

STATEMENT FROM STUART S. ZISHOLTZ

It has to be made crystal clear that the failure to prove everything in a Mechanic's Lien does not necessarily mean that the Mechanic's Lien is exaggerated. An exaggeration exists when someone deliberately and intentionally increases the amount due.

The classic case involved an exaggerated lien which was a small matter where somebody was greedy and stupid. The contractor had an item of material that cost \$110 or so, and when he submitted the bill, he put a "1" in front of the \$110 and made it \$1,110. That was deemed a willful and deliberate exaggeration of a mechanic's lien. Where you add hours, juggle around time sheets or equipment or materials, etc., you run into a situation where you can be found to have exaggerated your lien. We have seen lienors add their medical bills, legal bills, country club bills and restaurant bills. All of those bills are not permitted in the lien. The lien must be for the work performed and materials furnished on the project. If you did not finish the project, the lien should not include the full amount of the contract. All of these examples are instances where the lien could be deemed exaggerated.

Recently, the Appellate Division, First Department, came down with a decision finding an exaggeration of a mechanic's lien and imposing damages in the sum of \$243,000. The Court stated that the exaggeration was willful and intentional since the lienor claimed to be owed almost seven times the amount actually due and owing.

This is in sharp contrast to a legitimate lien that cannot be fully established. If you file a lien for \$100,000 but because of poor bookkeeping, absent records, legitimate arithmetic errors, inability of witnesses to recall, etc., you can only prove \$90,000, that is not an exaggeration of a Mechanic's Lien. In today's day and age, virtually every response to a foreclosure action brings up the issue of exaggeration of the Mechanic's Lien. Many people who defend foreclosure actions

throw in the defense as a knee-jerk reaction to the foreclosure, but have not the vaguest idea of how to go about establishing it or proving it. Nevertheless, it is important to avoid an exaggeration of a lien because someone may get lucky and find out how to do it at the last minute or get the assistance of a judge who might find the exaggeration on his own.

The important thing, therefore, is to keep accurate and complete records, maintain a paper trail, and err on the side of caution. Where there is a possibility that something is not lienable, do not include it. Reserve those issues for a law action which could be maintained in the same foreclosure proceedings.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and payment bond claims, please contact me.

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