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UNDERSTANDING MECHANIC'S LIENS

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WHAT IS A MECHANIC'S LIEN?

In Colorado, a mechanic's lien is a lien that can be filed against real property by an individual or business that provided labor, materials, equipment, tools or machinery to be used in the construction, alteration or repair of any real property, structure or improvement upon land. The filing of mechanic's liens in Colorado is governed by Colorado statute (C.R.S. §38-22-101 *et. seq.* ("Lien Statute")), which provides very specific and detailed requirements that a party must fulfill in order for a mechanic's lien to be effective and valid. The Lien Statute also provides certain procedures for resolving mechanic's lien claims and the removal of invalid mechanic's liens. Any failure by a party to fulfill the various requirements of the Lien Statute may result in a mechanic's lien being declared invalid with penalties and damages being entered against the party claiming the invalid lien. Therefore, parties considering the filing of a mechanic's lien or defending a mechanic's lien should fully understand the Lien Statute, the ramifications of their actions, and should strongly consider retaining an attorney for legal advice regarding the mechanic's lien issue.

WHO CAN FILE A MECHANIC'S LIEN?

The Lien Statute generally provides that any person or business who supplied labor, materials, equipment, tools or machinery to be used in construction on any structure or improvement upon land may file a mechanic's lien. This also includes architects, engineers, draftsmen, and artisans who have furnished designs and construction managers overseeing construction. This also includes any subcontractors or suppliers who may not have direct contract with the property owner.

WHAT IS THE PROCEDURE NECESSARY TO FILE A MECHANIC'S LIEN?

Before a mechanic's lien can be filed, the party claiming the mechanic's lien must provide the property owner and general contractor for the project with a written notice of their intent to file a lien statement at least ten (10) days prior to the recording/filing of the mechanic's lien. The notice of intent must include all of the information that is required by the Lien Statute to be included in the mechanic's lien. After a minimum of ten (10) days notice has been provided to the property owner and general contractor, the party claiming the lien may proceed to record the mechanic's lien in county property records. Any failure to give notice or the improper or untimely recording of the mechanic's lien will invalidate the lien in most instances.

WHAT INFORMATION MUST BE CONTAINED IN A MECHANIC'S LIEN?

The Lien Statute provides that specific information must be set forth within the mechanic's lien, including, but not limited to: the name and address of the party claiming the lien; the name of the property owner and general contractor; the street address and legal description of property charged with the lien; the dollar amount of the lien; and sworn statements as to the information contained in the lien and the ten (10) days notice of intent discussed above. In many instances, failure to comply with the Lien Statute's requirements for information that must be included in a mechanic's lien can invalidate the lien. It is extremely important for parties claiming mechanic's liens to comply with the Lien Statute and ensure the accuracy of the information in the lien since the Lien Statute provides penalties for the noncompliant

assertion of liens, including, but not limited to, payment of any costs, attorney fees or damages incurred by parties affected by the lien. In many circumstances, the assistance of an attorney specializing in construction law can be of great assistance in properly preparing and filing a mechanic's lien and providing and documenting the required prior notice.

WHAT DEADLINES ARE ASSOCIATED WITH MECHANIC'S LIENS?

The Lien Statute provides a number of different deadlines associated with the filing and enforcement of a mechanic's lien that must be strictly complied with. Any failure to accurately comply with these deadlines can result in an invalid lien and/or litigation against the party asserting the lien. Generally, a mechanic's lien must be recorded no later than four months after the last day on which the labor was performed or the last material furnished; however, a variety of case-specific factors can shorten, extend or alter this recording deadline, and the Lien Statute does provide a specific procedure to extend the recording deadline depending on the circumstances. For instance, day laborers must record mechanic's liens no later than two months after the project's completion. In addition, the Lien Statute also requires that an action to foreclose on the mechanic's lien generally be commenced no later than six (6) months of the date of completion of the project or the date when the last materials or labor was furnished, whichever occurred last. Given the numerous deadlines—as well as other exceptions and case-specific factors that may alter these deadlines—it is crucial to understand and closely adhere to the Lien Statute's deadlines when claiming a mechanic's lien and persons or businesses considering filing a mechanic's lien should strongly consider seeking legal advice from an attorney to ensure proper compliance with the Lien Statute.

HOW DOES A PARTY CLAIMING A MECHANIC'S LIEN COLLECT OR ENFORCE ITS LIEN?

