

STATEMENT BY STUART S. ZISHOLTZ

In many of my articles I address the importance of filing a Mechanic's Lien. Many times it is the difference between collecting and not collecting.

A Mechanic's Lien is valid for one year. In a commercial project, it can be renewed the first time without a court order and then two more times with a court order. A residential Mechanic's Lien can be renewed two times only with a court order. Once a lien expires, it cannot be revived or renewed.

In order to establish a valid Mechanic's Lien, you must prove that there is a balance running from the owner to the General Contractor and from the General Contractor to you as the subcontractor. If payment has been made in full to the General Contractor, or back charges exist, which off-set the amount due the General Contractor, your Mechanic's Lien will be extinguished. This determination does not prevent you for pursuing a breach of contract claim against the General Contractor. Those two claims are separate and apart.

Many times we receive a claim that is over a year old and the Mechanic's Lien has been renewed at least once. Some of these claims are in the high six figures and have been lingering for a long time.

I always advise my clients that if you have not heard anything or negotiations have not commenced within sixty days after initially filing the Mechanic's Lien, then you need to institute an action to foreclose to bring the claim to a head. Waiting more than one year to commence a foreclosure action is not going to get you paid. Simply renewing the Mechanic's Lien year after year and having it remain on the property is not a guarantee for payment. Sometimes, you need to be aggressive to collect the money that is owed to you.

While many legitimate business reasons exist for not commencing a foreclosure lawsuit, every lienor must understand that a Mechanic's Lien is not a guarantee for payment. Renewing a Mechanic's Lien, year after year, does nothing more than maintain the status quo. Without pressure of a foreclosure action and the threat of a possible judgment, you may be wasting your hard earned money and time by continuously renewing the Mechanic's Lien.

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 or the Association.