

**A GUIDE TO MECHANIC'S LIENS IN MINNESOTA**

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This guide was written to advise Minnesota's contractors, subcontractors and material suppliers on how to assert and protect their rights to payment for goods and services.

Because it is a general discussion, and because the law is constantly changing, it should not be relied upon for specific advice. See an attorney for specific legal questions you may have.

## **A GUIDE TO MECHANIC'S LIENS IN MINNESOTA**

The Minnesota mechanic's lien statute provides an important remedy for unpaid contractors, subcontractors and materials suppliers. The Statute sets forth very specific steps and time frames that need to be complied with in order to preserve and perfect mechanic's lien rights. Failure to comply with the statutory requirements will most likely mean that lien rights will be lost.

### **I. PRE-LIEN NOTICE REQUIREMENTS**

Generally, the first step toward preserving mechanic's lien rights is that of giving notice (referred to as a "pre-lien notice") to the property owner. However, this pre-lien notice is not required in the following situations:

- 1) when the contractor is the owner of the property;
- 2) when the work is done on an apartment building of more than four dwelling units;  
or
- 3) when the work is done on non-agricultural commercial property containing more than 5,000 square feet or an improvement that would add more than 5,000 square feet to an existing commercial property.

Note that the only exception for single-family dwellings is when the contractor is the owner.

When the project does not fit within one of the above situations, pre-lien notice must be given to the property owner. There are separate pre-lien notice requirements for contractors and for subcontractors or materials suppliers.

#### **A. CONTRACTOR PRE-LIEN NOTICE REQUIREMENTS**

Where a contractor enters into a written contract with the property owner and the project will involve subcontractors or materials suppliers, the written contract between the property owner and the contractor must include a Notice. Generally, this Notice must include provisions notifying the property owner of the following:

- 1) Subcontractors or materials suppliers may file a lien against the property upon which the work is being done if they are not paid for their contributions.
- 2) The property owner has the right to pay subcontractors or materials suppliers directly and deduct the amounts paid from the contract price, or withhold the amounts due them under certain circumstances.

Where there is no written contract between the owner and the contractor, the provisions set forth above must be included in a separate Notice. A Notice form is available at legal forms supply companies. This separate Notice must be given to the owner either by personal delivery or mailed by certified mail within ten (10) days after the work or improvement is agreed upon. If the Notice is not included in the written contract or separately provided to the property owner within the required ten (10) day period, an unpaid contractor will not be entitled to file a mechanic's lien against the real estate.

## **B. SUBCONTRACTOR PRE-LIEN NOTICE REQUIREMENTS**

If a subcontractor or materials supplier wants to preserve their mechanic's lien rights in the owner's real property, they must give pre-lien Notice to the property owner. The pre-lien Notice for subcontractors or materials suppliers must contain a description of the type of services or materials to be provided and the estimated charges for these services or materials. In addition, the notice must include provisions similar to those required for the contractor's pre-lien Notice, as set forth above. This type of Notice form is also available at legal forms supply companies.

The Notice must be either:

- personally given; or
- mailed by certified mail to the property owner.

The Notice must be given or mailed within 45 days after the subcontractor first starts work or the material supplier first provides supplies to the site. It is important to note that even if the Notice is provided within this 45 day period, it will not protect the mechanic's lien rights if the Notice is given after the property owner has already paid the contractor in full. As a result, subcontractors and materials suppliers should provide Notice immediately after the work is started or materials are delivered to the site.

## **C. PROCEDURE FOR SERVICE OF PRE-LIEN NOTICE**

Whenever a Notice is required to be personally given or mailed by certified mail to a property owner, the appropriate Notice form should be obtained and completed. After the original of the form is completed, a photocopy of the front and back of the Notice should be made. The original of the Notice is then personally delivered or mailed by certified mail to the property owner.

Upon completion of delivery or mailing, one of the service Affidavits on the back of the retained copy of the Notice needs to be completed. If the property owner was mailed a copy by certified mail, complete the Affidavit by Mail, having the signor's signature notarized. If the owner was handed a copy personally, fill in the Affidavit by Personal Service portion of the form, again having the signor's signature notarized. The completed photocopy of the Notice and Affidavits of service should be kept with the records for the job. It must be produced later if it is necessary to enforce the lien.

## **II. MECHANIC'S LIEN STATEMENT**

If a contractor, subcontractor or materials supplier has complied with the applicable pre-lien Notice requirements and does not receive payment for the work performed or materials supplied, a Mechanic's Lien Statement must then be recorded against the owner's real property.

The recording of the Mechanic's Lien Statement must be completed within 120 days after the last day work was done or materials were supplied on a job.

A contractor, subcontractor or materials supplier cannot go back to the project solely to extend this 120 day period. Thus, it is very important that this time period be monitored so it does not expire without the appropriate action being taken. Further, it is important to preserve proof of the last day of work or delivery of supplies.

The Mechanic's Lien Statement that is recorded contains, among other things, the property address, legal description of the real estate, amount owing on the job, name of owner (if known), name of the party contracted with, the first and last dates of work performed on the job, and a statement that the statutory pre-lien notice requirements were met, if applicable. It is advisable for contractors to set up their files to collect this information right from the start.

If the Lien Statement is not recorded during the 120 day period, the contractor, subcontractor or materials supplier cannot pursue their mechanic's lien foreclosure rights. Instead, a regular civil collection action would need to be commenced in court to collect what is owed. In addition to recording the statement, the statute requires personal service or service by certified mail on the property owner, the authorized agent, or the person who entered into the contract with the contractor. Thus, preserving the lien rights and timely recording the Mechanic's Lien Statement are vitally important.

## **III. MECHANIC'S LIEN FORECLOSURE**

In order to secure the benefit of a mechanic's lien, the contractor, subcontractor or materials supplier must foreclose its lien claim in a process similar to that of foreclosing a mortgage.

This foreclosure action must be commenced within one year after the last day work was done or materials were supplied on the project. If a contractor or supplier has completed the pre-lien notice and statement recording on its own, it is important to involve an attorney in advance of this deadline.

There are many advantages to a Mechanic's Lien foreclosure over a regular civil action; the right to collect attorney's fees, and an earlier court hearing are two of them.

Once the action is commenced, the suit will proceed as a litigation matter through the court system until the case is settled or a judgment is entered. If judgment is entered in favor of a contractor, subcontractor or materials supplier, the property will be sold at a Sheriff's sale to satisfy the amounts owing.