

TIME TABLE FOR PROTECTING SUBCONTRACTOR LIEN RIGHTS

Often we get questions from subcontractors on commercial construction projects about the actions that they can or need to take to protect their mechanic's lien right. We thought that it might be helpful to prepare the following summary of such actions. Please note that the rules governing work on individual residences under the Illinois Mechanic's Lien Act are different. Should you have any questions or need assistance in protecting your rights, please feel free to contact Ron Damashek at (312) 377-7858 or at rdamashek@stahlcowen.com.

Notice to Owner

- A subcontractor may protect itself by putting the owner on notice of its contract and the amount due or to become due thereunder at any time after the execution of the contract, but no later than 90 days after the completion of its work.
- It can do so by sending a notice to the owner in substantially the following form:
To (name of owner): You are hereby notified that I have been employed by (the name of contractor) to (state here what was the contract or what was done, or to be done, or what the claim is for) under his or her contract with you, related to your property at (here identify the property) and that there was due to me, or is to become due to me (as the case may be) therefore, the sum of \$_____.

Dated at _____, Illinois this _____ day of _____

Signature _____

- To preserve its lien rights, the subcontractor must provide the owner with this type of written notice of its claim within 90 days of the completion of its work.
- The only exception to this rule is where the subcontractor is listed on the general contractor's sworn owner's statement; however, in that situation, the subcontractor's claim is limited to the amount due to it or to become due to it according to the sworn statement.
- The 90-day notice also should be given to any mortgage holder of record so that the subcontractor can assert a priority lien claim ahead of, or of equal strength with, the mortgage above to the extent that the claimants work has enhanced the value of the property).

- The 90-day notice should be sent by registered or certified mail, with return receipt requested, and delivery limited to addressee only, to (or personally served on) the owner of record or his agent or architect and to the lender.
- If the subcontractor is prevented from completing its work by the contractor or is excused from performing because of the contractor's default, the 90-day notice should be given within 90 days of the last day of work.

The Mechanic's Lien Claim

- To be effective against parties other than the owner, a mechanic's lien claim must be recorded within four months of completion of the lien claimant's work.
- Even then, the lien claim will not affect the interests of a lender whose mortgage was recorded prior to the execution of the general contract unless the claimant has served the lender with a 90-day notice as provided above.
- To be effective against the property owner, a mechanic's lien claim must be recorded within two years of completion of the lien claimant's work. However, if the lien claim is not recorded within four months of completion of the subcontractor's work, it will be junior to any third party liens against the property.
- A lawsuit must be filed to foreclose the mechanic's lien claim within two years of the completion date; otherwise, the lien lapses.
- A party against whom a mechanic's lien claim is asserted can expedite the resolution of the lien claim by serving a written demand that requires the lien claimant to file suit to enforce its lien within 30 days or forfeit its lien claim.