

Maryland Mechanics' Liens – Strategic Considerations

With private commercial work on the uptick, we are seeing more mechanic's liens. While the lien process is relatively straight-forward in DC and Virginia, it is much more complicated in Maryland.

In Maryland, a mechanic's lien does **not** attach at the commencement of the work or the filing of a lien action. Instead, a contractor, subcontractor, or other claimant must file a complaint, present evidence at a "show cause" hearing in circuit court, and (usually) prevail at a full trial on the merits to establish a lien. This much more intensive process was established as a result of the decision in *Barry Properties, Inc. v. Fick Bros. Roofing Co.*, 277 Md. 15, 353 A.2d 222 (Md. 1976), and can take 14 months or more to complete.

Below is a summary of key aspects of Maryland's mechanic's lien process.

Notice Requirements

Subcontractors, suppliers, and their lower tiers (but not prime contractors) must provide notice of their intent to file a petition to establish a lien within 120 days after their last day of work. Failure to provide notice is fatal to the claim, and is aggressively enforced by Maryland courts. The Maryland Code prescribes a form of notice, which requires several mandatory data items.

Filing of Petition To Establish Lien

Any party seeking a lien must file a petition to establish a lien within 180 days of that party's last day of work. The petition must include "all material papers" necessary to prove the lien. As a result, for any sizable lien claim, these filings typically include hundreds or even thousands of pages of documents. There are also specialized requirements for certain types of projects, such as condominiums and renovations. Failure to file the petition within the 180 day period is fatal. The petition is filed in the circuit court for the county where the project is located.

Show Cause Hearing and Trial

Assuming the filed paperwork is in order (which is not always the case), the court is supposed to issue a show cause order directing the owner of the property to file an answer under oath, typically within 15 days of the order. The order is also supposed to provide for an evidentiary hearing within 45 days of the order. Most of the circuit courts are good about adhering to these dates, but on



occasion we have experienced circuit courts that do not strictly comply. In any event, failure to file the answer under oath, and within the time specified in the order, is fatal – we won a case on this issue once, and watched opposing counsel get fired in the hallway on the way out!

At the show cause hearing, the judge can do one of three things:

- (1) deny a lien;
- (2) establish a lien; or
- (3) enter an interlocutory order if the claimant shows “probable cause” for its case.

As a practical matter, most judges tend to give the claimant the benefit of the doubt in finding “probable cause.” As a result, in the majority of cases, the judge enters an interlocutory order. For this reason, the owner (or sometimes the general contractor on the owner’s behalf) will avoid the show cause hearing by agreeing to an interlocutory lien and bonding off the lien. An interlocutory order is temporary and does not permanently impair title. The interlocutory order also establishes a date for a full trial on the merits within six months. If the claimant prevails at the trial on the merits, an enforceable judgment establishing a lien will be issued by the court.

Right To Enforce the Lien

A petition to enforce a lien must be filed within one year from the date the petition to establish the lien was filed, *regardless of whether a final order establishing a lien has been issued*. Failure to timely file this petition prevents the claimant from enforcing a lien, even if the claimant prevails at a trial on the merits.

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