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## **A summary of the basics of the Massachusetts mechanic's lien statute (M.G.L. c. 254) - by Kirk McCormick**

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A mechanic's lien is a powerful tool in the hands of a claimant seeking payment for services or materials on a construction project. Essentially, a perfected mechanic's lien – one that complies with all statutory requirements for enforcement – acts as a mortgage on the property and provides the claimant with significant leverage by encumbering the property and potentially preventing the owner from obtaining financing for the project.

In order to acquire this leverage, however, the claimant must strictly comply with the Massachusetts mechanic's lien statute (M.G.L. c. 254). Failing to do so will invalidate the lien and potentially leave the claimant without recourse. A summary of the basics of the Massachusetts mechanic's lien law is set forth below.

### Potential Claimants

Nearly anyone involved in the construction process may file a mechanic's lien, provided the party claiming the lien (1) provided some "improvement" to the real property at issue, and (2) has a written contract. This includes as potential claimants not only the general contractor, subcontractors and suppliers, but also architects, engineers, and construction managers. It also includes those who provide rental equipment and tools.

### Timing Requirements

#### Notice of Contract

The mechanic's lien claimant must file a Notice of Contract with the Registry of Deeds where the project is located within 90 days of the last date that services or materials were provided to the project, although there are certain exceptions (such as when a Notice of Substantial Completion or Notice of Termination is filed). Importantly, unless the claimant is the general contractor, the 90 days is calculated based on the date that anyone – including other subcontractors – last provided materials or services to the project. The Notice of Contract must contain certain information about the project, including a description of the land where the project is located. For claimants who do not have a direct contract with the owner, the Notice of Contract also must include specific information

regarding the subcontract, such as the subcontract price, change order amounts, and payment history, and a copy must be served on the owner.

#### Notice of Identification

For a second- or lower-tier subcontractor (i.e., a claimant that does not have a contract with the general contractor), a Notice of Identification should be sent to the general contractor within 30 days of beginning performance. The Notice of Identification informs the general contractor that the lower-tier subcontractor is performing and also preserves the amount for which the claimant may recover. Sending the Notice of Identification also potentially means the lien has greater value. This step is in addition to filing a Notice of Contract.

#### Statement of Account

The next step is filing a Statement of Account. As with the Notice of Contract, the Statement of Account must be recorded with the Registry of Deeds. The Statement of Account must usually be recorded within 120 days of the last work at the project, although there are exceptions (such as when a Notice of Substantial Completion or Notice of Termination is filed). The Statement of Account must include the property description, the amount claimed, and the name of the property owner.

#### Lawsuit

No more than 90 days after recording the Statement of Account, the claimant then must file suit to enforce the lien. Failure to commence the lawsuit timely will result in the automatic dissolution of the lien. Because the ultimate remedy in a mechanic's lien proceeding is the sale of the subject property, the lawsuit is filed against the owner of the property.

#### Record at Registry of Deeds

The claimant must record a certified copy of the complaint with the Registry of Deeds within 30 days of filing the lawsuit or else the lien will be dissolved.

#### "Amount Due"

A key factor to consider regarding mechanic's lien claimants' rights is what is sometimes called the "amount due" requirement. As a general rule, no lien claimant is entitled to a lien greater than the amount owed to the party immediately above the claimant. For example, a subcontractor's lien cannot be greater than the "amount due" the general contractor under the general contractor's contract with the owner. Similarly, unless a second-tier subcontractor or supplier files a Notice of Identification, that party cannot obtain a lien greater than the "amount due" the subcontractor with which it contracted. The "amount due" is calculated as of the date the recorded Notice of Contract is provided to the Owner. If nothing is due the general contractor at the time the Notice of Contract is filed, the subcontractor has no lien rights.

#### Challenges to the Lien

The statute provides several methods for challenging or discharging a lien. One method is a summary procedure for discharging a facially invalid lien (for example, if the Notice of Contract is obviously untimely based on the last day work was performed). Another method is bonding off the

lien, whereby a bond substitutes for the property as security for the lien claimant. Of course, another method is to negotiate a settlement with the claimant that requires the claimant to voluntarily dissolve the lien.

### Conclusion

The mechanic's lien can be an effective method of securing payment on Massachusetts construction projects. However, strict compliance with the statute is necessary to ensure that lien rights are protected. Due to the complicated nature of the mechanic's lien statute (which this article has only briefly explored), as well as the tight deadlines for satisfying the statute's requirements, you should consult with an attorney at the beginning of the project. This is the case for both potential lien claimants and property owners who wish to aggressively challenge any liens.

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