

## Ways to Run Afoul of Mechanic's Lien Filings

In a perfect world, suppliers and contractors would get paid promptly for money owed, but as this fairy tale environment doesn't exist, mechanic's liens do, making payment more likely when things go wrong. However, a myriad of possible mistakes are possible with mechanic's lien filings, and even the smallest can mean your lien rights will vanish when fought in court. The following are a few, but by no means a complete list, of the most frequent ways any eligible subcontractor or materialman can botch a filing and costs their company a lot of money.

### **Not Getting Enough Job Information Up Front**

Waiting until the debtor owner or contractor is late on payment is not the time to collect the job information as this is likely the time they are going to be the least bit helpful in supplying the necessary information. At the outset of supplying labor or materials, it's important to get the names and addresses of involved parties. If supplying to a subcontractor, it's critical to find out which general contractor (GC) specifically hired that subcontractor, as there could be multiple GCs working on a large project. On public projects, don't forget to acquire the bonding information and do some research on who is behind the surety. Do not expect that a municipality will follow up to make sure the GC took out a surety bond. Sometimes GCs don't do everything they are supposed to, which can be to their peril and yours.

### **Not Getting Enough or Investigating Information as Job Progresses**

A small mistake on a name or address, or the estimation of the first or last furnishing date can, and often has, been used by debtors to invalidate a lien. The smallest details can cause the greatest damage. For example, if a creditor estimates the date of last furnishing in a state like Florida, where the supplier has 45 days to serve a lien notice and the service was made in 46 days, the lien rights will vanish if challenged. NACM's Secured Transaction Services (STS) cited a case where a supplier lost all lien rights because the address where it delivered goods was slightly different than the address listed in contracts. The work site was literally across the street from the existing, but because the supplies went to a technically incorrect works site address, the supplier lost their lien rights.

### **Not Getting Delivery Addresses Precise**

Similar to the case mentioned above, it is important to deliver materials only to the site where contracts specify the job is being located. Sure, some will try to convince the supplier that they are concerned about shrinkage/theft, but complying only ups the risk of losing lien rights, dramatically so. That's because a judge can stipulate that any materials not sent to the official job site may not have actually made it there since, once they go into the debtor's inventory, they're no longer able to be accurately tracked. STS noted another example where this scenario occurred and, as a result, the supplier's lien was only able to capture approximately 50 cents on the dollar, as only about half the materials went to the work site.

### **Not Knowing the Differences between State Statutes**

Virtually no two states in the country are the same when it comes to mechanic's lien statutes. Various small nuances exist that, if not tracked, can and will be used against you. Ignorance is not an excuse when defending lien rights. For example, some states are unpaid balance states, which mean they stipulate that a lien must be filed before the owner pays the GC or primary contractor. If this does not happen, the lien is unlikely to hold up in court. Some states are full price states that allow "double jeopardy." This is where a supplier is able to file a lien even if the subcontractor it sold to was paid, as long as full payment never made it from the subcontractor to the supplier.

**Source: NACM-National**

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