

STATEMENT FROM STUART S. ZISHOLTZ

Over the years, I have emphasized the importance of properly calculating the amount of your Lien in order to avoid the harsh remedies associated with an exaggerated lien. You must lien for the work performed and materials furnished. Filing a Mechanic's Lien for future amounts due, the total contract sum when all of the work has not been performed, interest, service charges and legal fees could render the lien exaggerated.

Recently, we were retained to foreclose a Mechanic's Lien. The client provided us with back-up documentation which he felt supported his Mechanic's Lien. Unfortunately, the claim consisted of costs associated with medical bills, service charges and anticipated legal fees. If we had commenced a foreclosure action, the owner or General Contractor could have interposed a counter-claim for an exaggerated lien.

The penalty for an exaggerated lien is the reduction of the amount awarded by the amount of the exaggeration. Thus, if you have a lien for \$100,000 that is willfully exaggerated and you are awarded \$70,000, the \$30,000 spread is reduced from the \$70,000 and your recovery is \$40,000. From that you are charged legal fees which could be \$25,000 and you wind up with a \$15,000 net recovery.

Similarly, if you have a lien for \$100,000 and it is exaggerated by \$60,000, that \$60,000 will be deducted from the \$40,000 and you will owe the owner \$20,000 plus legal expenses. The penalty for exaggeration, therefore, is very severe and must be avoided at all costs. This does not mean, however, that failure to prove the full value of your lien is a willful exaggeration. Suffice it to say, however, for purposes of this article, a willful exaggeration means throwing things into the lien that do not belong there and are not legitimate.

Never let your lien time expire.

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