

## **STATEMENT FROM STUART S. ZISHOLTZ**

Over the years, I have emphasized the importance of filing a mechanic's lien. Many times it is the difference between getting paid and not getting paid.

As all of you know, a mechanic's lien can be filed after you perform the work or furnish the materials. Once a lien is filed, it is extremely difficult and costly for an owner or a general contractor to remove the mechanic's lien.

In certain instances an owner or a general contractor can bond the lien. This involves the owner or general contractor posting collateral and obtaining a discharge bond from a surety company. Many times there are personal guarantees which must be executed before a discharge bond is issued by the surety company.

Other means of obtaining a discharge of a mechanic's lien include depositing the funds in escrow or with the Clerk of the Court. This method assures the lienor that his claim will be paid in the event he is successful in establishing a valid mechanic's lien.

A third and more unorthodox method of discharging a mechanic's lien is for the general contractor or owner to institute an action to declare the lien void for failure to comply with the specific provisions of the Lien Law.

In the latter method, the owner or general contractor must establish that the face of the lien is invalid or the lienor failed to comply with a specific provision of the Lien Law. The owner or general contractor cannot argue that the lien is exaggerated or the amount claimed is not due, etc. Those are material facts which must be addressed in litigation or at trial. Those arguments will not result in the lien being summarily discharged.

In a recent case, the Court refused to discharge a lien which was filed on a condominium complex. The lien referred to 13 separate condominium units and the invoices submitted by the subcontractor did not reflect 12 out of the 13 units. Unfortunately for the owner and general contractor, the Court refused to discharge the lien because the discrepancies between the lien and the invoices were issues that needed to be flushed out in litigation. The statute did not permit the Court to summarily discharge the lien based upon factual discrepancies.

Once again, you can see the power of the mechanic's lien. In this recent situation, the owner and general contractor could not remove the mechanic's lien and the lien remained a cloud on title preventing refinancing or the selling of a condominium unit.

While the subcontractor may ultimately fail in its claims against the owner and general contractor and may be held accountable for damages for improperly filing a mechanic's lien on certain condominium units, the power of the mechanic's lien is clearly evidenced in holding up a closing and forcing the owner and general contractor to address the claims asserted by the subcontractor.

Never let your lien time run out!

For a free copy of our pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me.

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