

Abbie Goodman - Chapter 424 of the Acts of 2010 signed into law: Lien law to protect licensed design professionals

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On January 5, 2011, governor Deval Patrick signed Chapter 424 of the Acts of 2010 into law. The new law, which takes effect on July 1, 2011, provides additional legal protection to engineers, land surveyors, architects and related licensed design professionals.

The American Council of Engineering Companies of Massachusetts (ACEC/MA) worked closely with AIA/Massachusetts, the Boston Society of Civil Engineers Section/ASCE (BSCES) and the Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE) to advocate for this new law. It was ACEC/MA's legislative priority during the last legislative session. The associations appreciate the leadership of senator Karen Spilka and representative James Vallee, the legislative sponsors, and their staffs, who worked tirelessly for passage of this bill.

Design Professionals - engineers, architects, land surveyors, and others provide services that create substantial value for property owners. Planning and feasibility studies set out the general scope and configuration of potential development, either as an as-of-right project, or through a process of applying for a zoning variance. Surveys and design plans establish the full extent and character of the prospective investment. Construction drawings and specifications provide a complete technical description of the project and are needed for soliciting construction bids. Design professionals prepare documents that bring a tangible, elevated financial value to the owner's land by establishing what is possible in the regulatory context and by facilitating the owner's ability to receive permits and project approvals.

Unfortunately, some land owners don't pay some or all of the fees owed to the design professional. Some owners hire a designer for a limited scope of services, don't pay that designer's invoices, but instead hire another designer for the next phase of the project, leaving the first with no payments and no prospects for future work on the project. Other owners don't pay the last few invoices after design services are complete. Some owners ignore the designer's invoices until enough value has been created, and then sell the project to another developer. In the past, a designer's only recourse has been to sue, an expensive and protracted process that can cost more than the fees owed.

This new law enables designers to file a lien on the property so that any sale will be encumbered by the obligation to pay the fee owed. Builders already have this right. Filing a lien, or the threat of filing, is an effective way to enforce payment. Additionally, past experience demonstrates that the right to file liens has not harmed anyone unjustly; the only individuals or companies who will bear any costs under this new law are those who don't pay the firms they engage.

Chapter 424 of the Acts of 2010:

* Allows licensed design professionals: architects, engineers, land surveyors, landscape architects and licensed site professionals, to lien property when the owner and/or developer fails to pay for agreed-upon services.

- * Does not change the current process for general contractors and subcontractors, such as plumbing and electrical trades, to place a lien on property when the owner/developer has not paid for their work.
- * Has no impact on owners/developers who pay their bills.
- * Does not affect public properties or projects.
- * Brings Massachusetts in line with the majority of other states that allow licensed design professionals to place a lien on property when owners and developers fail to pay the invoices.

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