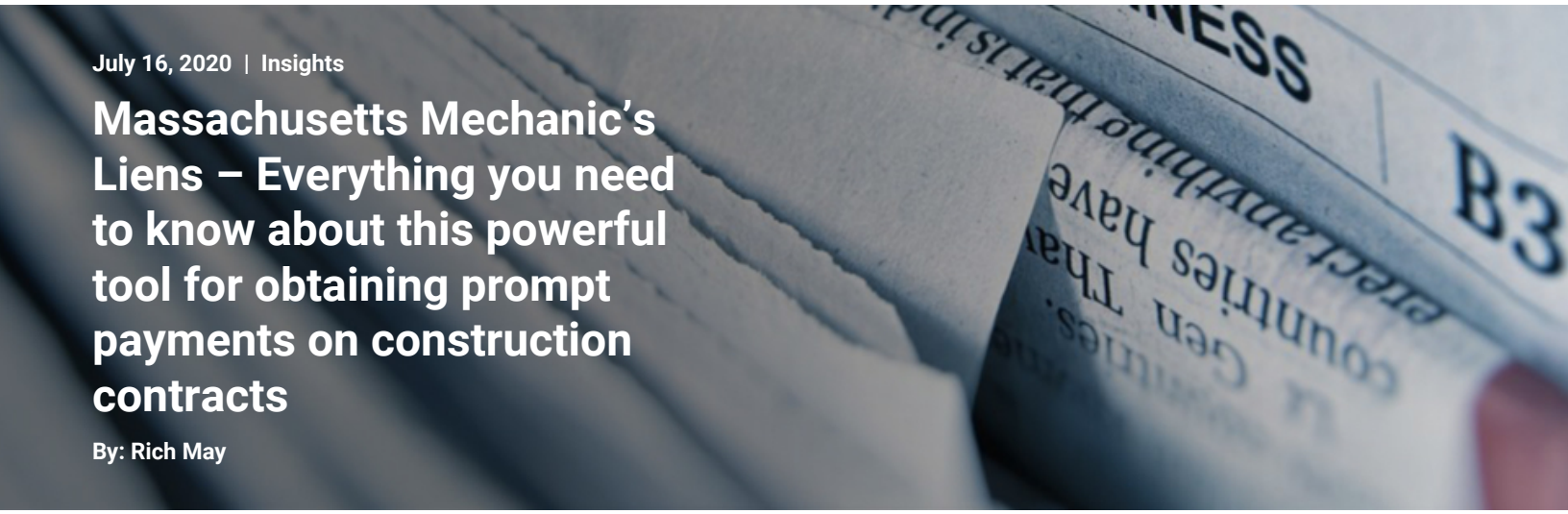

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Massachusetts Mechanic's Liens – Everything you need to know about this powerful tool for obtaining prompt payments on construction contracts

By: Rich May

Mechanic's liens are a statutory right afforded to contractors and subcontractors under Massachusetts law and codified in MGL c. 254. These liens are not at all related to actual mechanics or cars, and are sometimes referred to by other names that better describe their function: "construction lien," "laborer's lien," "contractor's lien," "materialman's lien," "supplier's lien," or "artisan's lien." The intent of the mechanic's lien is to help contractors and subcontractors secure payment for labor and materials that they furnish as part of a construction project. A mechanic's lien provides a legal claim against the property to enforce this right to payment. A mechanic's lien is a powerful tool because it does not require the express consent of the property owner or court approval. It is also often the only remedy available to contractors and subcontractors that economically ensures prompt payment for labor and materials. However, contractors and subcontractors must carefully follow specific procedures in order to perfect a lien.

Who can file a Mechanic's Lien

Under Massachusetts law, any party who furnishes labor or materials to the construction, alteration, repair, or removal of a structure on land, or the land itself is entitled to mechanic's lien protection. This includes general contractors, subcontractors, professional service providers, and providers of material or rental equipment. Design professionals (including, but not necessarily limited to architects, landscape architects, engineers, licensed site professionals and licensed land surveyors) also have the right to lien in Massachusetts. Suppliers to suppliers, parties on a lower tier than sub-subcontractors, and sellers of tools and equipment are not entitled to mechanic's lien protection in Massachusetts.

