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Massachusetts mechanic's liens: Tool to ensure payment

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In today's economic climate, many contractors may find themselves insecure about collecting amounts due on construction projects. A Mechanic's Lien provides such a contractor with an effective tool to obtain security for payment.

Mass. law provides for Mechanic's Liens on private construction projects where a contractor has not been paid, has a written contract with either the general contractor or the owner, and where the contractor complies with certain procedures.

The first requirement of the Mechanic's Lien statute, Mass. General Laws, Chapter 254, is the requirement for a written contract to exist between the contractor and either the general contractor or the owner. Generally a purchase order signed by the purchaser of the services or products will be considered sufficient.

Assuming a written contract exists, a notarized Notice of Contract must be recorded with the registry of deeds in the county in which the project is located. A Notice of Contract is a written document which sets forth the date of the written contract, the parties to the contract, and the owner of the project. The Notice of Contract must be signed by the contractor, be notarized, and contain a proper legal description of the property to be liened. On or about the date the Notice of Contract is recorded, a copy must be sent to the owner of the property by certified mail. In the case of a subcontractor, a subcontractor has until 90 days after the last furnishing of labor or materials by the general contractor to record the Notice of Contract. In the case of a general contractor, a general contractor has until 120 days of the last furnishing of labor or materials by the general contractor to record the Notice of Contract.

Within 120 days of the last furnishing of labor or materials by the general contractor, a notarized Statement of Account must be filed in the appropriate registry of deeds. Otherwise, the mechanic's lien will be deemed dissolved. As with the Notice of Contract, a copy of the Statement of Account must be sent to the owner by certified mail.

Within 90 days of the filing of the Statement of Account, the claimant must file a civil action to enforce the lien in superior or district court where the property is located.

Often the proper designation of the owner is not available to the contractor, as the property may be owned by a realty trust or other legal entity, separate and distinct from the generic name used by the entity purporting to own the property. This information can generally be obtained from the Tax Assessor's office in the city where the property is located.

The effectiveness of the Mechanic's Lien procedure is that it provides security for payment by simply following certain mechanical steps.

Contractors should also know that any provision in a contract which purports to waive or release a contractor's right to file a Mechanic's Lien is void and unenforceable as set forth in Mass. General Laws, Chapter 254, Section 32.

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