

Mechanic's Liens are a Patriotic Product of Our "Founding Fathers"

by Donald Gregory, Esq.

Many in the construction industry are familiar with the importance of mechanic's liens, but are not as familiar with their creation and history.

When George Washington was still President, the young country was planning to build a new capital city on the Potomac River. President Washington chose the site and a federal commission was formed to oversee construction in the newly created capital that would become the District of Columbia. In 1791, Thomas Jefferson, James Madison, and other members of that commission suggested to the Maryland General Assembly that it enact a statute "for the encouragement of master-builders to undertake the building ... within the city, by securing to them a just and effectual remedy for their advances." Late in 1791 — at almost the same time as the Bill of Rights was adopted — the first mechanic's lien law was enacted.

Early lien laws were primarily focused on protecting the laborers and materialmen who actually performed the work, and tended to be limited to particular cities or areas. But the idea spread until almost all states enacted mechanic's lien laws covering their entire jurisdictions.

Approximately a century ago there were some due process assaults on mechanic's liens laws, but mechanic's liens and their constitutionality prevailed. Many states enacted constitutional amendments that specifically barred any statute from interfering with mechanic's lien rights.

The next time you are faced with nonpayment and considering whether or not to take action to protect your mechanic's lien rights, remember your patriotic duty. The Founding Fathers would approve.

Donald Gregory, Esq., is a director and chair of the construction practice area for Kegler, Brown, Hill & Ritter, Columbus, Ohio, ASA's legal counsel. Gregory can be reached at (614) 462-5400 or dgregory@keglerbrown.com.

to track who has and who has not sent preliminary notices, lien waivers, and other lien-related documentation.

There is quite literally, therefore, a dashboard to report on the priority that should be given to a subcontractor.

Subcontractors can avoid disputes and maintain leverage in the negotiation by appearing on this dashboard in a priority position, and they do that by simply keeping their lien rights alive. At the start of a project, savvy subcontractors send a preliminary notice to keep the general contractor and other top-of-the-chain parties honest, and to put themselves in the front of the payment line.

After A Dispute: Level the Playing Field with a Lien Claim

Subcontractors who deliver a preliminary notice and stay "at the front of the payment line" will avoid a lot of dispute scenarios. Nevertheless, it's impossible to avoid problems completely, and subcontractors may still find themselves confronted with

a dispute and negotiating against the possession principle. What can be done now?

When a dispute arises, it's critical for subcontractors to pull the trigger and use their lien or bond claim rights. Sending the preliminary notice puts them in position to use the remedy, but when a dispute arises, it's time to actually use it. It's usually the only way to gain some leverage in the negotiation.

Mechanic's lien claims have a number of direct [consequences](#) that yield favorable results to the subcontractor. While the general contractor may be "ahead" of the subcontractor and with the upper hand at first, filing a mechanic's lien pushes back at this and actually lays claim to a bit of possession for the subcontractor: possession of the jobsite.

One effect of a mechanic's lien claim is that the ownership of the jobsite gets thrown askew. The property cannot be sold, transferred, refinanced, or otherwise altered until the lien claim is resolved. Further, the mechanic's lien typically causes

contractual complications between the owner and the lender, and the contractor and the owner. All of these things help the subcontractor offset her initial possession disadvantage, and levels the playing field.

Take Caution, and Conclusion

Proceed with caution around the mechanic's lien process — for two conflicting reasons.

First, the preliminary notice and mechanic's lien process is riddled with misunderstandings and fear. A lot of subcontractors are scared to send preliminary notices to their general contractor customers thinking that it will get them black-balled from future business or will otherwise ruin the relationship. And further, when they decide to send a preliminary notice, the nuances of state legal requirements can be overwhelming.

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