



## Maryland Bar Bulletin

[Publications](#) : [Bar Bulletin](#) : [May 2013](#)

### Maryland's Pioneering Mechanics' Lien Statute

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Whether you are a homeowner, commercial building owner, builder, subcontractor, supplier, or design professional involved in construction in Maryland, you need to understand the State's mechanics lien statute.

During Thomas Jefferson's presidency, the fledgling Federal government began building Washington, D.C. When Baltimore contractors balked at giving credit to the new government, Maryland's legislators created the nation's first mechanics lien statute to protect contractors and subcontractors if their general contractor could not pay its bills.

A mechanics lien gives persons supplying labor and materials to a construction project the right to establish liens on the property and, if necessary, to force a sale of the property to secure payment. Its specific notice and filing requirements are construed narrowly. Missing filing deadlines, even by one day, jeopardizes the ability to establish a lien.

In Maryland, a mechanics lien may be established against newly-constructed buildings and against any project where an existing building is repaired, rebuilt, or improved by 15 percent or more of its value. This percentage is the ratio by which the contract value of all work being performed bears to the value of property being improved.

A contractor supplying \$10,000 worth of labor or materials to a \$100,000 renovation project for a \$500,000 property can file a mechanics lien. With new construction, any contractor supplying labor or materials may file a lien without regard to the value of the contract.

The notice requirements of Maryland's mechanics lien statute are controlled by the nature of the relationship between the party asserting the lien and the party with whom it contracted.

Filing a mechanics lien claim involves two specific time requirements. If a party did not contract directly with the owner, that party is required to give the owner a Notice of Intention to Claim a Lien within 120 days after last supplying labor or materials to the project.

Any person claiming a lien is required to file a Petition to Establish and Enforce a Mechanics Lien in Circuit Court within 180 days after last supplying labor or materials to the project. The amount recited in both the Notice and the Petition must be the precise amount owed to the claimant by the owner or contractor, and must contain recitals on how that amount was calculated.

While a lien on a commercial building can be for the full amount owed to the contractor or subcontractor, a claimant of a lien on a single-family dwelling is limited to the difference between the amount owed under the contract *at the time Notice is given to the homeowner* and the amount already paid to the contractor.

Consequently, if the homeowner has a legitimate offset against the contractor, the pool of money available to the subcontractors will be diminished. The Notice gives the owner the opportunity to investigate and withhold payment until assurances are provided that subcontractors have been paid.

Maryland's mechanics lien statute contains the actual forms to be used for both the Notice and the Petition. Both the Notice and Petition require critical information and do not allow for deviation. Written notice is only effective if given by registered or certified mail, return receipt requested or if personally delivered to the owner.

After a Petition is filed, the Court reviews the Petition and supporting documents to determine whether a lien should attach. If the Court deems the lien appropriate, it then issues an order directing the owner to show cause why the lien should not attach and sets a preliminary hearing date within 45 days of the Order. The owner must file an Answer to the Petition, including an affidavit refuting the lien.

Next, a preliminary hearing provides the claimant with interim lien protection until a full trial can be held. This interlocutory mechanics lien, which is issued when the Court finds probable cause, is designed to prevent further encumbrances on the property.

The process culminates in a full trial, at which the parties present witness testimony and evidence, and the Court determines whether a final lien should issue. Once a final lien is issued, a lien claimant can force the sale of the property to satisfy the judgment.

Overall, the mechanics lien statute is a valuable tool that helps parties in the construction process to receive payment. The caveat is that the deadlines are specific and will be strictly construed by the courts.

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