ignore Mechanic's Liens

I'm always amazed at what little information contractors have to protect their rights when collecting monies rightfully owed to them. Most contractors that attend classes to obtain their licenses are told to record a mechanic's lien against the owner's property if they are not paid. Unfortunately, they

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are not told what to do about the lien after it is recorded.

Most contractors think that if they record a lien against property, they can just let it sit there until the property is refinanced or sold. They think that one day they will get a call saying the payment is being made so that the lien will be removed. Wrong!

Mechanic's liens are very powerful tools because they allow a contractor to obtain a security interest in the property prior to filing any type of legal action. Most claims don't provide for liens to attach until after a judgment is obtained, perhaps years after the debt became due. In light of the onerous effect a lien can have on an owner's property, the laws are quite strict regarding the procedures you must follow to ensure the validity of your lien.

Record your lien on time. First of all, you must record your lien within the appropriate time period. The time peri-

ods usually start to run from either the date a Notice of Completion is recorded against the property or from the date the project is substantially completed. The deadline for recording the lien is usually between 30 and 90 days depending upon which circumstance applies and whether you are a general contractor or a subcontractor/supplier. (Check your local rules.) Some contractors try to negotiate with the owner for payment for long periods of time after they finish the project, or buy into the owner's promise that payment will be made eventually. By the time they realize that payment is unlikely, it is too late for them to record a lien.

Perfect the lien. Assuming you have timely recorded your lien, you only have a short time period within which to "perfect" it. It is perfected by filing a lawsuit in court to foreclose the property to pay the lien. Usually this time period is 90 days from the date of filing. And keep in mind that 90 days is not always 3 months. You must actually count the days. So if you are not paid after recording the lien, you must file a lawsuit to foreclose the lien prior to the 91st day. (Of course, check your state's requirements for the appropriate time period.)

In addition to filing a lawsuit, you also must record a document against the property putting the owner and the rest of the world on notice that a lawsuit has been filed. This document is known as a "Lis Pendens," translated to "Notice of Action Pending." This lets any potential buyer or lender know that, in fact, the required law-

suit has been timely filed and the lien is perfected. This Lis Pendens is what actually prevents the property from being sold or refinanced without the contractor being paid.

Respect the deadline. If you fail to file a lawsuit to perfect the lien, your lien is invalid. There is no extension of time for good faith mistake or any other excuse. The owner or the owner's attorney can then send you a letter notifying you of your failure to perfect the lien and demanding that you remove it. The law in most states requires the removal and if you don't, the owner can recover attorney fees for going to court to have it removed. So instead of getting paid for the work you did on the property, you end up with a judgment against you for the attorney fees incurred by the owner. Not exactly the result you intended.

The best thing you can do after you record a lien is send a copy of it to your attorney. Make sure the attorney knows the actual date the lien was recorded. The attorney will then calendar the applicable deadlines and notify you when it is time to file the lawsuit. If you get paid in the interim, notify the attorney. The mechanic's lien laws are very powerful, but you must know the rules to obtain the optimum benefit. ♦

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