

Mechanic's Liens

Mechanic's liens are special rights that subcontractors, contractor, material suppliers can use to help ensure payment for work performed on a construction project located in Missouri. It is important to be proactive when using lien rights as they are time and location sensitive and when used correctly an extremely effective collection tool. You have lien rights if you did work that improved the value of a piece of real property. To be eligible, your product must either be attached physically to the property, or you must have provided a service that contributed to the improvement of the property. Generally, eligibility is limited to subcontractors, contractors, material suppliers, or distributors of building materials.

Here at Pratt, Fossard, Jensen & Masters, L.L.C., we become your advocate in the lien filing and debt recovery process. We take our duty very seriously. Jim Fossard practices in the field of construction litigation and can see that the lien in properly and timely filed.

The greatest strength of a mechanic's lien is that it can take priority over the construction loan lender's lien. That can often assure that the lien will be paid. But strict compliance with the mechanic's lien procedure is very important to assure that lien priority.

INFORMATION FOR MECHANIC'S LIEN, NOTICE AND PETITION

BASIC DATA NEEDED ON ALL LIENS

Name and address of Claimant:

Names and address of all of the owners of the property:

Name and address of contractor:

Section 429.012 notice must have been provided by the Contractor, (usually done with all invoices):

What deeds of trust are there on the property?

What is the legal description of property?

What is the street address of property?

First day on the job:

Last day on the job:

Attach copies of all invoices with a detailed listing of all materials, labor and

pricing:

Amount owed:

If the project is a remodel project of a residential property of 4 units or less, then the subcontractor would need to have obtained the consent of the owners to do the work, in order to be able to file a lien later in the event of non-payment. That consent must be on the form provided by the Missouri statute (Section 429.013 RSMo.), which is the following:

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF THEY ARE NOT PAID.

OWNERS SIGNATURES: _____

It is a good idea to have the Contractor put it on his notice as well!!

This is only **required** of subcontractors doing remodeling, repair work, or adding an addition on to an owner-occupied residential property of four units or less. "Owner-occupied" means currently occupied, intends to occupy, or does occupy within a reasonable time after the completion of the work. It is only necessary to obtain the signature of one owner.

Regardless of whether you are a contractor or subcontractor, it is a good idea to put the "Consent of Owner" form on all invoices, bids, contracts and statements. There is no time limit on when you have to obtain the signature on the consent, it can be anytime.

If you are a contractor, i.e. someone dealing or contracting directly with the owner of the property, you must give a very important notice in order to be able to file a lien later in the event of non-payment. This is what is called the "Notice to Owner", and it is required by Section 429.012 RSMo. This must be provided by all original contractors dealing directly with the owner, and it is a good idea to have it on all of your invoices and contracts. The notice is as follows:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE

FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMo. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THE CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

This notice must be given by the original or general contractor to the owner 1) at the time the original contract is signed, 2) when the first materials are delivered, 3) when the work is commenced, or 4) with the first invoice.

Second, add this language to your contracts and invoices:

IN SIGNING THIS CONTRACT OR INVOICE, IN THE EVENT OF NON-PAYMENT OF AMOUNTS OWED FOR WORK AND MATERIALS PROVIDED TO YOU BY _____, YOU AGREE TO PAY ANY ATTORNEY FEES AND COURT COSTS THAT _____ INCURS IN COLLECTING ANY SUMS OWED.

Be sure and have the owners, all of them, sign the contract for the work and it would be good if they signed the invoices also, if possible. That may be hard to do on every invoice, that is why it is important to at least have them sign the initial contract on the job.

At the time you file your lien as a subcontractor or material provider, you will need to list in as great a detail as possible, all the materials and labor that went into the project, including hours worked by the employees and hourly rates paid. This needs to be itemized in considerable detail **if you are a subcontractor or material provider.**

Time Requirements

You have six months to file a mechanic's lien from the last date you did any work on the project, or provided the materials.

If you are a subcontractor or material provider, you must personally deliver a notice to the owner of the property at least 10 days before you file your lien of your intent to file the lien if you are not paid. This is very important. There is only an exception to this notice in the event the owner cannot be found, or resides outside of the State of Missouri. Without the 10 day notice, your lien will be invalid. This 10-day notice is not an actual filing of a Mechanics Lien but establishes the right to file that lien later on if you are not paid in full by your customer.

A Mechanics Lien prevents the owner (who requested the improvements) from selling the property without first addressing the lien claimant's interest in the property (unpaid receivable). A properly filed mechanic's lien can ensure the lien holder is paid before a

mortgage holder if the property is sold or foreclosed upon.

The filing of a mechanic's lien will not guarantee payment. After a lien is filed, if you are not paid, you have 6 months within which to file a lawsuit to enforce the lien. This is another critical deadline that you must keep in mind.

Public versus Private Construction Projects

The remedies available to contractors and subcontractors vary according to whether the project is privately or publicly financed. You can not place a Mechanics Lien on a public piece of property. For publicly financed projects, the government usually requests that the general contractor furnish a bond guaranteeing that the workers will be paid. Some states allow an unpaid subcontractor to place a lien on the funds appropriated for the project. In that case, the public entity must ensure that there are provisions for paying the subcontractor before making any further payments to the general contractor.

Each claim we received is immediately assigned to one of our staff attorneys. Under his guidance, our lien filing professionals work to prepare the lien documents and notices immediately. Our real estate professionals examine the file to ensure that proper notice is being given. Finally, our in-house production and administrative teams see to it that your liens are filed in the proper county.

INVOLVEMENT OF OUR FIRM IN FILING LIENS AND LIEN ENFORCEMENT.

Because it may take time to properly prepare a valid lien, it is suggested that the lien claimant always get all the information and documents to our firm well in advance of the expiration of the six month window for filing liens. It is suggested that if you are not paid within no greater than 90 days of your last day on the job, then you contact our firm to discuss the filing of a lien. We will be glad to help in any way we can.