

Mississippi's lien laws

Assume that you're the general contractor on a custom project, or a remodel; or you're a lessor of equipment on any one of the following jobs, you submit your invoice for services to either the owner or the general contractor, whoever contracted you to do that job, you wait, you wait, you wait, and you wait. You don't get paid. What do you do?

Mississippi lien law is not straight forward; in fact, it's very confusing and convoluted. It presents rewards to those who are diligent and detailed, and great pit falls to those who rather "leap before they look."

This is a broad overview of Mississippi lien law. To discuss who has what rights, and who doesn't, and the penalty for violating this law.

In Mississippi, everyone who provides labor or materials, or even design services (architects, engineers, surveyors, etc.), for improvement of real property, is entitled to protect the value of his services rendered with a lien on that property.

What is a lien? A lien is a charge against the value of that property which, in reality, attaches to that property until it is either satisfied, or expunged (through legal process, foreclosure, bankruptcy, or otherwise).

Who is entitled to a construction lien? Under Mississippi's current law, you are entitled to a construction lien if you are provided labor, materials, design services or leased equipment to an owner of property, and you have a direct contractual relationship with the owner of the property. The contract can be written or oral.

The lien must be filed within ONE YEAR after payment is due for the services rendered. In addition, during that same year, you must file suit for the enforcement and perfection of that lien. This means that if you provide renovation services directly to an owner, not to a general contractor, and you send him a bill on January 1 of year 2013, and the terms are "net ten days," and he does not pay you, then you must file your lien against that property by January 10, 2014. If you do not, your right to do so is barred, forever.

In addition, you also must file suit to enforce and perfect that lien within that same one-year period. So, therefore, if you filed your lien on February 1, 2013, but did not file suit to enforce that lien until March of 2014, your lien rights have extinguished.

Here is what has to be done to file a lien. The Mississippi statute's are very specific, that the Notice of Lien must put the owner on notice that the contractor is maintaining a right to put a lien on the property for moneys due and owing, in a specific amount, for services rendered and materials supplied, which have not been paid. The lien must provide a copy of the contract between the owner and the contractor who is putting the lien on the property. If there is no written contract, instead, an oral contract that is the only thing that exists, a sworn affidavit, identifying,

with specificity, the services rendered, the materials supplied, and the cost of each, can be supplied in lieu of a written contract. The lien must provide a legal description (no street addresses) for the property, and the contractor must identify all known persons or entities with an "interest" in the property at the time of the filing of the lien. This means banks with Deeds of Trust, other contractors with liens, and anybody else who would own an interest in that property.

You also must send a copy of the Notice of Construction Lien, via certified mail, return receipt requested, to the owner of the property, copied to all persons with an interest in the property, notifying them that the lien had been placed on the property. You also must sign an Affidavit, which has to be part of the lien filing, which states that you have or will have provided this Notice. Once you have provided this notice, and provided the information required, you file your lien in the lien Book with the Chancery Clerk Land Records Division of the county in which the property may be found and the Lis Pendens record in the same county.

What benefit does the filing of a lien that give you? The purpose of filing a lien is that it gives you prejudgment priority over the piece of property that you performed work on. It's that simple. If the owner wants to try to sell the property or refinance the property, and it has your lien on it, that lien must be satisfied by paying it or at least bonding it, securing your right of payment, "at the end of the day."

Depending on how aggressive you are in filing your lien, you may find yourself having priority over even some permanent financing company.

The lien statute was recently amended by the Legislature to also give lien rights to material suppliers who lease equipment. In other words, if you're building a spec. house, and you own the property, and you rent materials and supplies from a local vendor -- watch out! If you don't pay their bills, they may place a lien on your project. They weren't always able to do that until recently, when the Legislature's amendments to the lien statutes were enacted.

However, **SUBCONTRACTORS DO NOT** have lien rights, unless they have a direct contract with the owner of the property. If the only contractual relationship is between the sub and the general, and the general is also not the owner of the property, in the case of most custom projects or a remodel project, then that subcontractor has no lien rights, but is limited only to "stop payment" rights. In March, 2013, the Federal District Court of North Mississippi ruled this process as unconstitutional. This case is being appealed to the fifth circuit.

What happens if a lien is wrongfully filed on a property? Nothing good.

The owner has a right, under Mississippi law, to seek an expungement of a wrongfully-filed lien. An owner has one year from the filing of a "false lien" to seek expungement of that lien. A contractor, supplier, or designer who "falsely and knowingly" files a wrongful lien is subject to a very stiff penalty: The award of the face amount of the false lien to the land owner. In other words, if I am subcontractor X, and I file a lien for payment due me by the general contractor, who I know is not the owner of the property, and I file my lien anyway, "just 'cause," and if that owner seeks to expunge my lien, and can prove that I filed my lien "falsely, knowingly, and without just cause," I may be facing a judgment against me for the face amount of my lien, in

addition to having my lien expunged.

If I am a general contractor, with a contract with the owner, and file a lien against the property, without providing proper notice to the owner, or if my lien form is defective and I do not correct it, then, while I may not be subject to the penalty discussed above. My lien can be expunged, and any priority over other creditors that I may have had, lost. Therefore, it is extremely important that, when filing liens, contractors “look before they leap,” and act with deliberation.

However, as shown above, if the contractor has the right to place the lien on the property, and does so correctly and timely, the position he may put himself in may make the difference between getting paid and not being paid at all.