

## **SUMMARY OF MECHANICS' LIEN LAW**

**FOR**

**KENTUCKY**

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## General Notes

**Be Careful:** The courts consider a mechanic's lien to be a privilege and not a right. You receive its benefits only if you **strictly adhere** to the state law requirements. Bottom line: miss a deadline by one day and you have lost it. Unlike other areas of the law where you can argue equities, find technical exceptions, and lawful excuses, there is no forgiveness here. In this case, knowledge is not only power, it's a necessity.

In many states this means you will be writing down dates for at least three (the number differs for each state) documents: a) Pre-Lien Notice; b) Mechanic's Lien; and c) lawsuit to foreclose the mechanic's lien. Write down all the deadlines in your calendar. Use a highlighter or red pen. If you have a staff, use a "fail safe" system by doubling up and putting it in their calendar also. This reminds you twice. The first calendar entry should be two weeks before the due date as a preliminary reminder.

On the second calendar entry, do a white lie to yourself. Put the due date as one week before it is actually due as insurance in case you get busy or need legal advice.

Time is money. You will waste a lot of valuable time running around and doing it at the last moment, as opposed to doing it early.

## PRE-LIEN NOTICE

This state requires a Notice be sent out before the mechanic's lien is filed/recorded. For simplicity, this notice will be referred to as a "Pre-lien Notice". The basic information on this Notice is as follows:

**Name of Notice:** Notice of Intent to File Lien.

**Who Must Use  
this Notice:**

All contractors, subcontractors, laborers, and material/equipment suppliers who **do not** have a direct contract with the owner or the owner's agent. For example, a general contractor with a direct verbal or written contract with the owner who acts as the prime is not required to give the Notice. This pre-lien is required only for private projects. No pre-lien is required for State public projects (state, county or city projects).

**When:** See **Time Deadlines** table.

**How to Serve:** The pre-lien notice should be served on the owner at the person's last known address by certified mail, return receipt requested, and an additional copy sent by regular mail. This insures that if the owner does not sign the certified receipt, there is also proof it was also sent by regular mail. If you really want to be safe, the post office will issue a "Proof of Mailing" for the regular, first-class mail, so there is certainty of the proof of mailing.

**Verified or Notarized?:** The pre-lien notice need not be notarized or verified.

## MECHANICS' LIENS

**Name of Lien:** Statement of Lien.

**Who is Entitled to a Lien:** A mechanic's lien is primarily for general contractors, subcontractors, laborers, as well as material suppliers. But it also covers, as of 1994, the rental and lease of equipment, small tools, and machinery, as well as the cost of labor, materials, and repair parts required to keep the machinery and equipment in operating condition on the project. A lien can also be used for design professionals, including architects, landscape architects, engineers, and surveyors, as long as they are licensed. In general Kentucky law allows mechanics' liens to be filed for people who have a contract with the owner or agent, general contractor, subcontractors, remote subcontractors, or architects.

**Who is not Entitled to a Lien:** Material/equipment suppliers who have a contract with another supplier, as opposed to another subcontractor.

**When to File/Record:** See **Time Deadlines** table.

**Where to File/Record:** Filed with the County Clerk in the county where the project is located.

**How to Serve:**

Serve the property owner at his or her last known address within 7 days of filing the Statement of Lien. This is absolutely crucial and if not done within the time limitations, the lien is of no force or effect. Because of the uncertainties of the statute, you should send the copy by both regular and certified mail, return receipt requested.

**Amount of Lien:**

Primarily for unpaid labor, material, and equipment supplied. Attorney's fees are usually not allowed. Further, indirect or consequential damages are not allowed, including lost profits, impact, and delay damages. In other words, damages for breach of contract which are not specifically related to conferring value or improvements to the property. It is uncertain whether interest or finance charges are allowed.

When a subcontractor or supplier is only entitled to a lien for the amount due from the owner to the prime contractor on both public and private projects. This means that if nothing is owed by the owner to the general contractor, your lien will not be enforceable.

**Property Subject to the Lien:**

Kentucky is one of the few states that allows a mechanic's lien upon federal, state, or local government property. Almost all states prohibit such liens but Kentucky allows them. Obviously, liens are also allowed on private property, including non-profit organizations and churches. Lien claimants are then in the enviable position of having two remedies. One is the mechanic's lien, and the other is the right to go against a payment bond which is required to be taken out by a general contractor on a state, local, or federal works project.

