

Mechanics' Liens Now Available to Design Professionals in Massachusetts

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Massachusetts Governor Deval Patrick recently signed into law a new bill amending the coverage of mechanics' liens under Mass. Gen. Laws ch. 254 to include architects, professional engineers, licensed site professionals, landscape architects and land surveyors, provided that they are licensed or registered in Massachusetts. Effective July 1, 2011, design professionals will have the same mechanics' lien protection as contractors, subcontractors and materialmen in Massachusetts. Like other claimants seeking protection under the mechanics' lien law, strict compliance with statutory procedures will be required in order to preserve and enforce the lien rights.

Under the new law, Massachusetts joins many other states that allow design professionals to place a lien on private property for unpaid services. The law leaves unchanged the current process for general contractors and subcontractors to place a lien on private property when the owner or developer has not paid for their work, and does not affect public projects.

Persons Covered

The new law covers "design professionals," defined as an "architect, landscape architect, professional engineer, licensed site professional or land surveyor who is licensed or registered as such in the commonwealth." It also includes corporations, limited liability companies, partnerships and other legal entities that are authorized to practice in Massachusetts.

Services Covered

Liens under the new law are permitted for the value of "professional services," defined as "services that are customarily and legally performed by or under the supervision or responsible control of design professionals in the course of their professional practice, including without limitation, programming, planning, surveying, site investigation, analysis, assessment, design, preparation of drawings and specifications and construction administration services."

Procedures

For design professionals who have direct contracts with project owners, tenants or persons acting with their consent, there are four basic requirements to enforce a lien: (1) a written contract with an owner of “any interest in real property” or any person acting “for, on behalf of or with the consent of such owner . . .”; (2) execution and recordation at the appropriate registry of deeds of a “notice of contract” within the time limits set forth in the statute; (3) execution and recordation at the appropriate registry of deeds of a “statement of account” within 30 days after the last day that a notice of contract may be filed, setting forth “a just and true account of the amount due, minus all just credits,” the owner’s name and a description of the property to be lienied; and (4) commencement of a civil action to enforce the lien within 90 days after recordation of the statement of account, and recordation of an attested copy of the complaint with the appropriate registry of deeds. Failing to comply with the specific requirements and deadlines set forth in the statute may result in dissolution of the lien.

There are also special requirements for lower-tier design professionals who work for first-tier design professionals, general contractors and subcontractors.

Limitations

Under the new statute, most design professional liens have a lower priority than contractor, subcontractor, supplier and labor mechanics’ liens. Only if monies are available after those other liens are paid can money be distributed for the design professional mechanics’ lien. Design professionals hired directly by contractors or subcontractors, however, are not subject to this limitation.

There are many traps for the unwary in the preservation and enforcement of mechanics’ liens under Massachusetts law. Consultation with knowledgeable and experienced legal counsel is therefore highly recommended.