

STATEMENT FROM STUART S. ZISHOLTZ

Many contractors perform work for condominiums. The contractor is hired by the Board of Managers or a General Contractor to perform work throughout the common elements in the building. Beware, the Lien Law, as well as the Real Property Law, do not protect the contractors sufficiently in order to secure payment.

Under ordinary circumstances, a contractor performs the work and furnishes the materials knowing that it has lien rights in the event it is not paid. For a condominium unit, the lien time is 4 months from the last day the contractor performed work or furnished materials. Be advised, that this applies solely to the unit owners and work performed within a specific unit(s).

Real Property Law Section 339-L prevents a contractor from filing a mechanic's lien when it is engaged to perform work in the common elements unless it obtains the unanimous consent of the unit holders. You can assume from this article that the unit holders never consent to the filing of a mechanic's lien against their building.

The common elements are defined as the land in all other areas of the property that are not expressly part of the individual units. This area includes the lobby, stairway, roof, maintenance room, etc. A condominium unit is owned by an individual unit owner. Each individual unit is treated as a separate parcel of real property similar to a residential house. The condominium Purchaser acquires title to his/her unit and also acquires an allocable share of the common elements.

While work performed on an individual unit is lienable, the common elements are not lienable. The only recourse a contractor has in these circumstances is to pursue a claim for breach of contract, account stated, quantum meruit etc. against the condominium and Board of Managers.

If a mechanic's lien is filed on the condominium's common elements, the mechanic's lien will most likely be vacated. While this is a quirk in the Lien Law, the reality is that you must know, in advance, that your lien rights are in jeopardy before performing work directly for the condominium.

Never let your lien time run out!!

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