

Mechanic's Liens and You

The Dynamic Tower in Dubai, United Arab Emirates, is heralded as the city's symbol of its status as the city of the future. Dubbed the "Rotating Tower in Motion," the building will have 80 floors and reach 1,380 feet into the air. Apartments will range in size from 1,330 square feet to 12,900 square feet, complete with a parking space inside the apartment. The first 20 floors will be commercial space, the next 15 floors will be a luxury hotel, the next 35 floors will consist of residential apartments, and the top 10 floors will be luxury villas. What makes this building so unique is that each floor is capable of rotating freely around a core pillar, thus constantly changing the shape of the building and ensuring that its tenants never become bored with their views. Construction is set to begin in the next few months, and it is scheduled to be completed in 2010.

Amazingly, the tower's design is the vision of a plumber. Well, not actually a plumber, but architect David Fisher of Dynamic Architecture, who, until recently, was most known for his "Leonardo da Vinci" smart bathroom. The bathrooms in the Dynamic Tower's residential units will be among the most expensive and complicated in the world. Each bathroom will be prefabricated in Italy and is slated to contain such amenities as a sauna, Turkish bath, chromatography, sound therapy, and Italian marble.

This exotic building design may soon be coming to an American city, and who better to link the fancy bathrooms to the central plumbing system than you? The contract for plumbing alone is sure to be worth millions. However, the only thing that can dampen a plumber's day after the award of such a contract is not getting paid those millions of dollars for work performed under that contract. If that were to occur, what should the plumbing contractor do? Rip out the plumbing? Stage a protest in front of the rotating tower with signs that say "Don't flush here"? Neither option is likely to get the plumber paid, which is the ultimate goal. The smart plumbing contractor will consider filing a mechanic's lien against the property.

WHAT IS A MECHANIC'S LIEN?

A mechanic's lien is *not* what the auto repair technician at AAMCO does when he reaches across the hood of your car. Mechanic's liens are grounded in statute, and the law varies widely from state to state. For that reason, it is imperative that you consult with a local attorney to assist you with a mechanic's lien. This article is meant only to give you a general overview.

According to the Superior Court in California, a mechanic's lien "enforces against the owner of property payment of the debt incurred for the performance of labor or the furnishing of material used in construction." A mechanic's lien encumbers the title to the property, making it difficult to sell or mortgage the property until the lien is discharged. Thus, the lien pressures the owner to ensure that the contractor's debt is paid. The purpose of a mechanic's lien is "to prevent unjust enrichment of a property owner at the expense of laborers or material suppliers."

FORMS AND NOTICES

The process of filing and perfecting a lien typically involves several steps that must be taken before a claimant (or lienor) may seek to foreclose on the property (much like a mortgageholder does when a mortgagor is in default). Again, these steps vary depending on the jurisdiction. Some jurisdictions require the lienor to provide notice of a pending lien claim to the general contractor. Other states make such notice optional or do not require it at all. However, in most jurisdictions, the lienor is required to notify the owner when the lien claim is filed.

For a pending or actual lien notice to be valid, a specialized form must be utilized, or particular language and information must be contained within the notice. This information typically includes the name of the owner, a general statement of what the lien is for (i.e., description of the work performed and/or material supplied), the amount due and owing, the name of the entity that employed the claimant, a description of the property, the date the claim came due, and the dates when the work was performed and/or the material was supplied. Proof of service, sworn statements, and affidavits supporting the lienor's position also may be required. It is important for the contractor to collect all of this information and provide it to his attorney so that a mechanic's lien may be prepared, served, and filed in accordance with the requirements of the applicable jurisdiction.

TIME

A key piece of information that every plumber should know is the time requirements for filing a lien claim and commencing a foreclosure action. Each state strictly enforces these time requirements, and failure to comply with them could extinguish a claim. A number of jurisdictions give lienors as little as three months (from when they last performed work) to file their claim. In many states, the time to file a lien claim begins on the last day on which substantial services were performed or materials were provided.

After a lien is filed, most jurisdictions require a lienor to commence a foreclosure action within a certain period. As with the filing, the time to commence a foreclosure action often begins to run from the last day on which substantial services are performed or materials are furnished. However, some more "generous" states allow a lienor to commence an action within one or more years from the date on which the lien claim was filed.

These time parameters vary widely depending on the jurisdiction. Thus, it is extremely important for contractors to know the particular requirements—including time limitations—of the jurisdiction in which they are working.

DISCHARGING A LIEN

Many jurisdictions allow a property owner to discharge a lien. This typically is done by substituting the lien against the real property with some other form of security. This option normally requires the owner to file a bond as security for the lien. Jurisdictions vary as to the amount of money needed to file a bond.

The application and impact of laws can vary widely based on the specific facts involved. Nothing in this column should be considered legal advice, recommendations, or an offer to perform services. The reader should not act upon any information provided in this column, including choosing an attorney, without independent investigation or legal representation. As such, this column should not be used as a substitute for consultation with an attorney.

Some are as high as double the face amount of the lien, while others may require only 110 percent the amount of the lien. By “bonding off” the lien, the owner may proceed to obtain financing or sell the property unencumbered. The lien claimant is left with the option of commencing legal action against the owner and making a claim against the bond.

