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UNDERSTANDING MECHANIC'S LIENS

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 that were incorporated into any 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 rendered invalid with penalties and damages being entered against the party claiming an invalid lien. Therefore, parties considering the filing of a mechanic's lien or defending a mechanic's lien should ensure that they fully understand the Lien Statute and the ramifications of their actions.

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 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 a 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 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 as well as affidavits attesting to the notice of intent being provided before the filing of the 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 with the Clerk and Recorder's Office in the County where the property is located. Any failure to give notice or 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, and the dollar amount of the lien. The mechanic's lien must also include a sworn statement as to the information contained in the lien by the party claiming the lien, the sworn affidavits regarding the ten (10) day 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 assertion of liens that claim excessive amounts or that are filed against the wrong property, including, but not limited to, payment of any costs, attorney fees or damages incurred by parties affected by the lien.

WHAT DEADLINES ARE ASSOCIATED WITH MECHANIC'S LIENS?

The Lien Statute provides a variety of 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 or litigation against the party asserting a lien for the assertion of an excessive or improper lien. Generally, a mechanic's lien must be recorded with the Clerk and Recorder's Office no later than four months after the last day on which the labor was performed or the last material furnished; however, a variety of factors can shorten, extend or alter the 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 factors that may alter these deadlines—it is crucial the anyone claiming a mechanic's lien understand and closely adhere to the Lien Statute's deadlines.

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

Once a mechanic's lien is recorded with the Clerk and Recorder's Office, the lien creates an encumbrance or lien 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 liens or encumbrances against the property (such as mortgages), and if successful, will allow the lien claimant to proceed with a foreclosure sale of the property 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 and requirements for properly asserting a lien in the Lien Statute, or if the lien is attached to an incorrect property. In instances such as this, 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.

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 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.

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 a parcel of real property. In instances where a property owner is not looking to sell or transfer title to a property, the mere recording of a mechanic's lien against your property may not pose significant

problems unless your mortgage or loan has specific prohibitions on other liens against your property. In instances where the sale or transfer of the property is impending, the use of a bond to substitute for the lien (as described above) can eliminate any difficulties the lien creates to a transfer of the property. While the mere recording of a mechanic's lien may not cause significant problems, an action to foreclose on the mechanic's lien does have a much greater impact as this action is a court trial where the Court will determine if the lien claimant can proceed with a foreclosure sale of your property to collect the amount claimed in its lien.

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 the filing of mechanic's liens. One of the most effective means to avoid lien disputes for both the property owner and the contractor is to utilize a well-drafted 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 payment. A contract can also require general contractors to purchase a surety bond to ensure against and remove any liens filed. Additionally, the Lien Statute provides a procedure for owners of rental properties where tenants are undertaking improvements to avoid liens against their property.

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 approaches 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 and your property. Failures to fulfill these requirements can also result in you unknowingly becoming liable for damages, costs and attorney fees. Given these complexities, if you are dealing with a mechanic's lien or payment dispute it is advisable to consult with an attorney to better understand your 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@jhmillerlaw.com.

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