

FREQUENTLY ASKED QUESTIONS (F.A.Q.)

Regarding

Construction Law

by Christian Linville

What is a construction lien?



A construction lien is an encumbrance upon real property that enables a contractor or worker to sell the property in order to get paid for work done on that property. The law allows you to file a lien against the property where you did your work in the amount that you're owed. The lien is recorded against the title of that property, meaning that you have an interest in that property in the amount owed.

How does the lien enable me to be paid?

Once the lien is properly filed and recorded, you can ask a court to foreclose on the lien. That means a court will command the sheriff to sell the property at auction, and pay you what you're owed out of the proceeds. Most property owners would rather pay for the work done to their property than risk losing it. Any potential buyers of the property will know that its title is encumbered by your construction lien, and will not purchase the property that is subject to foreclosure unless the lien is satisfied. It is a powerful and effective tool to ensure you are paid.

Are there any requirements of the contractor, subcontractor or supplier?

Yes. If you are a contractor, you must be properly and currently registered with the Washington State Department of Labor and Industries. That means you must be bonded and insured. In order for you to bring any court action against a property owner who is not a general contractor, you must have been registered at the time you contracted for the work. If you are a subcontractor or supplier, not only must you be registered, but you must work with a registered contractor. You forfeit the right to file a lien by working with an unregistered contractor.

Are there any prerequisites to filing a construction lien?

Yes. Prime contractors who contract directly with a property owner must give notice to customers of residential projects (4 or fewer units and greater than \$1,000) and commercial projects (from \$1,000-\$60,000) prior to starting work. The notice must contain specific information required by law. Giving notice is not the filing of the lien itself; it is merely giving the property owner certain information about your bond and registration, and further information on how to avoid liens on his property for work done.

If you are a supplier of materials to a contractor or a second-tier subcontractor (subcontractors contracting with subcontractors), you must give the property owner notice that you have a right to claim a lien against the property. It is best to give notice before doing any work or supplying materials, but you can protect your right to claim a lien by giving notice within 60 days after providing materials (or within 10 days after providing materials in the case of a new construction of a single family residence). If the job is a residential remodeling project, all subcontractors must give this notice to the owner.

How is the lien filed?

The claim of lien must be filed no later than 90 days after the last date you did work or supplied materials. It must contain certain information required by law. It is filed with the county auditor or recorder of the county in which the property is located. In order to preserve the right to attorneys' fees and court costs, the claim of lien must also be given to the property owner by certified mail within 14 days of the date it was recorded.

Does the claim of lien expire?

Yes. You must bring a lawsuit to foreclose on the line within 8 months of the date when the lien was recorded, or it expires. A lien cannot be renewed.

What about public works projects?

A similar process exists to ensure payment on state public works projects. The lien of an unpaid subcontractor or supplier is filed against the contract retainage and payment bond purchased by the prime contractor and provided by the prime contractor to the public agency to guarantee that all subcontractors and suppliers and taxes will be paid. All subcontractors and suppliers who do not contract directly with the prime contractor must give notice to the prime contractor of the right to file a claim against the prime contractor's payment bond and retainage within 10 days after the date of first delivery of materials or supplies. Claims must be filed with the appropriate state agency within 30 days after that agency's final acceptance of the work (payment bond claims), or within 45 days of completion of the contract work (retainage claims).

What about federally-funded construction projects?

As with state-funded projects, a lien can be filed against the bond put up by the prime contractor under the federal Miller Act. Those contracting directly with the prime contractor are not required to give notice to the prime contractor. However, second-tier subcontractors and materialmen must give notice within 90 days after the last day of performance of labor or delivery of supplies. Third-tier subcontractors and materialmen are not protected by the Miller Act. There is a 9-month window to file a lawsuit on your claim against the bond. The window starts 90 days after you last provide labor or materials to the project and ends 1 year after the last date labor or materials were provided.

Is a construction lien the only way to recover payment for your labor or materials?

No. Liens are but one method of payment collection. Nothing prevents a contractor or supplier from going to court and seeking payment from another party for what is owed. Liens are an effective and timely remedy and contractors or suppliers would be well advised to preserve their lien rights whenever possible. This means paying close attention to deadlines and giving the proper preliminary notices.

What is a lien release?

The property owner or general contractor may ask that you sign a lien release or lien waiver in order to receive a progress or final payment. These forms release or waive your rights to file a lien against a property to recover for unpaid services. If you have not yet been paid for work done or materials supplied, you may be waiving your rights to recover by filing a lien if you sign these forms. However, you can sign a "conditional release" form that waives or releases your claim of lien against a property only when you've been paid for work done or materials delivered. If you have been paid for all the work you've done, there is no risk in signing these forms.