

# Express Lien

Virginia Lien Punchlist (Private)

## **NOTICE REQUIREMENTS**

- Preliminary Notice prior to work is typically not required from anyone in Virginia to preserve the right to lien.
- On One and Two Family Residential Dwelling Projects, a 30-Day Preliminary Notice is required if a "Mechanics Lien Agent" (MLA) is identified in the building permit. Notice must be sent to the identified MLA within 30 days of first furnishing labor and/or materials.
- Prime Contractors must give notice to the owner that the lien was filed, upon filing. The Subcontractor must give Notice to Owner of the filing of the lien. Sub-Subcontractors must give Notice to the owner and the prime contractor.

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## **THE MECHANICS LIEN**

Nearly every party who furnishes labor, materials, services and/or equipment for use in the improvement of property have lien rights in Virginia. Sub-subcontractors have lien rights, but it is likely that a subcontractor to sub-subcontractors (3<sup>rd</sup> tier contractors) cannot lien.

- Filing Deadline: Liens ordinarily must be filed within 90 days from the last day of the month in which the claimant furnishes labor, services or materials.

Lien period may be a bit shorter for those contractors working towards the end of the project, as the law states liens may also be due 90 days from the completion or termination of the project, if it occurs before the first stated deadline.

- All parties must file an action to enforce the lien within 6 months from when the lien was filed, or 2 months from the termination or completion of the project – whichever is later.

## **THE 150 DAY RULE**

All liens in Virginia must follow the "150 day rule." From the last date materials or equipment was furnished, the claimant must count backwards for 150 days. The claimant is only allowed to lien for materials/services, and the amounts due for those services/materials, provided within those 150 days.

The only exception to this rule is that older retainage amounts may be liened (so long as they do not exceed 10% of the contract price).

It's important for those working in Virginia to not allow balances to get too old!

## **LIEN SOONER, RATHER THAN LATER**

In Virginia, the Owner is only liable to subcontractors for amounts it has not yet paid the prime contractor at the time of lien. Likewise, prime contractors are only liable to sub-subcontractors for amounts it has yet to pay the subcontractor at the time of lien.

So, while you may have time to lien the project by law...the sooner you lien the project, the more likely the upper level party will have money left to disburse.

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