

# Mechanic's Liens in Practice (D.C.)

TIMOTHY R. HUGHES, JUANITA F. FERGUSON, STEPHEN D. CARUSO,  
BEAN KINNEY & KORMAN PC, WITH PRACTICAL LAW REAL ESTATE

Search the [Resource ID numbers in blue](#) on Westlaw for more.

A Practice Note addressing statutory mechanic's liens that may arise out of construction projects for the improvement of privately owned residential and commercial real property in the District of Columbia. This Note focuses on providing practical guidance on the processes and procedures for perfecting, enforcing, and releasing mechanic's liens in Washington, D.C.

A mechanic's lien can be a powerful tool to protect a contractor, subcontractor, or supplier that has not been paid for work or services performed or materials furnished to improve real property. Title 40 of the D.C. Code governs mechanic's liens on residential and commercial property in the District of Columbia. (D.C. Code §§ 40-303.01 to 40-303.20a.)

This Note discusses the processes and procedures when:

- Preparing a valid notice of lien.
- Perfecting and enforcing lien rights.
- Determining the priority of lien rights.
- Releasing or discharging a mechanic's lien.

For more information on mechanic's liens in D.C., see State Q&A, Real Estate Finance: District of Columbia ([W-000-7369](#)).

## PRE-LIEN MATTERS

### PERSONS ENTITLED TO A MECHANIC'S LIEN

Any person employed by an owner or general contractor to furnish work or materials for the completion of a project for the erection, construction, improvement, repair of, or addition to real real property in D.C. may file a mechanic's lien, including a:

- General contractor.
- Subcontractor.

- Supplier that is directly employed by the owner or owner's authorized agent.
- Supplier that is directly employed by the general contractor.

A mechanic's lien may not be claimed by a:

- Sub-subcontractor.
- Supplier not directly employed by the property owner or general contractor.

(D.C. Code § 40-301.01; see *Battista v. Horton, Meyers & Raymond*, 128 F.2d. 29 (D.C. Cir. 1942).)

A subcontractor or supplier is entitled to demand from the property owner or its agent the terms of the contract between the property owner and the general contractor, including any amounts due or to become due. If the owner or its agent fails to provide that information or provides false information, the owner is liable for the full amount due the lien claimant regardless of any payments made by the owner to the contractor before the lien claimant's demand (D.C. Code § 40-303.05).

### PROPERTY INTERESTS SUBJECT TO A MECHANICS' LIEN

A party may claim a mechanic's lien to secure payment for materials furnished and labor performed on:

- Every building erected, improved, added to, or repaired at the direction of the property owner or its authorized agent.
- The land:
  - on which the building is erected;
  - intended to be used relating to the building; or
  - necessary to the building's use and enjoyment.

(D.C. Code§ 40-301.01.)

### Mechanic's Liens Against Several Buildings

If a claimant performs labor or furnishes materials for the erection or repair of two or more buildings, it is not necessary to determine the value of the labor or materials for each separate building if the buildings are either:

- Joined together.
- Owned by the same person(s).

In a court-ordered sale, the court has the discretion to order the sale of all the buildings and land on which they are erected as one building or separately. (D.C. Code §40-303.12; see *Enforcing the Mechanic's Lien*.)

### Mechanic's Liens Against Leasehold Interests

When a building is constructed or repaired by tenant or by a person having an equitable interest in the building or the land on which it stands, the mechanic's lien extends only to the interest of the tenant or equitable interest holder (D.C. Code § 40-303.07).

When leasing to a tenant that intends to make improvements to the property, the landlord should take steps to protect the property from any mechanics' liens arising from the tenant's improvements. For example, the landlord may require that the lease contains provisions that require or permit one or more of the following:

- A bond for the full amount of any construction agreement as a condition precedent to the tenant contracting for any improvements to the property.
- The establishment of an escrow account to cover all construction costs as a condition precedent to the tenant contracting for any improvements to the property.
- The tenant to discharge or bond over a lien for tenant improvements that attach to the landlord's fee interest.
- The tenant to indemnify the landlord for any losses due to a lien being placed on the property for improvements contracted for by the tenant.
- The landlord has the right to discharge or bond over any liens for improvements by the tenant and seek compensation directly from the tenant for:
  - the cost of obtaining the discharge; or
  - the cost of obtaining the bond.

