



BASSFORD REMELE

IT'S TIME TO REVISIT THE BASICS OF MECHANIC'S LIEN

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Mechanic's liens are among the strongest weapon in the arsenal for contractors, subcontractors, and suppliers to ensure payment for their work or materials. In Minnesota, the process of filing a mechanic's lien is governed by strict statutory requirements. AGC members undoubtedly have substantial experience with mechanic's liens. Unfortunately, we've noticed a rise in simple mistakes related to mechanic's liens. Being unprepared can jeopardize your right to file a lien, so it's essential to take proactive steps to protect your interests. Sometimes revisiting the basics can be beneficial.

Here are five considerations to ensure that your mechanic's lien is effective:

1. The Pre-Lien Notice

General contractors must include a pre-lien notice in their written contracts with the property owner or developer. Subcontractors and suppliers must generally provide this notice within 45 days after first furnishing labor, skill, or materials for the improvement. The language to be included in the notice is provided in Minn. Stat. § 514.011, subd.2. A simple "copy and paste" can ensure strict statutory compliance.

Finally, the notice must be served by personal delivery or certified mail. If you have been corresponding with the property owner via email, a *courtesy copy* via email is fine, as long as a notice was sent by personal delivery or certified mail.

2. Keep Detailed Records of the Project

Maintaining thorough documentation is crucial to support your lien claim. Keep a copy of your contract or agreement and track all invoices, change orders, and payments. Be sure to document the work performed and materials supplied, and record dates for project milestones, work completion, and when notices were served.

3. Mark Your Calendar

Issues and disputes may arise during the course of the project. Whether or not you believe the project owner may withhold payment, you should set calendar reminders so you do not miss the filing deadline for a mechanic's lien. A mechanic's lien must be filed within **120 days** of the last date of work or delivery of materials. The lien must then be enforced by filing a lawsuit within **one year** of the last date of work or delivery. Missing these deadlines will result in losing your lien rights.

4. File Accurate and Complete Lien Statements

When it's time to file a lien, make sure the lien statement is accurate and includes all required information, including: (1) the name of the property owner; (2) a legal description of the property; (3) the amount due and unpaid; and (4) your name and address as the lien claimant. File the accurate lien statement with the county recorder or registrar of titles where the property is located.

This is where your diligence under Consideration No. 2 pays off. If you do not keep accurate records of the work or supplies you contributed to the project, you run the risk of overstating the lien exposing yourself to a "slander of title" claim. Placing grossly inaccurate mechanic's liens on real property can constitute "malicious conduct" for purposes of a slander of title claim. Situations where a court may find that the lien was published "maliciously" include the lien contained claims for sums owed to the contractor for things clearly not "lienable" under Minnesota law including claims for liquidated damages, contents handling, items that were intentionally overcharged, amounts related to fraudulent invoices from subcontractors, amounts for items that the contractor purchased but expressly refused to release to the homeowners, work that was not done at the premises and work for which homeowners had already paid for and received lien waivers.

5. Seek Professional Assistance

Mechanic's lien laws are complex, and a simple mistake can nullify your claim. If you're unsure about any step in the process, consult with an attorney experienced in construction law to guide you.

By taking these proactive measures, contractors can safeguard their right to payment and be prepared to file a mechanic's lien if necessary. Mechanic's liens are a powerful tool for ensuring payment, but they require careful attention to detail and strict adherence to Minnesota's legal requirements.

Complacency can be costly. Failing to stay proactive or follow the steps outlined above can lead to mistakes, missed deadlines, and the loss of lien rights. By remaining vigilant and prepared, contractors can protect their interests and secure the compensation they've earned.

Preparing for the possibility of filing a mechanic's lien is an essential part of risk management for contractors in Minnesota. By understanding the legal requirements, keeping meticulous records, and acting within the required timelines, contractors can protect their financial interests and maintain leverage in payment disputes.

About the Authors



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