Remember, there are separate lien forms for private and public projects. These consist of the "Statement of Lien – Public Project" and "Statement of Lien– Private Project". Both of these forms are available on this web site.

***Furnishing Information:***

Upon request, the general should furnish others with information about the owner so the required notices and lien can be filled out properly.

***Verified or Notarized?:***

A ***verified*** notice simply means you sign it and are representing the contents are true and accurate. A ***notarized*** notice is signed in front of a Notary Public or other official. A ***verified*** notice is all that is required in this state. The Statement of Lien must be ***verified*** and ***notarized***.

***Priorities:***

It does not make any difference who performs the services first or who files their lien first. All lien claimants share equally. If there are not enough proceeds to go around upon foreclosure, there is a pro rata distribution based upon the amount of their liens in relationship to the overall proceeds.

***Lien Release Bond:***

The owner may have the mechanic's lien released by filing with the County Clerk's office a surety bond for double the amount of the lien. After this, you will proceed as usual in your lawsuit, but when you are successful, your redress will be against the bond.

***Lien Waivers:***

Be very careful as Kentucky law allows a general contractor to waive it's lien rights in the original contract or in a separate document. Watch what you are signing.

***Definition of "Completion":***

Because a Statement of Lien must be filed no later than six months after completion of the project, the definition of "completion" is crucial. This means that warranty or "call-back" work will not extend the time period.

This refers back to going back and fixing what you have already done. Further, the courts are not stupid, and if you go back and perform trivial work just to extend the time period, this will be to no avail. To be safe, file early.

***Lien on Public Work Funds:***

If you work on a public works project by a state or local government (not federal), you get the added bonus of being able to put a lien on the unpaid construction funds. In other words, if you have not been paid, you can force the government entity to pay you directly before further disbursements are made. This applies to both general contractors, subs, and material suppliers.

To enforce this lien, you must file in the County Clerk's office in the county in which the project is located a "Statement of Lien – Public Projects" within 30 days after the last day of the month in which the last labor or materials were furnished. Thus, if you last worked on April 10<sup>th</sup>, you would have to file your Statement of Lien by May 30<sup>th</sup>.

This means that many times you will be recording your lien at a time in which the amount is not yet past due. For example, assume you have a six month project and bill on the first of each month for the services of the preceding month. So, when you bill May 1, the invoice includes all the work that was performed in April. As can readily be seen, this causes nothing but problems. You would be forced to lien at the end of each month, and in this case on May 30, while the government was still in the mist of processing your check. Some contractors filed a lien each month to be safe, and simply released it when they received a subsequent payment. And many people were sending out their bills quicker and sooner, which caused even more problems.

The legislature finally solved this dilemma in 2007 by changing the time limit to 60 days after the end of the month in which the work was performed. In the sample above, you would have until June 30 to file the lien. Your May 1 invoice would presumably be paid by the end of May or at least by June 15. That way, you would only be filing a mechanic's lien if the government was close to 60 days behind, which would be the logical thing to do in any event.

The other benefit of the new law is that you only record the lien when invoices are past due and you have some doubt as to whether you're going to be paid. Under the old law, you filed a lien at a time in which you had no idea whether you were going to be paid under the normal course of events.

After you file the Statement of Lien – Public Projects, the County Clerk will deliver a copy of it to the owner and general contractor. These people then have 30 days to protest it. If they do not, payment must be made directly to you. If they do protest, you must bring a lawsuit and serve the public authority and the general contractor within 30 days of the filing of their protest. The lien on such funds only applies to state public works projects and not private projects.

**Notice of  
Contract:**

There is one other notice that may be filed by a subcontractor or supplier. It is called a Notice of Contract. Its sole purpose is to give you preference over a construction mortgage, sale of the property or a judgment recorded against the owner. Normally a construction lien is second in line to these greater rights. This means that if the property is sold, you would only get what is left over after paying the person with a higher priority. Here is an example. The owner of a construction project pays for it by taking out a construction mortgage with a local bank. You perform your work as a subcontractor and later file a lien. The owner is unable to pay his or her bills and the property is foreclosed by the bank. In normal circumstances, you would only get what is left after the bank receives their money. However, if you filed this special notice with the recorder's office before the bank had filed its construction mortgage, you would get first "dibs" with the foreclosure monies. The problem is that in almost all cases, the bank has already recorded their mortgage before work starts and therefore this notice accomplishes nothing. The same rules apply if the owner sells the property to someone else who does not know about the unpaid bills—they may not have to pay you.

