
Mechanics' Liens and Right to Payment: Getting What is Owed

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Agenda

- **Getting Paid Starts Well Before the Payment is Due**
 - **Pre-Contract**
 - **Everyone Plays a Role**
 - **Contract Negotiation & Administration**
- **Informal Efforts**
- **I'll have to refer this to my attorney...**
 - **Mechanic's Liens**
 - **Bond Claims**

Pre-Contract

- **Who are you dealing with?**
- **Due Diligence**
- **Involvement of the Team**
 - **Business Development**
 - **Project Leadership**
 - **Credit Team**

Contract Negotiation & Administration

- **Favorable contract terms**
 - Length of pay application cycle
 - Complexity and clarity of pay application process
 - Right to stop work if not paid by a certain time
 - Owner right to withhold funds?
 - Payment of undisputed portions
 - Pay when paid/ pay if paid
 - Pre-work lien waivers
 - Agreement to bond off liens of downstream parties

Everyone Plays a Role

➤ **Sales/ Credit Manager - Issues at Account or Job Opening**

- Personal guaranty from Customer?
- DUNS Report
- Case.net Searching
- **Complete** Credit Applications
- Secretary of State Verification of Customer Identity
- References
- Pre-Payment by Credit Card
- Financing Information on Project or Property to Determine Risk
- Owner Information (Tenant/Landlord?)
- General Contractor Information
- Property location
- Nature of the Project

➤ **Ordering/Dispatch/Delivery**

- Accurate record of materials provided by Job
- Location of Project
- Signed delivery tickets
- Purpose/use of materials
- Customer consent if homeowner

Everyone Plays a Role (cont'd)

➤ Administration

- Timely invoicing
- Organized recordkeeping
- Record of communication with customers and other parties regarding credits and collections
- Proper lien waivers
 - Conditional on “receipt of payment”
 - In the “amount of payment received to date”
- Early recognition of potential problems with collection
- Timely coordination with attorney

Mechanic's Liens

- **What is a mechanic's lien?**
- **To lien or not to lien, that is the question**
- **The “mechanics” of a mechanic's lien**
- **Notice requirements**
- **Lien filing requirements**
- **Filing suit**

Mechanic's Liens – What is It?

- **Creature of law**
- **Security if you don't get paid after winning a lawsuit**
- **Right to force sale of private real property in order to obtain proceeds**
- **Covers the reasonable value of labor, materials and services provided to an improvement**
- **Technical process**

To Lien or Not to Lien - Factors

- **Amount of debt – cost vs. benefit?**
 - Time & effort of company employees
 - Expenses for title search, service of notice, etc.
 - Legal expenses
- **Customer situation, history and relationship**
- **Customer outlook for future**
- **Technical problems with lien requirements**

Missouri Mechanic's Liens

- **Original Contractor Notice**
- **Subcontractor Notice – Commercial**
- **Subcontractor Notice – Residential Remodels, Repairs and Improvements**
- **Residential Notice of Rights**

Missouri Mechanic's Liens – Original Contractor Notice (§ 429.012)

➤ Who?

- General Contractors must give notice to the Owner

➤ What?

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, REMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

➤ When?

- Prior to receiving payment in any form of any kind

➤ How?

- Few options (contract, first invoice, commencement of work)

Missouri Mechanic's Liens – Subcontractor Notice (Commercial) (§ 429.100)

➤ Who?

- Subcontractors must give notice to the Owner
- It is also suggested that you provide notice to the general contractor, the party that hired you, and any lender or surety if known

➤ What?

- Notice that you have claim against improvement, description of property, amount of claim, and from whom due

➤ When?

- 10 days prior to filing lien

➤ How?

- Personal service on Owner, or Owner's agent

Missouri Mechanic's Liens – Subcontractor Notice (Residential) (§ 429.013)

➤ Who?

- Subcontractors performing repairs, improvements or additions on Owner-occupied property of 4 units or less must obtain Owner's consent

➤ What?

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.

➤ When?

- At time of contract (signed separately from Contractor's notice)

➤ How?

- General contractor to retain copy and furnish to subcontractors and suppliers upon request

Missouri Mechanic's Liens – Residential Notice of Rights (§ 429.016)

➤ Who?

➤ All potential lien claimants must record a Notice of Rights for residential construction, other than remodeling, repair, and additions

➤ What?

➤ Date, owner, claimant, legal description of property, party with whom you contracted, authorized and notarized signature with printed name

➤ When?

➤ 5 days before intended date of closing, as shown in notice of intended sale

➤ How?

