



Subcontractor Lien Rights

by Quenda Behler Story

Subcontractor lien rights are complicated by the lack of an agreement directly between the sub and the property owner. In general, before unpaid subs can place a mechanics lien on the building where they performed their work, there must first be an enforceable contract between the property owner (or his agent) and the

prime contractor. When such an agreement does exist, the sub cannot get better rights against the property owner than the prime contractor has.

In some states, an unlicensed contractor cannot sue the person who hired him for payment. That means that a subcontractor cannot sue either, even if licensed. (Exceptions

Sample Subcontractor Lien

1. The name of the person with whom the subcontract was made by lien claimant is *(prime contractor's name)*.
2. The subcontract between the lien claimant and the general contractor provided that *(describe work to be performed and materials to be furnished)*.
3. The address of the work site is *(address)* and, so far as known by the claimant, is owned by *(property owner's name)*.
4. Lien claimant has performed all the labor and provided all the materials required by the subcontract. **[Note: If you stop work due to lack of payment, substitute the following: "Lien claimant has to date performed labor and furnished materials pursuant to the contract."]**
5. To date, the amount of labor and materials furnished is as follows: *(provide dates, amounts of labor and material, and their costs; attach copies of the contract, receipts, and time sheets)*.
6. The amount owing and unpaid to lien claimant is *(dollars)*.
7. Lien claimant hereby claims a mechanics lien for the improvement of the described real property pursuant to *(cite the appropriate statute)*. **[Note: Get this citation from the library or the Registrar of Deeds.]**
8. The legal description of the real property located at *(job site address)* is *(legal description of property)*.

Date _____ Signed _____ *(your signature)*
 _____ *(your title)*

State of _____

County of _____

_____*(your name)*_____, being first duly sworn, states that s/he has read the foregoing notice of lien and knows its contents, and that the statements contained in the foregoing notice are true to his/her personal knowledge.

Date _____ *(your signature)* _____

Notary Seal

This sample lien form should work for subcontractors in most states. Ask your Registrar of Deeds for standard forms and time limits, and be sure to follow state laws exactly.

may be made if the sub can establish some kind of implied or actual consent by the property owner, but such consent is difficult to prove.)

The situation becomes even more complicated when the unpaid subcontractor was hired by another subcontractor. Whether or not the unpaid sub is entitled to a mechanics lien depends entirely on local statutes. Some places allow a sub to use a lien in these circumstances and some do not.

Reasonable value. Most states do, however, allow the sub to file a mechanics lien when the prime contractor has also filed a mechanics lien. This is true even when the contractor's lien claims the entire contract price. The amount of the mechanics lien is usually limited to the "reasonable value" of the labor and materials actually furnished, regardless of what the contract amount may have actually been. The total contract price may, however, constitute evidence of what the reasonable value of the sub's work is.

But suppose the owner actually paid the contractor, who then pocketed the money without paying the sub. What then? In a situation like this, someone is going to get burned. Whether it's the property owner or the sub depends entirely on what state they're in. In some states, the sub can only collect from the prime contractor. After all, the property owner should not have to pay twice.

On the other hand, the property owner still has a piece of property that's been improved by the sub's labor, while the sub has only an unsecured debt. The sub may have the right to collect the debt from the contractor, but the contractor may be uncollectible — even "unfindable." Consequently, some states — Michigan, for instance, where we do our work — allow an unpaid sub to claim a mechanics lien against the property even when the homeowner has paid the prime contractor.

Provisions like this recognize the social value of skilled tradespersons, most of whom are small business people. If subs cannot pay their bills because they aren't paid, they will be forced out of business. Their skills will then be available only through larger,

more expensive companies, which will increase cost of building construction, repair, and improvement. Ultimately, when the cost gets too high, buildings will be allowed to deteriorate.

Waiver of Lien Rights

In many states, the prime contractor can waive the subcontractor's right to a mechanics lien in the original contract. The rationale for enforcing such a waiver clause is that since the sub's rights depend on the existence of a valid contract, the sub is bound by the terms of that contract. Some states, however, will not enforce the waiver unless the sub had actual notice of it; a few states will not enforce a waiver clause unless the sub actually consented to it.

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Remember that even an effective waiver of lien does not prevent the subcontractor from using other means of collecting the money. It only means that the sub can't put a mechanics lien on the property where the work was done.

Legal Requirements

Subcontractors filing a lien must follow state law exactly. Ask the Registrar of Deeds in your state about filing time limits and mandatory notices to the property owner. Use standard forms, and get the *exact* legal description of the property. Your notice should also explain that you are a subcontractor. Language similar to that in the sample subcontractor lien (see previous page) will work in most states. ■

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