In other words, this notice is used in some pretty rare cases and you should probably seek legal advice first. Remember, it is not required under normal circumstances for the recording of your lien. In other words, it is not a required pre-lien notice before you can record the mechanic's lien.

In some states recording a notice of contract forces the owner to withhold money to the general contractor so the subs and suppliers will be paid. It is important to note that this notice does not accomplish this purpose.

## LAWSUIT TO FORECLOSE LIEN

**Introduction:** Your lien is not valid forever. Because it directly affects the owner's title, it has a limited shelf life and must be enforced within a short period of time. That enforcement is done by filing a lawsuit to foreclose. Just like the time deadlines for a Pre-Lien or Mechanic's Lien, the courts strictly construe these time limits which are called statutes of limitation. Again, if you are literally one day late, the lien is ineffectual.

**When:** Within 12 months from the filing of the Statement of Lien on private projects.

**Arbitration:** Many construction contracts state that all disputes will be decided by binding arbitration, as opposed to a court proceeding by judge or jury. In fact, it has long been a tradition to do so in the construction industry. Arbitration is usually quicker and less costly, especially because it cuts down on expensive discovery. The decision is final and binding, with no right to appeal. You lose your right for a jury trial, but few contractors want that in the first place. You usually pick an experienced construction attorney or retired judge to hear the case in their conference room. It is just like a court proceeding with the same general rules of evidence, but more informal.

On the other hand, you can only foreclose your lien through a court proceeding, not arbitration. So, how do you keep your arbitration rights and at the same time preserve your lien rights? Simple. You bring a lawsuit to protect the lien and then immediately request the court to stay the court proceedings. When arbitration is done, you go back to court and turn the arbitration award into a judgment.

### **Need a Lawyer?**

In this country, every individual has the statutory right to represent themselves. This means they can prepare all necessary papers, appear at hearings, and actually try the case. In so doing, the court considers you to be acting either in "**pro se**" or "**pro per**". Before making this decision, consider the following factors:

1. You are a professional and thoroughly know the ins and outs of not only the construction industry but of the

project itself. The best lawyer on his or her best day will probably not know more than 50% of what you know.

2. How is your public speaking abilities? If you are uncomfortable speaking to a group, you will even more uncomfortable in court or arbitration. You could be the “sharpest wit in town” but may not be able to present your arguments. Remember, appearing uncomfortable is perceived as having deficiencies in your case. People usually think that if you are not comfortable about your own facts, then they must not be that strong.

3. If the other side has a lawyer, you might want to think twice about representing yourself. You will certainly know the facts quite well, but you may be blindsided by legal technicalities.

4. You may also want to think twice if this is a really nasty and emotional case. In other words, if the other side is going for “blood”. Having a lawyer can shelter you from this emotional trauma. No matter how strong you are, lawsuits are taxing not only on your time, but on your physical and emotional energies.

5. If you have a good case in which you have complied with technicalities and performed good work, you are essentially engaging in a collection action. These actions are typically very simple because there are few defenses or defects alleged by the other side. It makes it easier for you to represent yourself because it is more a question of when and how much they will pay as opposed to whether you will win at all.

6. If you have a binding arbitration provision, you may consider representing yourself. These proceedings are much more informal and the arbitrator tends to give you more leeway. There are also fewer rules and not they are usually not quite as strict.

7. You could consider representing yourself but get advice along the way from a lawyer. It is much cheaper that way. On the other hand, the lawyer cannot watch over every move and you might slip up. Many times lawyers can also help you with preparing the forms, simply putting your name on the pleading. You can also bring in your lawyer at the end to actually try the case.

8. Judges and courts do not give legal advice. They only help you with what forms to use. However, clerks can be invaluable in steering you in the right direction as far as where to file, time limitations, the nature of the form or pleading, etc. But, remember when it comes right down to the ultimate advice, they cannot help you.

9. Judges usually treat you the same as an attorney which means they expect strict compliance with the rules. Although some judges give you more slack, don't count on it.

10. The biggest dilemma is whether you should hire an attorney for a smaller case, typically in the \$5,000 to \$10,000 range. You have to watch this because you may eat up that amount in attorney's fees. *You* never make money on lawsuits, only *lawyers* do. Try to settle for the best price you can get and move on.