

Mechanic's Liens and Construction Bonds 101



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The laws regarding mechanic's liens vary throughout the United States and the District of Columbia. If you supply materials or services for the improvement of real property in any jurisdiction, it is beneficial that you have a general understanding of the laws of the jurisdiction in the event that payment for materials and services is not forthcoming from the customer.

Who can file a mechanic's lien?

Virginia – All persons performing labor or providing materials for a construction project.

Maryland – All persons performing labor or materials for a construction project.

District of Columbia – Any person having a contract with the owner or the general contractor.

What do I file?

Virginia – A Memorandum of Mechanic's Lien is the initial filing. In order to enforce the lien, a suit to enforce the mechanic's lien must also be filed. Subcontractors, sub-subcontractors, and material men must also file a notice to the owner of the property.

Maryland – Subcontractors must file a Notice of Intent to Lien. The first notice required for a general contractor is the Petition to Establish Mechanic's Lien. Subcontractors are also required to file a petition in order to enforce the lien.

District of Columbia – A Notice of Mechanic's Lien. In addition to filing, subcontractors must serve the notice on the owner of the property. In order for any contractor to enforce the lien, a complaint must be filed.

Where do I file?

Virginia – The Memorandum of Mechanic's Lien is filed in the land records of the circuit court in the city or the county where the property is located.

Maryland – The Notice of Intent to Lien is filed in the clerk's office of the circuit court where the property is located.

District of Columbia – The Notice of Mechanic's Lien is filed at the office of the Recorder of Deeds in Washington, D.C.

When do I file?

Virginia – Any time after work commences or materials are provided, but no later than 90 days after the last day of the month that work was last performed or materials were provided, and in no event no later than 90 days after the project terminates.

Maryland – A general contractor must file a petition within 180 days of completion of the work or delivery of materials. A subcontractor must file a notice within 120 days after performing work or providing materials.

District of Columbia – The notice must be filed completed or terminated, whichever is earlier.

While contractors can file mechanic's liens against privately owned property, the same is not true for public projects. Alternative, and perhaps, superior, security exists in the form of payment bonds. The federal Miller Act requires that all construction projects for federal contracts be bonded by the general contractor to protect the right of payment for those performing work or providing materials to the project. Similarly, most states have laws for state and municipal projects known as "Little Miller Act" statutes. Miller Act payment bonds protect all persons supplying labor and material for public construction projects.

How much is the bond?

Virginia – For all public projects in excess of \$100,000.00, the amount of the main contract.

Maryland – 50 percent of the total amount due under the main contract.

District of Columbia – One half of the total amount due under the terms of the main contract.

What kind of notice is required?

Virginia – Any person who has a contract with the general contractor does not need to file notice. Any person who has a contract with a subcontractor must give notice to the general contractor within 180 days of the last date that work was performed or materials were provided for which payment is claimed.

Maryland – Any person who has a contract with the general contractor does not need to provide notice. Any person having a contract with the subcontractor or a sub-subcontractor must provide written notice to the general contractor within 90 days of the last date of providing labor or materials and state the amount of the claim and the party for whom the work was performed or materials provided.

District of Columbia – Any person who has a contract with the general contractor does not need to provide notice. Any person having a contract with the subcontractor must provide written notice to the general contractor within 90 days of the last date of providing labor or materials and state the amount of the claim and the party for whom the work was performed or materials provided.

Is my project covered?

Virginia – If the project is \$100,000.00 or less, the project is not covered unless required by Virginia, the county or the city responsible for the project.

Maryland – With the exception of highway projects, contracts for less than \$100,000.00 are excluded.

District of Columbia – If the project is less than \$100,000.00 the bond may be waived.

When do I file a lawsuit?

Virginia – Suit must be filed more than 90 days after the last day that labor is performed or materials are provided but within one year after the date on which the claimant last performed labor or provided materials.

Maryland – Suit must be filed more than 90 days after the last day that labor is performed or materials are provided but within one year after the state or municipality accepts the work performed under the primary contract.

District of Columbia – Suit must be filed more than 90 days after the last day that labor is performed or materials are provided but within one year from the last date that labor is performed or materials are provided.