Mechanics' Lien Flowchart (VA)

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 Flowchart outlining the stages of non-judicial mortgage foreclosures in Virginia. This Flowchart includes pre-lien notice requirements, required filings, public auctions, and post-sale requirements.

Mechanics' Lien

Under Title 43 of the Virginia Code, a contractor, subcontractor, sub-subcontractor or supplier (claimants) may use a mechanics' lien to secure payment for work or services performed or materials furnished to improve privately owned real property.

Before Filing a Mechanics' Lien

- Determine:
 - if the lienor is a person entitled to a mechanics' lien;
 - if the work and materials are covered by a mechanics' lien; and
 - if the property against which the lien may attach is subject to a mechanics' lien, including leasehold interests.
- Conduct a title search to identify liens and encumbrances on the property.
- Conduct a bankruptcy search to determine if the property owner has filed for bankruptcy relief.

Give Written Notice to Mechanics' Lien Agent (if applicable)

- Give written notice to the mechanics' lien agent by registered or certified mail or personal delivery before filing a memorandum of lien if the residential property owner has designated a mechanics' lien agent in writing and posted the designation on the property.
- Record the written notice to lien agent with the land records for the circuit court for the county where the real property is located within:
 - 30 days of the first day that the claimant performed labor or furnished materials; or
 - 30 days of the date that the building permit was issued if the labor or materials were performed or furnished before the building permit was issued.



Create and Perfect a Mechanics' Lien

General Contractors

- Prepare a general contractor's memorandum of lien and affidavit using the statutory form.
- Mail a copy of the memorandum of lien to the property owner or its agent by certified mail, return receipt requested.
- Record the memorandum of lien and a certificate of notice of mailing to the owner with the land records of the circuit court for the county where the real property is located within 90 days following the claimant's last date of work or completion of the project.

Subcontractors

- Prepare a subcontractor's memorandum of lien and affidavit using the statutory form.
- Record the memorandum of lien with the land records of the circuit court for the county where the real property is located within 90 days following the claimant's last date of work or completion of the project.
- Mail a copy of the memorandum of lien to the property owner or its agent by certified or registered mail, return receipt requested.

Sub-Subcontractors

- Prepare a sub-subcontractor's memorandum of lien and affidavit using the statutory form.
- Record the memorandum of lien with the land records of the circuit court for the county where the real property is located within 90 days following the claimant's last date of work or completion of the project.
- Mail a copy of the memorandum of lien to the property owner or its agent by certified or registered mail, return receipt requested.
- Mail a copy of the memorandum of lien to the general contractor or its agent by certified or registered mail, return receipt requested.

Enforce the Mechanics' Lien

- File a civil complaint to enforce the lien within:
- six months from the date the claimant recorded the memorandum of lien; or
- 60 days from the completion of the building or structure or the date the work on the building or structure was terminated.
- File an itemized statement of account with the complaint containing all information required by statute.
- Ensure that the claimant or its agent verifies the statement of account.
- Include all necessary parties in the action to enforce the mechanics' lien.
- Determine the priority of applicable mechanics' liens.

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**. For more information or to schedule training, call **1-800-733-2889** or e-mail **referenceattorneys@tr.com**.

06-