

STATEMENT FORM STUART S. ZISHOLTZ

The law is clear that a contractor, subcontractor and/or a supplier has the right to file a Mechanic's Lien on real property where it performed work or furnished materials. Thereafter, it can foreclose its Mechanic's Lien to try and collect the outstanding sum due.

The question, however, is can you hold a landlord responsible for improvements done by a tenant where the landlord had nothing at all to do with the improvements and the tenant has disappeared?

In order to hold a landlord responsible where there is an intervening tenant, you must prove that the landlord consented or requested the work to be done. Consent is vital to filing a Mechanic's Lien. In order to show consent, you must prove that the landlord was actively involved in the project. Mere acquiescence and benefit is not enough to establish liability on the landlord.

The landlord may review plans, approve the work, facilitate construction of the premises, etc. The more involved the landlord is in the project, the stronger your case is against the landlord. It becomes a factual issue as to the knowledge, consent and authorization provided by the landlord for the project. In the long run, however, it is an uphill battle to compel a landlord to pay for improvements performed by a tenant where the landlord never obligated itself, by contract or otherwise, to pay for the work performed.

The argument by the lienor is always that the landlord is gaining certain improvements to the premises and is being unjustly enriched. The landlord, however, will argue that all of the responsibility lies with the tenant and even though the tenant may be out of business, no liability exists on behalf of the landlord.

The key is that if you are performing work for a tenant mere acquiescence by the landlord will not result in liability against the landlord. He must be actively involved in the project in order to be held accountable.

Never let your lien time run out.

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