Mechanic's Lien Procedures

There are slightly different procedures for contractors, subcontractors, and sub-subcontractors under the mechanic's lien statute. All procedures must be followed strictly if the lien is to be effective.

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A contractor, as an initial matter, must have a written contract to furnish labor or materials in relation to an "improvement to real property." If there is no written contract, there can be no lien. However, a group or writings which together contain all of the material terms of the contract may be sufficient to satisfy this written contract requirement. The contractor then has the right to record a "Notice of Contract" at the appropriate registry of deeds no later than the earliest of: (i) 60 days after recording a notice of substantial completion, or (ii) 90 days after recording a notice of termination, or (iii) 90 days after last performing work at the project. There is no explicit requirement of notice or service on the owner of the property but it is best practice to do so anyway. Furthermore, given that an important purpose of the lien is to gain leverage and prompt payment, a lack of notice to the owner is entirely counterproductive. Following or simultaneous with the Notice of Contract, the contractor must record a "Statement of Account" detailing the amount owed by the earliest of: (i) 90 days after filing the notice of substantial completion, or (ii) 120 days after recording a notice of termination, or (iii) 120 days after last performing work at the project. The Notice of Contract and Statement of Account both have particular statutory requirements and small deviations or errors in these documents can jeopardize the enforceability of the lien. Finally, the lien will not be enforceable unless the contractor files a lawsuit within 90 days of recording the "Statement of Account" and records a certified copy of the complaint at the registry within 30 days of the start of the lawsuit.

Subcontractors and sub-subcontractors largely follow the same procedure as contractors, except that they are required to mail the Notice of Contract by certified mail return receipt requested to the owners of the property. Additionally, a sub-subcontractor, who has no contractual relationship with the original contractor, must send a Notice of Identification to the general contractor by certified mail return receipt requested within 30 days of commencing work on the project. This early deadline is easy to miss.

Contractors and subcontractors who have had bad experiences seeking payment in the past may initiate the mechanic's lien procedures as a matter of course on every job by immediately recording a Notice of Contract and/or mailing a Notice of Identification. There is no requirement that contractors or subcontractors wait until the work has been completed or even commenced.

Dissolution of the Lien

A mechanic's lien may be dissolved by a simple written statement of the contractor or subcontractor recorded at the registry of deeds. Payment on a contract is often contingent on or partly in consideration for dissolving a mechanic's lien. Even though a lien is not perfected unless all of the above procedures are followed, including the commencement of a lawsuit, it is still best practice to obtain a formal dissolution by written notice so that a property's record title is clear.

Waiver Not Possible

The right to a mechanic's lien cannot be waived. More specifically, the right to file a mechanic's lien can only be waived to the extent payment has already been received but contractors and subcontractors cannot waive the right in relation to future or outstanding

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claims. Provisions of contracts that attempt to waive a contractor's or subcontractor's right to a mechanic's lien are deemed against public policy and void. See M.G.L. c. 254, § 32.

Impact on the Property Owner

The most obvious impact on the owner is that their property now has an outstanding lien. The holder of the lien has all the rights associated with a property lien, including the ability to force a foreclosure although in practice that almost never happens. The existence of a lien can also complicate or prevent a refinancing or the sale of the property. These impacts and legal rights are intentionally calculated to provide contractors and subcontractors leverage and an incentive for prompt payments.

While liens can theoretically negatively impact a consumer's credit score, it is unlikely that a mechanic's lien would because credit bureaus generally only report liens that include certain minimum identifying information: a person's name, address, and Social Security number or date of birth.

Another more general impact results from how sophisticated actors view mechanic's liens. Some major actors in the construction/contracting business make it clear that if anyone liens their projects that person will not receive work again in the future. Such a blacklist may be of questionably legality but it is a reality that some contractors and subcontractors must consider.

Conclusion

Mechanic's liens are powerful but complicated tools. They provide contractors and subcontractors leverage where otherwise they have little ability to force prompt and just payment. The procedural requirements for obtaining and perfecting a mechanics lien are complex and an attorney can assist with obtaining, perfecting, or dissolving the lien.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys David Glod or J. Allen Holland.

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