

# Lien and Mean

## Knowing the Rules Can Help Ensure That You Get Paid for Your Work

By ADAM J. BASCH, Esq.

**W**hile receiving payment for a project has always been a challenge, in today's economic environment, it is getting even more difficult. In order for a contractor (whether a general contractor or a subcontractor) to ensure payment, he must move quickly to perfect his mechanic's lien rights. Just like the old saying goes, if you snooze, you lose.

Mechanics' liens in Massachusetts are governed by M.G.L. c.254, which covers liens by contractors and subcontractors. Strict adherence to the statutory requirements is essential, and all too often, mechanics' lien rights are lost to minor deviations.

A contractor must record a notice of contract in the Registry of Deeds for the county in which the property is located in a timely fashion in order to assert his statutory right to a mechanic's lien. The notice of contract must be recorded within a certain period of time, beginning any time after execution of the written contract and ending at the earliest of (1) within 60 days after filing a notice of substantial completion; (2) within 90 days after the filing of a notice of termination; or (3) within 90 days after the contractor last performed or furnished labor and/or materials to the property.

The enforcement of the lien requires additional actions. First, a statement of account must be recorded in the Registry of Deeds. This must be filed the earliest of (1) 90 days after filing the Notice of Substantial Completion; (2) 120 days after the filing of the notice of termination; or (3) 120 days after the last day labor was performed or material was delivered to the site. For a contractor, it is the last day he performed services or delivered material. For a subcontractor, it is the last day he performed services or delivered material,

or the last day the general contractor did the same.

After recording the statement of account, a civil action must be filed in Superior Court (the county where the land lies) or District Court (the district where the land lies) within 90 days of filing the statement of account.

Once the complaint is filed, there is a final step that must be taken to execute the lien. The contractor or subcontractor must record

M.G.L. c.254 defines what constitutes a written contract as "any contract in writing enforceable under the laws of the Commonwealth."

One loophole allows a lien without a contract, but it is applicable only to a person who actually performs services, not one who supplies material. This type of lien usually arises on small, informal projects where there are no written contracts. A statement of account

must be filed within 90 days of filing the lien, and that lien covers only up to 30 days of work performed prior to the recording of the statement of account.

In Massachusetts, it is illegal for a project owner to require a contractor or subcontractor to execute a blanket lien waiver prior to performing their services. This means that a project owner cannot require a contractor or subcontractor to agree that they will not file a lien upon the property. However, they can require such a waiver at the time



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in the Registry of Deeds an attested copy of the complaint within 30 days of filing it.

The theory of equity is not used in mechanic's lien cases. The timelines stated in M.G.L. c. 254 are absolute and cannot be extended by the court, and there is no exemption for oversight or neglect.

In order to establish a lien under as a general contractor or subcontractor, there must be a written contract. In the case of a contractor, the written contract must exist with the project owner. In the case of a subcontractor, a written contract must exist between the subcontractor and the general contractor. If there is no written contract, the lien is invalid.

of payment.

In short, M.G.L. c 254 can be a powerful tool in collecting payments. However, like any tool, it must be used by an experienced operator. Just like when you're on the job site, a seemingly minor mistake can have catastrophic consequences. ■

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