➤ Record with recorder of deeds in county where property is located

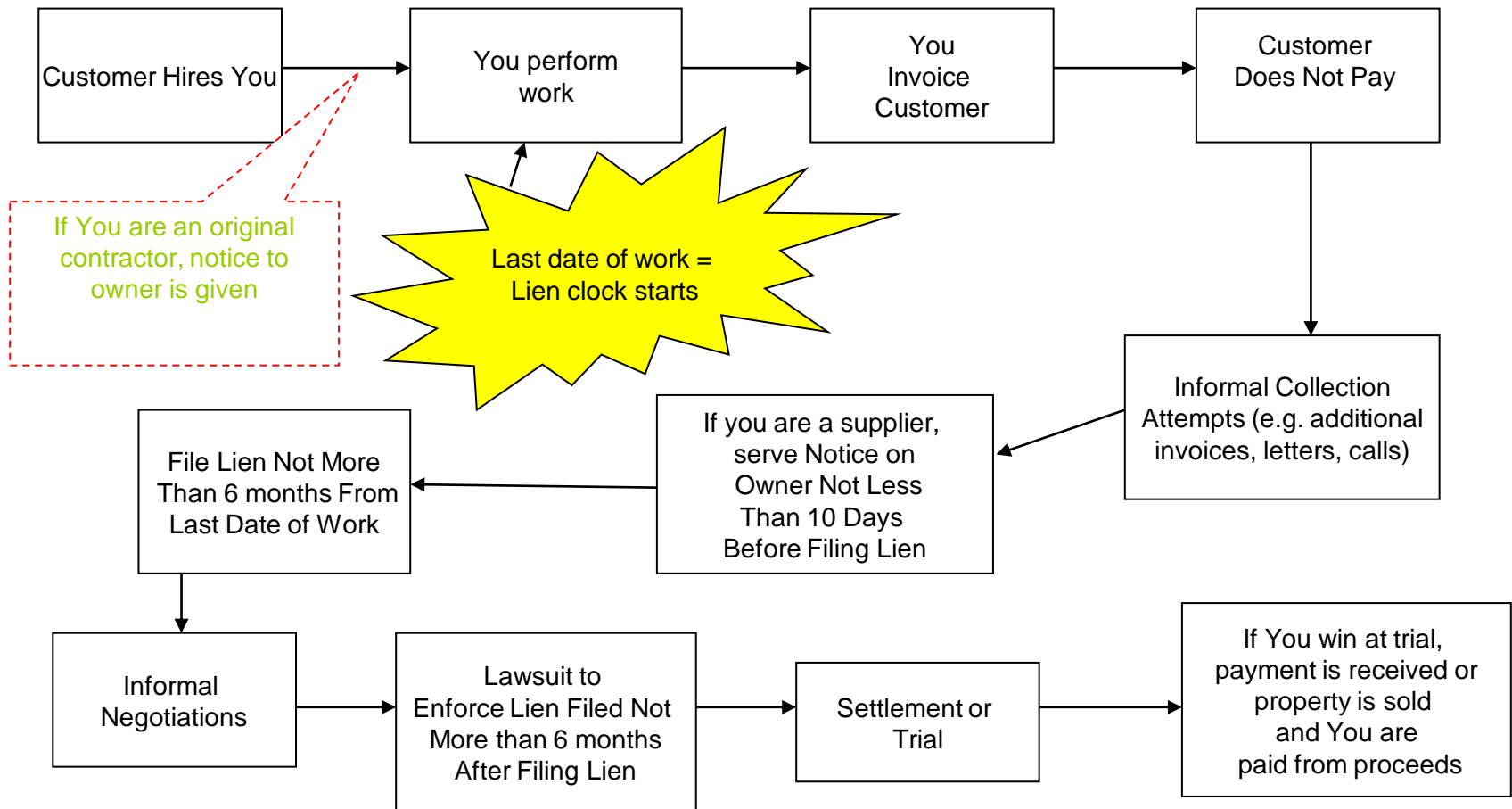
Mechanic's Lien Filing & Content

- **Due 6 months from your last date of base scope work**
 - Generally, warranty work doesn't count
- **Accurate property description**
- **Description of the correct parties**
 - Who owes you
 - Identification of the correct owner of the property
- **“Just and true” account**

Mechanic's Lien Lawsuits

- **Due within 6 months of filing the lien**
- **Try to negotiate in the interim**
- **Use the lien for leverage to avoid having to file suit if at all possible**
- **After filing suit, the lien becomes less important**
- **You have to win on substantive grounds to collect**
- **Usually a fight with a bank over priority**

Mechanic's Liens Process



Suggested Lien Timeline

<u>Days Past Due</u>	<u>Action</u>
30	Reminder statement to customer Identify last date of base scope work (not warranty work)
45	Confirm whether there is a payment bond
60	Warning letter to customer
90	Refer to attorney
100	Attorney demand/warning letter
120	10-day Notice of Claim (if applicable)
150-175	File Mechanic's Lien

Bond Claims

- **What is a Surety Bond**
 - **Guaranty issued by surety that replaces the property as security**
- **Why are they used**
 - **Owner generally wants to sell the property and cannot do so with liens on the property**
 - **Contractor generally cannot receive final payment if liens are on the property**
- **Making a bond claim**
 - **Request copy of bond and then send letter to surety setting forth reasons why withholding payment is improper and request payment**

Questions?

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