IDAHO MECHANIC'S LIEN LAW
2018-2019

Go to: Idaho Mechanic's Lien Forms

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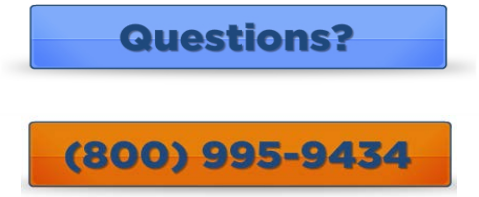

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Idaho Mechanic's Lien--General Notes

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 Idaho you will be writing down dates for at least two documents: a) Claim of Lien ("Mechanic's Lien") and; b) 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.

NO PRELIEN NOTICE REQUIRED

Many states require subcontractors and equipment/material suppliers to serve a prelien notice before being entitled to record the mechanic's lien itself. There is no such requirement in Idaho. Upon non-payment, the general contractor, subcontractors, and suppliers can simply record their mechanic's lien. Note also that in this State there is no difference as far as lien rights as between the general contractor, subcontractors, or suppliers. Additionally, subcontractors and material suppliers of any tier are entitled to a lien. For example, if a subcontractor subs out part of the work to another sub who, in turn, subs further work out to another sub, and on and on, each subcontractor in that chain would be entitled to a lien, together with any of their material or equipment suppliers.

Notice of Intent to Lien:

Many times you want to give the owner or general contractor a warning shot before recording the lien. It shows you are serious in getting paid and that you are

ready to take the next legal move. For this reason, many contractors, subs, and suppliers like to serve a Notice of Intent to Lien. It gives the other side 10 days to pay or else. The State of Idaho does not have a specific statutory provision describing such a Notice. Therefore it is optional and not required in Idaho. But it is certainly legal for you to utilize the form. In fact, most judges appreciate the fact you have given this warning shot before the recordation of the lien itself. As a matter of fact, this has become a very popular form on the National Lien Law website. If you are a subcontractor or supplier, serve both the general contractor and owner. If you are a general contractor, you simply serve the owner. The notice is not recorded or notarized. Simply send it by certified mail.

Then make sure you follow-up. The Notice states a lien will be filed if payment is not made within 10 days. To show you mean business, you should record the mechanic's lien shortly thereafter. Either download a mechanic's lien form from this site, or you can use our Lien Filing Service (925-899-8449).

MECHANIC'S LIENS

Who is Entitled to a Lien:

An Idaho mechanic's lien is primarily for general contractors, subcontractors, laborers, as well as material/equipment suppliers. But it also covers a large variety of other persons or entities that perform services, including, but not limited to, persons renting: equipment, materials, or fixtures (effective July 1, 2001); professional engineers, licensed land surveyors, architects, on-site construction managers or supervisors, or other persons performing professional services; utilities and street improvements, and grading, filling, and other "dirt work". And, one of the few states to do so, Idaho also allows the cost of workers compensation and Occupational Disease Compensation Security to be included in the lien amount. The services of a professional engineer, surveyor, or architect are also covered, including preparing designs, plans, maps, specifications, surveys, estimates of cost, and on-site monitoring. The construction services covered include almost any improvement to the land or a structure, including such various items as mining claims, a wharf,

bridge, ditch, flume, tunnel, fence, railroad construction, or other structures.

The furnishing of materials is covered under the lien as long as they are "incorporated, consumed or destroyed", as stated by the Idaho statutes. Additionally, there is even authority that a material supplier can file a lien if the materials were simply delivered to the job site, even though they were not actually used to improve it.

The following persons or entities are not entitled to a lien: Suppliers of gasoline or diesel fuel for the operation of construction equipment; providers of liability insurance covering a prime or subcontractor; providers of equipment loss insurance; and suppliers of parts used to repair construction equipment.

When to File/ Record:

See **Time Deadlines** table. Under Idaho statutes 45–507(2), the claim of lien must be recorded 90 days after "completion of the labor or services, or furnishing of materials". In other words, after the last of the labor and materials have been conferred. But does that mean completion of the overall project or completion of the lien claimant's portion of his are her work? The answer is uncertain. For this reason, it is recommended that the lien be recorded within 90 days of completion of **your portion of work**, to be safe.

As with most states, this is defined as "substantial completion". Warranty and "punch list" items that are simply re-doing what has already been constructed do not extend the time limits. Further, the time limits cannot be extended by simply performing further construction services after completion, or doing work under a new contract. Finally, work done to complete the basic contract which is "trivial" will not extend the time period.

However there is an exception: If the building inspector requires additional work, this will extend the time to file.

Where to Record:

The Recorder for the county in which the property is located.

