

# Mechanic's Lien

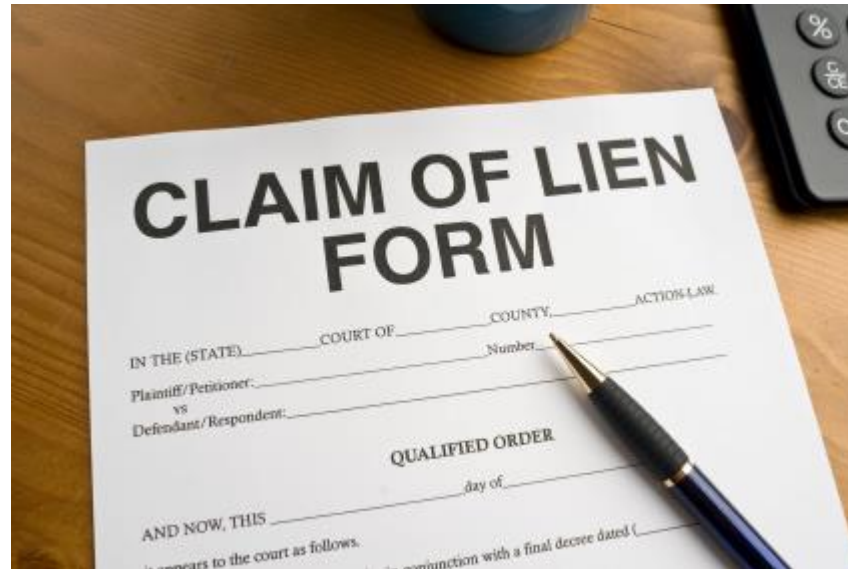
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# Discussion Question#6

## Preventing Mechanic's Liens

- Read the brochure on how homeowners can prevent mechanics liens and then post some ways you would prevent a mechanics lien on your property.



# Vocabulary

- **Preliminary Notice:** is a notice sent by the general contractor, subcontractor, materialmen, equipment lessors or other parties to a construction project not to create a Mechanics lien but rather to establish the right to file a Mechanics lien in the event of nonpayment. (The distinction is important.)
- **Mechanics liens:** is a legal claim, or security interest in against your property that, if unpaid, allows a foreclosure action, forcing the sale of your home to satisfy any project debts. (A legal process to ensure a contractor gets paid for his services)



# Preliminary Notice

- If you receive a Preliminary Notice, Don't worry just yet!
- The preliminary notice is Not a lien;  
( it is a notice that a subcontractor or supplier has provided or will be providing goods and/or services to improve your property and could file a lien claim if he/she is not paid.)
- Preliminary Notices allow you to track who has a potential claim against your property.
- Subcontractors must provide you with this notice to maintain their right to file a lien.



# Timing is Key!



- The subcontractor must give you the Preliminary Notice before delivering supplies or beginning the project , & up to 20 days after delivering supplies or starting work.
- If the preliminary notice is late, the subcontractor is therefore only entitled to foreclose a lien to recover payments owed 20 days before receipt of the notice and anytime thereafter.
- Effective January 1, 2011, the mechanics lien, &(the Notice of Mechanics Lien) must be served on the owner of the property.
- If owner can't be located, notice must be served on the property's construction lender/original contractor, with a proof of service affidavit.
- Failure to serve the mechanics lien properly, will result in the mechanics lien being unenforceable.

# Lien Requirements Checklist

- First confirm that the preliminary notice was given to you within the strict time frames to insure it is valid.
- Checking with your county recorder's office whether potential lien claimant filed the mechanics lien within the legal time frame.
- The potential lien claimant must record the mechanics lien within 90 days of:
- Completion of work, when the owner began using the improvement, or when the owner accepted the improvement.



# When a mechanics Lien is filed on your property.

A lien can affect you in the following ways :

- Foreclosure of your property.  
( to pay the unpaid contractors, material suppliers or laborers;)
- Payment for the same job twice—  
(if the homeowner pays the prime contractor and then has to pay the subcontractors, suppliers, or workers who weren't paid by the prime; )
- Can become an unresolved issue on the property's title, which can affect the your ability to refinance, or sell your property.





# Minimize Risks



- Carefully choosing your Contractor
- Keep track of paperwork
- Lien Releases
  - Allows the property owner to track when potential lien claimants have been paid.
  - Before making a payment, get a signed conditional release from the possible lien claimants.
- Joint Checks
  - Having both suppliers and subcontractors endorse the joint check.
- Protect your interests through a contract by including
  - Payment schedule that states when specific phases of the work start and end, and the price for each segment.



# Protecting Yourself



- Within ten days of becoming aware of the construction project, a property owner can give notice that he or she will not be responsible for the work. This is done by posting a notice of no responsibility in a conspicuous place on the property, and then recording that notice.
- The notice must contain a description of the property, the name of the person giving the notice and his or her interest in the property, the name of any lessee or purchaser of the property, and a statement that the person giving the notice will not be responsible for any claims arising from the work done.

# Termination of Mechanic's Lien



- Mechanic's liens are lost if no actions is taken to enforce them within 90 days of filing. The failure to start action or to file a lien extinguishes only lien rights, not the entire debt.
- Mechanic Liens could also be wiped out by a priority lien during the foreclosure process.
- An owner can also get a mechanic's lien released by filing a surety bond of 1.5 times the amount of the lien claimed. This is common when the an amount due is in dispute.

# Conclusion



- By the nature of the mechanic's lien, the property owner runs the risk of having his or her property sold to pay the lien, so his or her motivation will be to fight the lien at all costs!
- This is why the process of getting a mechanic's lien is not easy.
- There are several steps that need to be taken, and documents that need to be filed to effectuate the lien due to the interests of both parties.