



## **Construction Law: The ins and outs of mechanic's liens**

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Mechanic's liens are one of the topics clients most often come to me for legal advice on. They are as problematic for commercial building owners, as they are for residential building owners, shareholders in co-ops and condominium unit owners. They are a powerful tool for contractors who believe they are owed money, because they are a blemish on the title to the property.

They can be filed against commercial buildings either for work the building owner has done or for work by tenants. They can be filed on condominium buildings or on individual units. Sometimes they are incorrectly filed against the entire condominium building, when should only have been filed against only one unit. By contrast, if a shareholder has a dispute with a contractor, the mechanic's lien can be filed against the entire building, which is why cooperative apartment buildings require shareholders to take immediate steps to remove them. They can block the building from refinancing its mortgage.

They are a creature of statute and the laws vary from state to state. They are basically a form of legal notice that is placed on the title to the property, showing that contractors, subcontractors, suppliers or architects claim they are owed money. On commercial property and cooperative apartment buildings, for example, they generally must be filed within 8 months of the last date of work. For single family residential homes, it must be filed within 4 months. However, it is important to remember that just filing the 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 pressure off of the owner. The lien becomes a civil fee dispute and no longer involves the real property.

Liens which are filed as a result of tenant improvements present interesting issues because the owner may or may not have "consented" to the work. Most well-drafted leases will require the tenant to remove the lien or risk having the owner do it and charge the cost back to the tenant as rent. Most lenders and title companies will want the mechanic's lien to be removed or bonded before a closing or refinancing can occur.

The law regarding bonding a mechanic's lien in the State of New York changed a few years ago and it is now a simpler process that is more clerical than anything else. The lienor has to apply to a bonding company for a bond, with the assistance of legal counsel, and show the requisite financial statements to the underwriting department. For your "average" size mechanic's lien, this should not be a problem. Bonds are usually 10% higher than the mechanic's lien amount. A fee or premium is paid for this bond. This mechanic's lien bond has to be served on the lienor and others, then filed with the County clerk.

Once the mechanic's lien is bonded, it clears up the title issues so that a closing can occur, but does not eliminate the underlying dispute that lead to the mechanic's lien in the first place. The contractor

or architect can still sue the owner on a variety of legal theories, including breach of contract. Foreclosures of mechanic's liens take place in court. However, if there is a contract with a provision requiring arbitration of any disputes, the issues in controversy will have to be arbitrated before the mechanic's lien issues will be dealt with, so there may be an arbitration proceeding first, followed by litigation in court.

Some contractors and design professionals try to save money and file mechanic's liens themselves or by using inexpensive filing services, which may or may not obtain the correct filing information. Consequently, there are mechanic's liens which are accepted for filing by the clerk, which may contain fatal errors for purposes of a foreclosure proceeding by legal counsel later on. Notice of the filing of the mechanic's lien must be sent to the property owner, but many property owners report that they have never received such notice. None of these problems may be apparent until someone tries to foreclose on the lien.

Therefore, mechanic's liens should be prepared by attorneys experienced in doing so. When owners and shareholders receive mechanic's liens, they should also seek legal counsel knowledgeable in this area to understand what their legal options are.

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