

Hear it From the Judge

Judge Randall J. Slieter

www.judgeslieter.com

8th Judicial District Judge

Olivia, MN

What is a Mechanic's Lien?

You may have heard of this legal phrase. With the recent weather related roof damage, this phrase may have more immediate meaning to you whether you are a home owner who needs repair or a contractor who will perform the work. What is the origin of this legal phrase and what does it provide to homeowners and to contractors?

We think of the phrase "mechanic" to apply to our automobile mechanic. However, this phrase historically meant any person who performed construction work. A form of mechanic's lien existed under Roman law and in France, the Napoleonic Code granted lien rights to masons, architects, contractors and others involved in building houses. In the U.S., such laws were first enacted after the Revolutionary War when the Founders wished to expeditiously rebuild Washington D.C.

The mechanics lien law protects any individual who provides improvements to real estate, whether on buildings or the land itself. The lien applies to anyone who contributes to the project whether they are the main contractor, a subcontractor, an architect, the construction supplier, or a surveyor, among others. The lien also applies to those who provide labor, machinery, or other skills.

The main benefit of the lien to the provider of real estate improvements is that the lien, when properly created, creates a security interest in the real estate upon which the improvement was provided. This serves just as a mortgage does for a bank which provides a loan for the buyer of the real estate. If the provider of improvements is not paid for the services, the provider may secure payment by foreclosure of the lien and sale of the property. The lien statute grants the Court discretion to order payment of attorney's fees and other costs to the provider of services if foreclosure of the real estate is required. The lien may also protect a subcontractor for payment even though the subcontractor did not contract directly with the real estate owner.

The security of a mechanics lien is superior to any lien that is recorded after the first visible commencement of labor or delivery of materials for the improvements. The lien is not superior to any prior recorded liens, such as the home mortgage. Homestead property and homestead agricultural property is not exempt from the mechanic's lien.

One critical requirement for the supplier of improvements is to give the owner a pre-lien notice. This notice warns owners of potential liens by subcontractors and other suppliers with whom the owner does not deal directly. An owner entitled to notice must have some ownership interest in the real estate and is entitled to this pre-lien notice before the lien may be affective. The lien claimant must file a mechanics lien statement with the county recorder within 120 days of the claimant's last supply of improvements.

As always, I encourage you to discuss your specific situation with your attorney.