CONSULT WITH AN ATTORNEY

This admonition goes beyond the standard disclaimer that accompanies this article. Contractors are notorious for filling out a standard mechanic’s lien form in an effort to do-it-yourself and save money by way of legal fees. While this may be a noble pursuit, it is akin to me (an attorney) taking out a wrench to fix the pipes under my leaking sink!

Mechanic’s liens must comply with strict statutory requirements if they are to have any legal effect. As you can see by the tone of this article, there are few generalizations when it comes to mechanic’s liens, and it is critical that you consult an attorney who is familiar with the lien requirements of your specific jurisdiction. You do not want to jeopardize your entire claim in a quixotic effort to save legal fees. Your attorney will ensure that your mechanic’s lien form is completed properly and perfected, served, and filed in accordance with the applicable statute.

LIEN CLAIM EXAMPLE

Let’s use a hypothetical example to help understand mechanic’s liens. ABC Plumbing LLC (ABC) is providing all of the plumbing work for a 40-unit commercial high rise named Coventry Cross Office Tower in Gloucester County, South Jersey (a fictitious jurisdiction). The owner of the property is Coventry Cross LLC (Coventry). They hire Pelican General Construction Ltd. (Pelican) to act as the general contractor.

Pelican enters into a contract with ABC to provide all of the plumbing work for \$475,000. ABC begins work on July 15, 2006. Payment is made in installments throughout the duration of the project as provided under the contract. Aside from some minor touch-up work, ABC finishes the substantial portion of its work on March 15, 2007. ABC then awaits the last installment payment of \$145,000.

The entire project is completed shortly thereafter on April 15, 2007. However, ABC’s final payment is never fulfilled. Pelican has run into financial trouble and is contemplating bankruptcy. Several creditors have lined up for payment from Pelican, and unfortunately ABC is at the bottom of the list. The likelihood of collecting from Pelican is slim to none. Fortunately, South Jersey’s mechanic’s lien statute provides another way for ABC to receive payment.

ABC consults with its attorney and determines that the best course of action is to file a lien claim. Even though no contractual relationship existed between ABC and Coventry, the statute allows ABC to attach its claim to Coventry’s interest in the property. ABC knows that it must act fast to secure a lien claim on the Coventry Cross Office Tower property or risk forfeiting its rights under the mechanic’s lien statute.

ABC promptly assembles all of the information its attorney needs to prepare the lien: the name of the owner, a general statement of what the lien is for (nonpayment), the name of the entity that employed the claimant (Pelican), the address and description of the property, the date when ABC began work on the project, the last day of substantial work, and the amount due and owing. This notice alerts all potential buyers and mortgag-

ees that ABC may file a lien in the future, which will have priority over a new mortgage or title.

After the lien is prepared, South Jersey law requires the lien claimant to also file an actual lien claim within 90 days of the last day of substantially performed work. ABC’s attorney fulfills this requirement by filing an actual lien claim with the Gloucester County Records Office on June 1, 2007. Shortly thereafter, notice of the actual lien claim is provided to Coventry and Pelican.

South Jersey is like many jurisdictions in that a legal action on a lien claim must be commenced within one year of the last day of substantial work provided. Therefore, ABC has until March 15, 2008, to commence a foreclosure proceeding.

Despite ABC’s notice to Coventry of the actual lien claim, the two parties have been unable to satisfy the amount in controversy. It turns out that Coventry is also in financial difficulty and is either unwilling or unable to satisfy the unpaid portion of the contract price. Coventry’s attorney does not return any of ABC’s calls or e-mails. It seems that Coventry just wants to wait it out and hope that the lien expires before ABC chooses to exercise its rights.

However, on June 1, 2008, ABC’s attorney commences a legal action in the Superior Court for the County of Gloucester to force the sale of the Coventry Cross Office Tower. The sale goes as expected, and money collected from the sale is used to pay the unsatisfied portion of ABC’s contract price with Pelican. Unfortunately, ABC is unable to collect any interest or attorney fees that resulted from Pelican’s and Coventry’s failure to pay because the applicable statute only allows for the unsatisfied portion of the contract price to be collected in a foreclosure proceeding.

KNOW YOUR RIGHTS

Damages can compound significantly over the course of 12 months. Perfecting a lien claim and commencing with foreclosure proceedings quickly may reduce the cost of compounding damages. To preserve a lien claim, savvy plumbing contractors must be familiar with the statutory requirements of their particular jurisdictions. Mechanic’s liens are not overly legal in nature. They are based on facts, procedure, and a strict adherence to certain time requirements. The plumbing contractor needs to know how much time he has and the information needed to file a lien claim. Failure to know these requirements can leave a plumbing contractor without a remedy before he even gets to the merits of his case. **PSD**

SUGGESTED READING

Gary C. Tanko Well Drilling Inc. v. Dodds. 117 Cal. App. 3d 588, 593, 172 Cal. Rptr. 829, 832 (1981).

Basic Modular Facilities Inc. v. Ehsanipour. 70 Cal. App. 4th 1480, 1483, 83 Cal. Rptr. 2d 462, 464 (1999).

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