STATEMENT FROM STUART S. ZISHOLTZ

There has been a lot of litigation over the years pertaining to subcontractors claims and the obligation of the owner to pay for work performed and materials furnished on the Project.

A Mechanic's Lien allows a subcontractor to pursue a claim directly against the general contractor and the owner. While the subcontractor may not have a direct contract with the owner, the Lien Law is unique in that it permits a direct claim against the owner when foreclosing on a Mechanic's Lien. The logic behind the statute is that the owner is enhancing the value of its property while the subcontractor is providing the blood, sweat and tears needed to develop the property.

Without a Mechanic's Lien, however, the subcontractor does not have the same rights. A direct claim against the owner will fail without a Mechanic's Lien. Any arguments that the owner is a third-party beneficiary, was unjustly enriched, or there exists a quasi-contract will be unsuccessful. Thus, if the general contractor skips town and is nowhere to be found, the subcontractor will be out of luck pursuing a claim against the owner without filing a Mechanic's Lien. Remember, the owner will not be obligated to pay twice for the same bill. Thus, the longer you wait to file a mechanic's lien, the more likely the owner has paid the general contractor. Once the general contractor is paid and skips town, your rights are severely jeopardized and the likelihood of success is significantly diminished.

It is essential, therefore, that you understand your rights and file your Mechanic's Lien timely. Every conceivable excuse in delaying payment to you is another day lost in protecting your interests. Without a proper Mechanic's Lien, your claim could be severely affected.

Never let your lien time run out!

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

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