(See *Removing a Lien by Payment or Bond*.)

Before entering into a construction contract with a tenant, a contractor should:

- Review all provisions of the lease that relate to improvements to the property.
- Note any provisions of the lease concerning ownership of the improvements.
- Be aware of all obligations of the tenant.

## CREATING AND PERFECTING A MECHANIC'S LIEN

### NOTICE OF MECHANIC'S LIEN

A lien claimant perfects a mechanic's lien by:

- Recording a notice of mechanic's lien (also known as a "notice of intent") with the D.C. office of the recorder of deeds identifying the property subject to the lien:
  - during the construction; or
  - within 90 days after the completion or termination of the project, whichever is earlier.
- Serves the notice of mechanic's lien on the property owner within five business days after recording by either:

- certified mail to the owner's current address; or
- posting a copy of the notice of mechanic's lien at the property if the certified mail is unclaimed or undelivered.

The notice of mechanic's lien must include:

- The name and address of the contractor or the contractor's registered agent.
- The name and address of the property owner or the owner's registered agent.
- The name of the party against the interest of which the lien is claimed and the amount of the claim, less any credit for payments received up to and including the date of the notice.
- A description of the work done, including the dates that the work was commenced and completed.
- A description of material furnished, including the dates that the materials were first and last delivered.
- A legal description of the property and, if available, a street address of the property.
- If the lien claimant is organized under the laws of the District of Columbia or authorized to do business in the District of Columbia:
  - a copy of the contractor's current license to do business in the District of Columbia issued by the Department of Consumer and Regulatory Affairs (DCRA); and
  - a certificate of good standing from the DCRA issued within 180 days before the date of the recording of the notice of intent.
- If the lien claimant is an individual or entity organized in another jurisdiction and not doing business in the District of Columbia under applicable District law, but must be licensed by a governmental entity:
  - a copy of the contractor's current license issued by the government of the other jurisdiction; and
  - a certificate of good standing issued by the other jurisdiction's government.
- If the project is provided under a home improvement contract, a copy of the home improvement contract.
- A sworn, notarized statement that:
  - the contents of the notice of mechanic's lien are true and accurate to the best of the contractor's information and belief; and
  - the contractor has a right to recover the amount claimed.
- If the notice of mechanic's lien is executed by an authorized representative or counsel of the lien claimant:
  - attach written evidence of authority to execute the notice, such as the lien claimant's sworn, notarized letter granting authority to the representative or counsel; and
  - affirm that the notice of mechanic's lien is true and accurate to the best of the affiant's knowledge and belief.

(D.C. Code § 40-301.02.)

If a subcontractor or supplier records a notice of mechanic's lien, the subcontractor or supplier must give notice to the property owner or the owner's agent as follows:

- If the owner or its agent is a D.C. resident, by leaving a copy where they reside.

- If neither can be found, by posting a copy of the notice of mechanic's lien on the property being liened.

(D.C. Code § 40-303.03.)

The D.C. office of the recorder of deeds provides a notice of mechanic's lien form. Use of the form is not required. If not using the official form, counsel should ensure that the information contained in the notice of mechanic's lien conforms to the requirements of the statute.

On receiving a notice of mechanic's lien from a lien claimant, the property owner or its agent has a duty to withhold from a contractor's payment an amount sufficient to satisfy the amount of the lien (D.C. Code § 40-303.04).

### WAIVING THE MECHANIC'S LIEN

A contractor may waive or release its lien at any time. A lien in favor of parties employed by the original contractor is subject to the terms of the contract, if any, between the owner and the contractor. A contractor may not waive the lien rights of a subcontractor in a contract with the owner. (D.C. Code § 40-303.02.)

### PAYING THE CONTRACTOR IN ADVANCE

A property owner cannot defeat the lien of a subcontractor or supplier by paying the contractor in advance of the time agreed in the contract. If the amount due or to become due the contractor is insufficient to satisfy the liens of subcontractors or suppliers, the property remains subject to the full amount of the original liens as if the owner had not made the advance payments. (D.C. Code § 40-303.06.)

## ENFORCING THE MECHANIC'S LIEN

### TIME LIMITATION

A lien claimant that has recorded a valid notice of mechanic's lien must enforce the lien by:

- Filing suit within 180 days after recording the notice of mechanic's lien.
- Recording a notice of pendency of action (*lis pendens*) with the office of the recorder of deeds within ten days after filing suit (D.C. Code § 42-1207(b)).

