

MECHANIC'S LIENS - NO SIMPLE SOLUTION

Under Kentucky law, a person who performs labor or provides materials for the improvement of real property is entitled to a statutory lien in the event of nonpayment. KRS 376.010, *et seq.* In theory, this sounds like a simple solution to the problem of materialmen and subcontractors going unpaid for their labors. The reality, however, is that the claimant must comply with statutory notice provisions and filing provisions which in most cases are anything but simple.

Basically, the claimant must give pre-lien notice to the property owner, file the proper lien statement in the correct place, and then send a copy of the lien statement to the property owner within the time specified by statute. A person claiming a mechanic's lien is required to strictly comply with the notice and filing requirements under the various statutes.

If the claimant dealt directly with the owner of the property, pre-lien notice is not necessary. KRS 376.010(3). Determining who the proper owner is for purposes of asserting that the claimant contracted with the owner or his agent is another matter. Kentucky courts have found that a general contractor is not the agent of a property owner as a matter of law. Middletown Engineering Co. v. Main Street Realty, Inc., Ky., 839 S.W. 2d 274 (1992). Kentucky courts have also found, however, that a person managing the property on behalf of the owner is an agent of the owner. Sowards v. Ashland Lumber Co., Ky., 341 S.W. 2d 268 (1960). The Kentucky Courts

have also recognized that a lessee can be the agent of the lessor-property owner if the lease requires permanent improvements. Campbell & Summerhaze v. Green, Ky., 381 S.W. 2d 531 (1964).

If the mechanic's lien claimant can determine who the owner is and that it did, in fact, contract with that person, it must then file the mechanic's lien statement in the proper place. Generally, the proper place is the county where the property is located. KRS 376.010, *et seq.*

Mechanic's liens can be filed against projects ranging from construction of single family dwellings to the construction of state and federal projects, such as highways. The notice and filing provisions vary according to the type of project undertaken.

Should a labor or materialman claim under a subcontract against an owner occupied single or double family dwelling, the period for notice to the owner is ". . . not more than forty-five (45) days after the last item of material or labor is furnished. . . ." KRS 376.010(4). The claim for a mechanic's lien against a privately-funded construction project which is not owner-occupied requires notice to the owner of the property within 75 to 120 days, depending upon the amount of the claim, of the claimant's intention to "hold the property liable." The claim itself attaches to the real property in such a case.

The same lien against a publicly-funded project, however, requires that the claimant notify the property owner within thirty (30) days after the last day of the last month in which any labor, materials, or supplies were furnished.

The lien statement itself must also be filed in the county clerk's office in the county where the property is located, if privately owned, or where the seat of government for the governmental entity owning the property is located, if owned by a governmental entity.

Further, if the owner of the property is a governmental entity, the lien itself attaches only to the funds due the general contractor on the project from the owner of the property. Thus, if the owner has released all funds due the contractor, the claimant's recourse is to proceed against the payment bond on the project (required by state law) or to pursue an action against the contractor.

The final step in using a mechanic's lien to force payment from a reluctant property owner is to bring suit upon that instrument. The Kentucky statutes provide that a lien is dissolved unless suit is brought to enforce that lien within a year from the date of filing the statement in the clerk's office. KRS 376.010.

The foregoing should clearly demonstrate to you that filing a mechanic's lien is anything but a simple solution. □

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