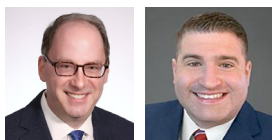


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Construction Industry Advisor

A Mechanic's Lien Can Be a Powerful Tool To Help Contractors Get Paid



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If you are a contractor or subcontractor that has not received payment for work performed or materials supplied, you should consider filing a mechanic's lien — a quick, easy and cost-effective means to secure your payment and seek to be made whole.

Anderson Kill's Construction Practice can help you navigate the highly technical process to help you get paid for your work and materials. The requirements for a mechanic's lien vary from state to state, and the differences can be material. To illustrate the point, this article will compare some of the requirements for mechanic's liens in New York and Pennsylvania.

1. What is a Mechanic's Lien?

A mechanic's lien is a legal tool (technically, a security interest in real property) that contractors and subcontractors can use to try to obtain payment for labor or materials that improve real property. Filing a mechanic's lien may give the contractor or subcontractor important leverage because it makes a subsequent sale of the property subject to the lien, requiring payment before clean title can transfer.



2. Who Can File a Mechanic's Lien?

In New York, a mechanic's lien may be filed by a "contractor, subcontractor, laborer, materialman, landscape gardener, nurseryman [...] who performs labor or furnishes materials for the improvement of real property." New York Lien Law § 3. New York courts have expanded this list to include others who provide services for improving real property, such as an architect, engineer, or surveyor.

In Pennsylvania, a mechanic's lien may be filed by contractors and subcontractors in privity of contract with a contractor, as defined in the Mechanics' Lien Law, provided that the amount of the claim exceeds \$500. 49 P.S. § 1301.

3. Notice Requirements Prior to Filing a Mechanic's Lien Claim

In New York, there is no notice requirement prior to filing a mechanic's lien. It is a "no notice" state.

In Pennsylvania, by contrast, at least 30 days before filing, the claimant must give the property owner formal written notice of the intention to file a mechanic's lien claim. 49 P.S. § 1501. The formal notice shall state: (1) the name of the party claimant; (2) the name of the person with whom contracted; (3) the amount claimed to be due; (4) the general nature and character of the labor or materials furnished; (5) the date of completion of the work for which the claim is made; and (6) a brief description sufficient to identify the property subject to the lien. 49 P.S. § 1501.

Additionally, in Pennsylvania, if the construction project is a Searchable Project (a project where the prime contract is for \$1,500,000 or more) registered on the State Construction Notices Directory website (www.scnd.pa.gov), the claimant must also file on the Directory: (1) a Notice of Commencement; and (2) a Notice of Furnishing. 49 P.S. §§ 1501.1 – 1501.5.

4. Filing Deadlines

In New York, for private property, the mechanic's lien must be filed within eight months after the Lienor's work is completed. N.Y. Lien Law § 10. If the work was performed on a single-family dwelling, the mechanic's lien must be filed within four months of the last day work was performed. N.Y. Lien Law § 10. For a public project, the Mechanic's lien must be filed no later than 30 days after the entire public improvement is completed and accepted by the owner. N.Y. Lien Law § 12. Failing to timely file a lien will result in a loss of lien rights.

In Pennsylvania, a mechanic's lien claim must be filed within six months after the claimant last supplied labor and/or material to the job site property, and written notice of such filing must be served upon the owner within one month after filing. 49 P.S. § 1502.

5. Information That Must Be Included in a Mechanic's Lien

The information that must be recited in the mechanic's lien is specific and different for every state. Most of the necessary information is easy to obtain, but strict compliance may be needed or the lien could be invalid.

6. Action to Enforce a Mechanic's Lien

In New York, generally, a lienor must commence foreclosure on their mechanic's lien within 365 days of filing the mechanic's lien by starting a lawsuit to force the sale of the property. The proceeds of the sale may be used to pay the debt owed. The lien may be extended under certain circumstances following approval by the Court. You should contact an attorney who will draft the extension or a foreclosure suit and ensure that all interested parties are served with a copy. The interested parties generally include the Owner, General Contractor, Mortgage Provider, and any other contractors that have asserted a mechanic's lien. Even if the property is not sold, a mechanic's lien places a cloud on the title, making it harder for the Owner to sell the property at a later date.

In Pennsylvania, a legal action on the mechanic's lien claim must be commenced in court within two years from the date of filing of the lien unless the time is extended in writing by the property owner. 49 P.S. § 1701. A verdict must be recovered or judgment entered

There are significant differences in the mechanic's lien laws from state to state, illustrated here by highlighting key differences between the relevant laws of New York and Pennsylvania.

within five years from date of filing of the mechanic's lien claim. 49 P.S. § 1701.

There are significant differences in the mechanic's lien laws from state to state, here illustrated by a few differences between New York and Pennsylvania. Filing a mechanic's lien does not guarantee success, but it is a powerful tool that often helps to resolve payment disputes. A mechanic's lien should be in every contractor's or subcontractor's toolbox, and Anderson Kill's Construction Practice can help you file and prosecute a mechanic's lien claim wherever your project is located. ▲

Our next article will discuss what to do if you are an Owner who has been served with a mechanic's lien and how best to protect your property.

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