Construction Law: The difference between private and public mechanic's liens

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Mechanic's liens are creatures of statute. They can be for private or public work projects. Private liens are basically a form of legal notice that is placed on the title to the real property, showing that contractors, subcontractors, suppliers or architects claim they are owed money. Mechanic's liens on public projects are very different, since they are against the money owed by the public agency to the contractor.

When most people think about mechanic's liens for unpaid work by a contractor, they think of private mechanic's liens. They can be on residential or commercial property. When they are filed in connection with renovation on a shareholder's apartment, they are filed against the entire building because the shareholder only owns shares in the co-op corporation. This is why co-ops require shareholders in their Alteration Agreements to have liens removed or the co-op will do it and charge them back for the expenses. They can be filed on condominium buildings or on individual units. Sometimes they are incorrectly filed against the entire condominium building, when they should only have been filed against only one unit.

The ultimate goal is to sell the real property to obtain the money owed in the lien. However, merely filing a private lien does not get the contractor paid or mean that the owner is going to lose his property in a foreclosure sale. If the lien is for a dollar amount where the owner has the financial ability to bond it or deposit the money with the court, it will take a great deal of the pressure off of the owner. The lien becomes a civil fee dispute and no longer involves the real property. Like private liens, public liens can be bonded, so that the lien will just involve a dispute over the money owed.

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