

# Five Ways A Mechanic's Lien Can Get You Paid

If you're unpaid for services, materials or labor furnished to a construction project, filing a mechanic's lien may be the *smartest* move you can make.

As anyone in the industry knows, there are hundreds of reasons why payments get delayed. Perhaps its a funding problem with the construction loan or a technical defect in one party's payment application. Too often, the reason you're not paid has nothing to do with you; it's a problem somewhere above you on the contractual chain causing the problem.

When a construction project has any sort of money issues, the property owner or prime contractor will prioritize debts, first paying off those parties who have preserved and enforced their lien rights. If you're owed money, you want to be one of these parties.

As this white paper will explain, filing a lien has immediate effects on the project and the parties holding the cash.

## 1) You Get More Skin In The Game



You furnished labor or materials pursuant to an agreement of some type. Either you signed a written contract with the party who hired you, or you orally agreed to perform with a party. In any event, you have a contractual relationship with some specific party.

If you're unpaid under that agreement, the law allows you to file suit against the parties to your agreement. That's it.

In other words, if you're a supplier hired by a subcontractor, you can only file a lawsuit

against that subcontractor if unpaid for your supplies. You can't sue the prime contractor or the property owner, even if these parties never pay the subcontractor. You're stuck with a "privity of contract" problem. In law, "privity of contract" principles prohibit you from filing a lawsuit against anyone whom you don't have "privity of contract."  
A mechanic's lien changes this.

If you file a mechanic's lien, not only can you sue the subcontractor, but you can also sue the prime and the owner for the amounts owed to you. And it usually doesn't matter if the property owner already paid the prime (or if the prime already paid the subs)...if you have a properly filed mechanic's lien, these parties can be forced to pay twice.

This ability to sue parties outside your contract gets more skin into the non-payment game, increasing your chances of getting paid.

## **2) Your Lien Usually Freezes Project Funds**

Some states require funds to be "frozen," and in other states, the freezing of project funds is a practical consequence of mechanic lien filings.

Since your lien gets "more skin in the game," the parties holding money who are now liable to you pursuant to the lien put a hold on funds they have owed to the folks down the chain from them.



Using our example from above of the supplier hired by a subcontractor, as soon as the supplier files a lien, the property owner is going to withhold funds from the prime contractor in an amount sufficient to cover the supplier's lien claim, and similarly, the prime is going to withhold money from the subcontractor.

These funds are being withheld because no one on the project wants to get stuck with the debt. Freezing the funds, however, pushes buttons and interrupts cash flow, all increasing your chances of getting paid.

### **3) The Property Becomes Your Security**



If you go to a bank for a loan to buy a piece of property, the bank requires *collateral* to give you the loan. The collateral is nearly always the property you're going to buy. Default on your loan with the bank, and the bank is going to take your property and sell it.

Those in the construction industry have very similar protection with mechanic liens.

A mechanic's lien actually attaches to the underlying property on a construction project, giving you a security interest or privilege in the property itself in the event you're unpaid.

So, if you file a mechanic's lien and still no one pays you, you theoretically own a portion of the underlying property equal to the amount owed to you, and you can foreclose on the property just like a bank. After proving how much you are owed, you can ask the sheriff to sell the property and pay you your share.

### **4) Prevent The Property From Being Sold, Re-Financed or Transferred**

Since your lien creates a privilege against the underlying property, the existence of your mechanic's lien has the effect of preventing the property from being sold, transferred or financed in any way.



Practically speaking, this can cause big problems for the property owner.

On many construction projects, the property owner or developer is planning to sell or transfer the property after construction, or it is using a construction loan to pay for the improvements and will need to refinance and convert the loan into a fixed mortgage. These goals cannot be accomplished when your lien is on the books.

The result of this is that you get paid, as your payment is required to put the property into commerce.

## 5) You Put Parties In Violation of Their Contract



In many instances, the party you contracted with has a contract with someone else related to the construction project. A subcontractor, for example, has a contract with a prime contractor. A property owner usually has a contract with a bank. A tenant has a contract with its landlord, the property owner.

And in nearly every instance, these other contracts *punish* the other party if one of their subcontractors or suppliers files a mechanic's lien.

The contract provision may require the party to pay attorneys fees, penalties or damages in the event a lien is placed, and in many cases, requires the party to pay or

“bond off” the lien immediately after its filed.

These contract provisions are great for the lien claimant because they increase the pressure on the parties to pay your lien claim.



*This white paper is written by Scott Wolfe Jr., a construction attorney who practices in California, Washington, Oregon and Louisiana through his law firm, [Wolfe Law Group](#). Scott is also the founder of [Zlien](#), a nationwide preliminary notice and mechanic's lien filing service, and the publisher of the [Construction Lien Blog](#).*

#### Other Resources:

- [50-State Lien Law Summaries](#)
- [Color-Coded USA Map of Preliminary Notice Requirements](#)
- [File A Preliminary Notice with Zlien](#)
- [Electronically File a Mechanic's Lien](#)