

STATEMENT FROM STUART S. ZISHOLTZ

There is a statutory requirement in the Lien Law which mandates that a lienor name the General Contractor in its Mechanic's Lien. Failure to do so could render the lien void. It is therefore vital that you determine whether you are dealing with a General Contractor or a Construction Manager.

It is easy to find out who the owner is on a particular project. That comes from a title search. It is also easy to know who your contract is with - that comes from your written agreement or your purchase order.

It is between you and the owner that difficulties develop. Is the owner doing the job through a Construction Manager or a General Contractor? Are you a subcontractor to a General Contractor or are you a subcontractor to a subcontractor?

From a subcontractor's point of view, the ideal situation is to find a Construction Manager, not a General Contractor. A Construction Manager may be a window to the owner. Many times, the Construction Manager is an agent for the owner.

If the subcontractor is dealing with a General Contractor, he may find himself too far removed from the owner. For example, the subcontractor might be a third tier subcontractor and cannot file a lien. However, if one of the parties between you and the owner is a Construction Manager, then you have eliminated one tier and you are that much higher on the totem pole.

If the subcontractor is dealing with a General Contractor, the legal ramifications are substantially different. The subcontractor must establish that the owner is still holding money for the account of the General Contractor without offsets or back charges in order to establish a valid mechanic's lien.

With respect to a Construction Manager, no such problem exists because the Construction Manager is the agent for the owner and whatever work the Construction Manager authorized, it is chargeable to the owner.

In doing your due diligence, therefore, I strongly suggest, in addition to all of the other things I have suggested in the past, that you find out if the party involved is a Construction Manager or a General Contractor. The distinction could be the difference between collecting and not collecting.

Never let your lien time run out!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims do not hesitate to contact me or the Association.