How to Serve:

After you record, serve by Certified Mail, Return Receipt Requested, on the owner within five business days of the recording date. Remember, this is a short time period so be careful.

Amount of Lien: Primarily for unpaid labor, material, and equipment supplied. By law, the lien claimant who is successful in a lawsuit to foreclose the lien is entitled to reasonable attorney's fees and costs against the owner. However, the opposite is not true – if the owner successfully defends such a lawsuit, that person or entity is not entitled to attorney's fees or costs.

Property Subject to the Lien: An Idaho mechanic's lien applies only to private projects. No lien is allowed in public projects against government property. The lien goes against the real property (the dirt) as well as the improvements. Note also that a non-profit organization is considered private ownership and subject to a lien.

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 ***notarized*** and ***verified*** notice is required in this state.

Priorities: Mechanics' Liens have priority over other mortgages, judgments, and encumbrances, as of the date on which the first work is done to the project by any of the trades. By way of a "legal fiction", it is as if the liens have attached at the beginning of the project, even though they are recorded later. This means that if a construction lender records the mortgage after work has begun, they will be lower in priority. "Priority" means who gets the first "bite" of the proceeds if the property is sold. Idaho also has a special provision, unlike other states, that the work is considered having been started when "professional services were commenced to be furnished". Technically, this would mean the liens attach as of the date the architect prepares plans, even though physical work has not commenced. Most states require the actual physical commencement of the work through some visible improvement, like grading or foundations, but it appears this is not required in Idaho.

But what if the property is sold and there are not enough proceeds to satisfy all the lien claimants? If so, the proceeds are paid in the following order of preference: Laborers, materialmen, subcontractors, prime contractor, and professional engineers and licensed surveyors. The persons in each step will be paid first, and if there is not enough in each such step, those persons will be paid pro-rata.

Lien Release Bond:

Idaho has a quick procedure whereby an owner, or other interested party, may have the mechanic's lien released by posting a bond. The owner files a petition for release of the mechanic's lien and posts a surety bond for 1-1/2 times the amount of the liens. A hearing is set between 5 and 10 days after the filing of the petition. The court then enters an order releasing the lien upon satisfactory evidence the requisite bond was issued by a licensed surety company. At that point, the lien is off the record and the lien claimants continue in court against the general contractor and others, as well as the surety company on the bond. The ultimate recovery will be against the bond and not the property.

Lien Waivers:

Can there be a provision in one's contract that waives the right to record a mechanic's lien in the future? In almost all states the answer is an emphatic "no" because it would be against public policy. However, the Idaho mechanic's lien laws have no such rule. Technically, one could include a valid waiver in a construction contract as long as it is in the form of clear and unambiguous language.

On the other hand, one cannot be the victum of fraud in the waiving of an Idaho lien. In other words, promising to pay on the account in exchange for a waiver but then intentionally not doing so. Additionally, the courts are strict in making sure the language is clear as to the waiver. Because of the uncertainty of the law, it is recommended practice that waivers be conditional upon the payment actually being received. Thus, most lien waivers in popular circulation have language to the effect that the waiver is effective only upon receipt of the actual payment.

Retention: Section 29-115 lays out the rules to be followed for the withholding of retention on a private construction project. Owners may not withhold from the general contractor and general contractors may not withhold from subcontractors more than 5% of the contract price for retention.

This rule does not apply to residential construction in which homeowners may elect to withhold a larger retention.

There is an interesting exception to this rule. If the owner demands the general contractor furnish a performance bond by a surety company and the GC does not do so, the owner can insist upon a higher retention amount. The same rule applies if the general contractor requests a surety bond from a subcontractor. This imposes a severe hardship upon contractors because of the exorbitant cost to procure such a performance bond. It essentially guarantees increased retentions because of that quirk in the law.

There is a beneficial aspect of this statute. Within 35 days substantial completion, retention is reduced to the lesser of: a) 150% of the estimated value of the work yet to be completed or b) 5% of the contract price. Further, if there are punch lists, the owner can only withhold 150% of the estimated cost to cure. This also applies as between general contractors and its subcontractors.

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 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: Six months after recording your Idaho Claim of Lien. However, extensions can be granted. As long as you record it, one can file an "Extension of Credit" giving more time to bring the lawsuit. Or, a similar recording can be made extending the time because of a partial payment. One would then have 6 months after the expiration of the extension to file the lawsuit. In many cases, this helps attempts at negotiating a settlement short of incurring expensive attorney's fees and costs.

Where to File: In the county court in which the project is located.

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 l*awyers* do. Try to settle for the best price you can get and move on.

Prepared by:

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