

**FLETCHER TILTON BUILDING BLOCKS.**

What You Need to Know About Massachusetts Mechanic's Liens

By Adam C. Ponte, Esq.

Many of us in the construction industry generally understand what it means to “lien a project”. But do we really know all of the requirements that must be satisfied to properly record a mechanic’s lien against a project property? Understanding these rules could help a general contractor get fully paid on a job; or could help a project owner fully defend against a defective lien. If you are a contractor, subcontractor, project owner, or are otherwise involved in real estate development and construction, you need to know the rules surrounding the mechanic’s lien law, M.G.L. c. 254.

I. MECHANIC’S LIENS GENERALLY.

Controlled by statute, a mechanic’s lien, once properly recorded and perfected, essentially operates as if it were a mortgage on the subject property. Mechanic’s liens may be asserted only on private construction projects. They are unavailable on public construction jobs. Any general contractor, subcontractor, sub-subcontractor or supplier that has furnished labor or materials to a private construction project can potentially record a mechanic’s lien. The party asserting the lien *must* have a written contract in connection with the labor and/or materials furnished to the project. The monetary amount of the lien on the property may only be for the amount due on the date that the lien is recorded. Accordingly, if the total contract price was \$1,000,000 of which \$800,000 had been paid to the contractor (including change orders), the enforceable lien amount would be \$200,000.

To initiate a mechanic’s lien, a general contractor, subcontractor or supplier must record a Notice of Contract with the applicable Registry of Deeds. The where, when and how in connection with recording this Notice of Contract are crucial. Subsequent to this recording, the party asserting the lien must follow specific steps to *perfect* the lien, so that it is enforceable in any proceeding, including formal litigation. See M.G.L. c. 254, §§ 2, 4.

If you are a sub-subcontractor (an entity that does not have a contract with an entity directly contracted with the owner) you must serve a Notice of Identification on the project general

contractor within thirty (30) days of starting work on the project. This notice must be served by certified mail, return receipt requested, and, if this notice is not timely served, the sub-subcontractor receives *no* mechanic’s lien protection until *after* the Notice of Contract is recorded. See M.G.L. c. 254, § 4.

II. THE PROCESS: TIMING IS EVERYTHING.

General contractors seeking a mechanic’s lien must follow the process outlined under M.G.L. c. 254, § 2. Subcontractors or suppliers and sub-subcontractors who lack direct contracts with the general contractor must follow the process outlined under M.G.L. c. 254, § 4.

It is imperative that any general contractor, subcontractor, sub-subcontractor or supplier seeking payment satisfy the timing requirements under the mechanic’s lien law. The chart on the following page has been provided to identify the critical requirements and deadlines for perfecting a mechanic’s lien.

(See chart on the following page)

III. CONCLUSION

After a contractor perfects its mechanic’s lien, its ultimate goal – of course – is to get paid. The existence of a properly asserted lien could compel settlement. Otherwise, if the contractor must proceed to litigation in superior or district court, to pursue payment, it must ultimately establish that it (1) satisfied all of the filing and recording requirements under the mechanic’s lien law; and (2) indeed is due monies from the owner for labor or supplies furnished to the project. The owner certainly must investigate these claims and, among other things, confirm that the contractor actually perfected its mechanic’s lien rights.

If you are an owner, general contractor, subcontractor, vendor or sub-subcontractor, and there are any payment issues on your private construction project, you should consult with a construction lawyer to fully understand the mechanic’s lien process and evaluate the potential for problems down the road.

GENERAL CONTRACTOR	SUBCONTRACTOR	SUB-SUBCONTRACTOR
1. Must have a written contract in connection with the project work.	1. Must have a written contract in connection with the project work.	1. Must have a written contract in connection with the project work.
2. Must record the Notice of Contract at the applicable Registry of Deeds within 90 days of last furnishing labor or materials to the project. ¹	2. Must record the Notice of Contract at the applicable Registry of Deeds within 90 days of last furnishing labor or materials to the project, potentially calculated from the last date the general contractor performed services.	2. <i>Should</i> serve a Notice of Identification on the general contractor by certified mail, return receipt requested, within 30 days of commencing work on the project.
3. Must record the Statement of Account within 120 days of last furnishing labor or materials to the project.	3. Must forthwith serve a copy of the Notice of Contract upon the project owner by certified mail, return receipt requested.	3. Must record the Notice of Contract at the applicable Registry of Deeds within 90 days of last furnishing labor or materials to the project, potentially calculated from the last date the general contractor performed services.
4. Must file the lawsuit to enforce the lien within 90 days of recording the Statement of Account.	4. Must record the Statement of Account within 120 days of last furnishing labor or materials to the project, potentially calculated from the last date the general contractor performed services.	4. Must forthwith serve a copy of the Notice of Contract upon the project owner by certified mail, return receipt requested.
5. Must record a certified copy of the Complaint at the Registry of Deeds within 30 days of filing suit.	5. Must file the lawsuit to enforce the lien within 90 days of recording the Statement of Account.	5. Must record the Statement of Account within 120 days of last furnishing labor or materials to the project, potentially calculated from the last date the general contractor performed services.
	6. Must record a certified copy of the Complaint at the Registry of Deeds within 30 days of filing suit.	6. Must file the lawsuit to enforce the lien within 90 days of recording the Statement of Account.
		7. Must record a certified copy of the Complaint at the Registry of Deeds within 30 days of filing suit.

¹The deadline to record the Notice of Contract or Statement of Account (for general contractors, subcontractors or sub-subcontractors), could be accelerated if a Notice of Substantial Completion or Notice of Termination is recorded. For example, if a Notice of Substantial Completion is recorded, the Notice of Contract must be recorded within 60 days of the substantial completion recording.

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