Once a mechanic's lien is recorded against the property, the lien creates an encumbrance against the property, but in most instances the mere recording of a mechanic's lien alone will not result in payment of the amount claimed in the lien. To enforce the mechanic's lien, the party claiming the lien must commence litigation to foreclose upon its lien and file a notice of lis pendens giving notice of the filing of litigation. The Lien Statute provides a specific deadline for the commencement of litigation to foreclose a lien and the filing of a notice of lis pendens. Any failure to meet this deadline results in the loss of lien rights and the expiration of the lien. In the foreclosure action, the Court will conduct a trial to determine the validity of the lien and amounts claimed, the priority of the mechanic's lien in relation to any other encumbrances against the property (such as mortgages), and if successful, will allow the lien claimant to proceed with a foreclosure sale of the property at auction to collect the amounts due.

WHAT CAN BE DONE TO REMOVE A LIEN AGAINST MY PROPERTY?

The Lien Statute provides specific procedures for resolving invalid liens and the removal of liens that may be valid or disputed. In many circumstances, mechanic's liens can be invalidated if the amount claimed in the lien is excessive, if the lien claimant failed to follow the numerous procedures, deadlines and requirements for properly asserting a lien in the Lien Statute, or if the lien is attached to an incorrect property. In these instances, the property owner or other interested parties can request that a Court determine the lien to be invalid, release the lien, and award damages, costs and attorney fees incurred due to the improper lien. Given the numerous different deadlines, procedures and requirements for properly filing a mechanic's lien, an attorney's review of a mechanic's lien can often greatly help determine the lien's validity and options for its removal.

In instances where a property owner needs a prompt removal of a mechanic's lien (oftentimes due to an impending sale of the property) and disputes the amounts claimed in the lien, the Lien Statute allows a property owner or other interested party to post a bond in Court that will substitute for the lien and the disputed lien will be released as the bond replaces the lien as security for payment of any amounts that might be due. Once a bond is substituted for a lien, the lien claimant is still required to timely commence litigation to foreclose on its lien or have the lien expire. Certain procedures must be followed for a bond

to properly substitute for a lien and cause its release, and an attorney specializing in construction law can often assist greatly in undertaking these legal proceedings.

HOW CAN THE RECORDING OF A MECHANIC'S LIEN AFFECT MY PROPERTY?

Like other liens (such as mortgages or deeds of trust), a mechanic's lien acts as an encumbrance against the title of real property. A mechanic's lien can significantly interfere with the sale of the property or the refinancing of the property and, in many cases, may render a mortgage borrower in default of his mortgage as a result of the lien affecting the title to the property, which default may result in the mortgage bank proceeding to foreclose upon the property itself.

HOW CAN YOU AVOID MECHANIC'S LIENS DISPUTES?

The Lien Statute and Colorado law provide several avenues that property owners and contractors can utilize to avoid or resolve mechanic's lien and other payment disputes. One of the most effective means to avoid lien disputes for both the property owner and the contractor is to utilize a well-drafted construction contract that provides specific payment procedures and protocols and to understand your rights and responsibilities set forth in the contract. In many instances, property owners can enter into contracts with contractors that restrict their ability to file liens or waive their lien rights in exchange for payments. A contract can also require general contractors to purchase a surety bond to ensure against and remove any liens filed, including liens of subcontractors or material suppliers. Additionally, the Lien Statute provides a procedure for owners of rental properties where tenants are undertaking improvements themselves to avoid mechanic's liens against their property should the tenant fail to pay for the work. Therefore, individuals and businesses involved in construction projects should retain legal counsel to advise and protect their legal rights in these transactions as in many instances relatively low-cost involvement by an attorney initially in a construction project can help avoid much larger and more costly disputes as the project progresses and ensure a successful project.

HOW CAN I RESOLVE A MECHANIC'S LIEN OR PAYMENT DISPUTE?

There are a variety of approaches that can be utilized to resolve a mechanic's lien or payment dispute, which are often specific to the underlying circumstances of your case. The Lien Statute contains many specific requirements and your fulfillment of these requirements can have a dramatic affect on your lien rights. Failures to fulfill these requirements can also result in you unknowingly becoming liable for damages, costs and attorney fees. The Lien Statute also includes many specific requirements and deadlines that may render a lien filed against your property invalid, depending on the specific circumstances of the case. Given these complexities, if you are dealing with a mechanic's lien or payment dispute you should consult with an attorney who specializes in construction law to better understand and protect your legal rights, responsibilities, and options. If you have further questions about mechanic's liens or need representation on a mechanic's lien dispute, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillierlaw.com.

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