

## Mechanic's Lien Law – Who? What? Where?

With home ownership at all time high and high prices (and correlating property taxes) driving remodeling and home improvements, many property owners are first being introduced to Construction Lien Law, also known as Mechanic's Lien Law. Similarly, with high demand for contractors, roofers and other skilled labor for new construction and improvements it has become even more important to for these companies to ensure payment for their services and materials. Like many other areas of law, this area can be fraught with serious and expensive risks if one is unfamiliar with its trappings. This is an area of law that is filled with nuances and intricacies, and has the reputation of causing confusion even to the most experienced contractor, supplier and skilled laborer. On the other hand, if one is familiar, then one can successfully use the statutes to secure payment for services and materials provided to the job.

Florida Statute §713 *et al* controls lien law rights, duties and obligations; indeed, it authorizes those that furnish labor, services and materials to improve real property to file and enforce a lien as a means of ensuring payment. Chapter 713, not only protects contractors, suppliers, and laborers, but architects and engineers, as well. No less, it also protects the homeowner or property owner from improper or slanderous liens. Depending on the classification of the services provided, the statute will dictate one's obligations and remedies under Chapter 713, for instance, a person in privity (direct contact) with the homeowner will have different obligations and remedies as one who is not in privity with the homeowner (potentially a subcontractor).

Under Chapter 713, a lien can only attach to private property and only by a licensed contractor, subcontractor or sub-subcontractor, which means "hands off" to that addition you just finished for city hall or state park.

Of course, one of the more important features of Mechanic's Lien Law is a document called a "Claim of Lien," which must be filed within ninety (90) days from the date the lienor *last* furnished labor or materials. This "Claim" must be served on the owner within fifteen days from the date it is recorded in public records. The reason this document is so important is because the Statute of Limitations to foreclose on a Claim of Lien is one (1) year from the date the "Claim" is recorded.

This is not the end of the road to ensure payment or protect your property from wrongful liens. The statute is full of time sensitive notice requirements, including "Notice of Commencement," which must be submitted by the owner and posted on the job site, and the lienors' "Notice to Owner," which satisfies the notice requirement by anyone who is not in privity with the owner. Not only must the Notice to Owner be timely, it must name who exactly provided materials, labor and supplies to the property. This "Notice" protects the owner from paying twice for the work or services provided because the general contractor is required to submit an affidavit attesting to the fact that any and all potential lienors have been paid. Of course, this assumes that the owner has paid the contractor. Remember, no "Notice to Owner," then no lien on the property.

It is not possible to outline every possible scenario associated with Mechanic's Lien Law. The very reason there are deadlines are twofold, so (1) everyone is on notice as to what is expected, and (2) to protect and secure one's rights. It is only by strict compliance can the project be completed, no liens are outstanding and everyone receives payment – hopefully.

*Silverberg & Weiss, PA practices both Business Law (transactional) and Commercial Litigation, including Mechanic's Lien Law. For more information call (954) 384-0998, e-mail to [info@pkslegal.com](mailto:info@pkslegal.com) or visit the firm website at [www.pkslegal.com](http://www.pkslegal.com).*