If the lien claimant fails to file suit or record the *lis pendens* within the 180-day period, the lien terminates automatically and by operation of law (D.C. Code § 40-303.13; see Notice of Mechanic's Lien).

### FILING AN ACTION TO ENFORCE THE LIEN

#### The Complaint

A complaint to enforce a mechanic's lien must contain the following:

- A brief statement of the contract on which the claim is based.
- The amount due.
- The date when the notice of mechanic's lien was recorded with the Recorder of Deeds.
- A copy of the notice of mechanic's lien served on the property owner or its agent, if served.
- The date when the building or the work was completed.

- A description of the premises and other material facts. The statute does not specify what type of description or facts are sufficient. To assure compliance with the statute, counsel should provide a legal description of the premises and, at a minimum, the property address.

- A request for relief that the owner's interest in the premises be sold and the proceeds of sale be applied to the satisfaction of the lien.

(D.C. Code § 40-303.08.)

### Necessary Parties

If a person other than the general contractor files suit to enforce a mechanic's lien, the claimant must name the general contractor as a defendant. The claimant also must name all other persons that have filed notices of mechanic's liens as defendants.

All or any number of lien claimants on the same property may join in one suit. State their respective claims distinctly stated in separate paragraphs.

If several suits are brought by different lien claimants and are pending at the same time, the court may order them to be consolidated. (D.C. Code § 40-303.08.)

Counsel should consider engaging the services of a reputable title company to run a title search to determine the property owner and all other parties with an interest in the real property, including other lien claimants.

### CHALLENGES TO LIEN VALIDITY

D.C. law does not provide any means for a party affected by a mechanic's lien to challenge the validity of the lien before the filing of an action to enforce the lien (see *Clarke v. Huff*, 165 F.2d 247 (D.C. Cir. 1947)).

### PRIORITY OF LIENS

Mechanic's liens on the same project generally have priority in the order recorded. However, a subcontractor that serves a notice of mechanic's lien on a property owner before the owner pays the contractor has priority over a subcontractor that does not give notice to the property owner (D.C. Code § 40-303.03; see Notice of Mechanic's Lien).

A perfected mechanic's lien takes priority over:

- All judgments, mortgages, deeds of trust, liens and encumbrances that attach to the building or ground affected by the lien after the commencement of work.
- Conveyances to third persons executed but not recorded before commencement of the work.
- Loan advances made after the filing of the lien notice regardless of when the mortgage or deed of trust is recorded. Although not required by statute, the lien claimant should serve the notice of intent on any lenders of record for the property to protect against a lender making additional advances (see Notice of Mechanic's Lien).

However, mechanic's liens do not have priority over purchase money deeds of trust that are recorded within ten days from the date of acknowledgement (D.C. Code § 40-303.07).

The mechanic's lien of a subcontractor or supplier has priority over the lien of the general contractor (D.C. Code § 40-303.10).

### REMOVING A LIEN BY PAYMENT OR BOND

The property owner may obtain a release of the lien after suit to enforce the lien that has been filed either by:

- Paying into court the amount claimed by the lien claimant and any additional interest and costs as the court may direct.
- Filing a written undertaking, with one or more sureties, with the court's approval, that the owner intends to pay any judgment that may be entered in favor of the lien claimant. When the written undertaking is a bond, only one bond is required.

When the money is paid into court or the court approves the written undertaking or bond, the property is released from the lien and the money paid into court or the undertaking or bond replaces the lien as security for payment.

The property owner seeking release of the lien must provide the lien claimant at least five days' written notice of its intention to apply to the court for approval of the release of lien. The notice must provide:

- The name and residence of the proposed surety.
- The time when the motion for approval is to be made.

If required by the court, the surety must state under oath that it is worth double the amount of the lien, over and above all the surety's debts and liabilities.

The lien claimant may appear and object to the approval (D.C. Code § 40-303.16.)

#### ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at [legalsolutions.com/practical-law](https://legalsolutions.com/practical-law). For more information or to schedule training, call **1-800-733-2889** or e-mail [referenceattorneys@tr.com](mailto:referenceattorneys@tr.com).