

Procedure for Perfecting a Mechanic's Lien Claim in Alabama

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I. Introduction

A mechanic's lien is a construction lien placed on real property which arises in favor of parties who furnish labor or material that is incorporated into the construction of a building or other improvement to land. Mechanic's liens are creatures of statute, and their purpose is to protect the rights of unpaid contractors, subcontractors, laborers, and material suppliers. This protection is provided by placing a lien against the owner's property for the amount of the debt owed to the unpaid party. The lien acts as an encumbrance against the owner's property, and once it is perfected a court can order the sale of the property in order to satisfy the debt owed to the lien claimant. Because mechanic's liens are creatures of statute, the procedural and notice requirements contained in the statute are strictly enforced, and failure to strictly comply with these requirements will bar the enforcement of any lien against an owner's property.

At the outset, it should be noted that Alabama law prohibits the enforcement of liens against public property. Therefore, in Alabama, parties can only assert mechanic's liens against construction projects located on private property. However, Alabama law does require general contractors on public projects to furnish payment and performance bonds. Therefore, a party who has not been paid on a public project has the option of pursuing a bond claim instead of a lien claim. As far as asserting a mechanic's lien against a private project, Alabama's lien law contains strict procedural requirements which vary depending upon the status of the party asserting the lien claim. The Alabama Mechanic's Lien Statute, which provides the procedures necessary to perfect a mechanic's lien, is codified in Alabama Code § 35-11-210 *et. seq.*

II. Type of Mechanic's Liens Available in Alabama

In Alabama, there are two types of mechanic's liens. The first type is referred to as the "full price lien." A full price lien entitles the claimant to assert a lien for the entire contract balance owed to the party on the construction project. As far as the parties entitled to assert a full price lien, any original contractor (contractor with a direct contract with the owner) is entitled to assert a full price lien. In addition, parties who do not have a direct contract with the owner are entitled to assert a full price lien if they furnish the owner and construction lender (if any) with the required preliminary notice. This preliminary notice must be furnished prior to furnishing any material, and must state that certain specified materials will be furnished to the owner at certain specified prices. If the owner does not object in writing to this notice prior to the time the material is used on the project, this party is entitled to assert a full price lien.

The second type of lien available in Alabama is the "unpaid balance lien." The unpaid balance lien entitles the claimant to only the unpaid balance (if any) of the contract funds due from the owner to the contractor. The unpaid balance lien applies to those parties who do not have a direct contract with the owner and did not furnish the owner with the required preliminary notice. In addition, it also applies to parties who furnish the preliminary notice if the owner objects to such notice.

III. Notice of Intent to Claim a Lien

In order for a party who does not have a direct contract with the owner to perfect either a full price lien or an unpaid balance lien, this party must first furnish the owner with a written notice of intent to claim a lien. This notice must state that the party is claiming a lien and must provide the amount of such lien claim. In addition, it must also state the type of work that was performed and the name of the person or entity who owes the claimant for such work. A copy of this notice must also be provided to the construction lender (if any). This notice must be furnished to the owner prior to the filing of the actual lien claim.

IV. Verified Statement of Lien

The second step necessary to perfect a lien for a party who does not have a direct contract with the owner, and the first step for parties who do have a direct contract with the owner, is for this party to file a verified statement of lien with the office of the judge of probate in the county where the property is located. Alabama Code § 35-11-213 provides the statutory form required for this verified statement of lien.

The time period allowed for the filing of the verified statement varies depending upon the status of the party filing the claim. A laborer must file this verified statement within thirty (30) days of the last day that this party provided labor to the project. On the other hand, original contractors are required to file the verified statement within six months after furnishing the last item of work to the project. Every other claimant, including subcontractors and material suppliers who do not have a direct contract with the owner, must file the verified statement within four (4) months after the last item of work or material was performed or furnished to the project by such party.

V. Commencement of the Lawsuit to Enforce the Lien

Finally, all parties seeking to perfect a lien claim must commence a lawsuit to enforce the lien “within six months after the maturity of the entire indebtedness secured” by the lien. Courts have defined this phrase as meaning the time when the debt is contractually due to be paid to the lien claimant. As far as where to file the suit, Alabama’s lien law provides that when the amount of the claim is greater than fifty dollars (\$50.00), the claimant may bring suit in the circuit court having jurisdiction in the county where the property is located. In all other cases, the suit may be brought before the district court in the county where the property is located.

To discuss this further, please contact:

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