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A lawyer discusses settling mechanic's liens, and problems that may arise - by C. Jaye Berger

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Many business people are in a panic these days about money and getting paid. The economic supply line is temporarily broken due to the pandemic and everything is getting backed up in the system. If a building owner is fearful about the economy, he may rightfully or wrongfully decide not pay the architect or contractor working on his project. Not being paid—or the fear that it might happen—may cause the architect or contractor to file a mechanic's lien to try to protect his interests. The filing of that lien may send the client into a panic mode and cause him to terminate the architect or contractor who filed it—like a chain reaction car collision on a highway. Being able to file a mechanic's lien without really knowing the related law or not having an attorney who does, can be problematic.

Architects and contractors may use an online company to file the lien inexpensively, but they also do not really know the law behind it and the next steps. Do they have the legal right to file a lien to begin with? How much can they properly claim is owed? What if they vindictively exaggerate the amount owed?

The filing clerks do not ask questions about the lien. If the lien looks fully filled out, with no blank spaces, they will collect the filing fee, stamp it, and file it. The recipient of the lien is left to take legal action, if they believe it was filed in error. Owners can claim the liens were willfully exaggerated and seek damages.

Most people naively believe that if you file a lien, somehow the money you are owed comes to you out of the sky. An owner may be so shocked and upset to have a lien, he may offer to pay and settle. He may be concerned that a lien will upset his lender and the project he has under way. However, the owner may not have any lenders and may not care about your lien. What happens then? They do not last indefinitely and must be renewed.

You will have to foreclose on the lien. That involves commencing a full blown lawsuit, which is not

typically handled by the online companies that inexpensively filed the lien. This is a whole other level, which may involve depositions, discovery and an actual trial. This process can quickly exceed the value of the mechanic's lien. It can also turn out that information is missing from the lien, making it defective. You might have a breach of contract claim as a plan B, but the foreclosure claim is key.

You are trying to claim that the real property on which the improvements were made, needs to be sold to pay back the architect or contractor. However, this process should not be undertaken lightly, since it is not clear whether you will ultimately prevail and be reimbursed. It can also boomerang back since the party you liened may claim damages for willful exaggeration and legal fees.

Mechanic's liens are powerful tools. I think of them like loaded guns, where the contractor or architect doesn't know how dangerous they can be. However, like any other issue in controversy, they can be settled and the lien can be released.

They can affect financing for the project. For co-ops or office buildings, the problem is due to the fact that they are filed against the entire building, not just against the office or apartment where the work was performed, so your dispute can affect the entire building. It could even prevent or delay refinancing of the building's mortgage. Similar concerns exist in condos, but because unit owners have deeds to their units, the liens can be filed against only their unit. Problems arise when an attorney misfiles the lien and does it against the entire building. They can be filed against commercial buildings either for work the building owner has done, or for work performed by tenants, if the owner or landlord has given permission to perform that work.

This is why commercial leases, work letters and alteration agreements always provide that tenants and shareholders must remove mechanic's liens or the owner will do it for them and bill them back. They cannot have them remain on the title to the property.

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 eight months of the last date of work. For single-family residential homes, it must be filed within four months.

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