



American
Subcontractors
Association

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“How To Get Paid”

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How To Get Paid: Summary

- I. Be wary of troublesome contract clauses
 - 1) Pay-when-paid
 - 2) Pay-if-paid
 - 3) One sided ADR clauses
 - 4) “Murder Clauses” in construction contracts
- II. Prompt payment statutes
 - 1) Protect subcontractors
 - 2) Recover 18% interest on MN public jobs
 - 3) Recover attorneys’ fees
- III. Remedies
 - 1) Mechanics lien
 - 2) Breach of contract claims
 - 3) Accounts stated claim

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Pay-When-Paid or Pay-if-Paid Clauses

- GC has no obligation to pay you unless payment from owner
- Payment from owner to GC is a condition precedent to payment obligation to subs
- Courts disfavor these clauses
- Clause must be clear and unambiguous
- AGC Rider B50.1 – after prime contractor has exhausted reasonable collection efforts
- AGC Rider B50.2 – enforceable pay-if-paid clause, according to the AGC
- Possible 2009 Legislation

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One Sided-ADR Clauses

- Other party chooses whether to arbitrate
- Other party can recover attorneys’ fees, but you can’t recover fees
- Other party chooses whether to join third parties

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“Murder Clauses” in Construction Contracts

- Difficult or risk-shifting contract provisions
- Always look for these provisions
- Failure to account for these risk-shifting provisions can mean the difference between profitable jobs and having jobs which are “loss leaders”

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Conflicting Interpretation Principles

- Courts want to honor risk allocation between contracting parties, particularly sophisticated parties
- But courts disfavor one-sided provisions because they promote conduct below accepted standards of care
- Narrowly construe onerous provisions (i.e., pay-if-paid clauses)

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NDFD

- No Damages for Delay Clauses - purport to disallow damages if project delays occur
- NDFD clauses barred by Minnesota law on public construction projects. Minn. Stat. § 15.411
- No reported Minnesota decisions analyzing NDFD clause on private project
- Disfavored and narrowly construed in other jurisdictions

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Limitation of Liability Clauses

- No liability beyond contract price or cap on damages
- Example: home appraiser wants damage cap to inspection fee
- Often upheld in commercial transactions
- Example: *M.A. Mortenson v. Timberline Software Corp.*, 998 P.2d 305 (Wash. 2000) (\$1.0 million bid mistake due to software glitch in bidding software; court enforced limitation of liability provision capping damages at cost of software)
- Example: Soils engineer. Wants limitation of liability equal to amount of their fee for performing limited soil borings

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Written Notice Requirement for Claims

- Increasingly being enforced by Courts
- Oftentimes, contracts require written notice within 21 days of claim
- *Cameo Homes, Inc. v. Kraus-Anderson*, 394 F.3d 1084 (8th Cir. 2005)
- Exceptions:
 - course of dealing to ignore written notice requirements
 - owner's actual knowledge of claim
 - actions by owner inconsistent with written notice requirement

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PROPER NOTICE

WHO

WHAT

WHERE

WHY

WHEN

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NOTICE ISSUES

1. The wording of the notice clause
2. Actual notice
3. Constructive notice
4. Prejudice to owner
 - Mitigation
 - Keep track of costs
5. Oral agreements (i.e., promise to pay) can change terms of written contract
6. Waiver of notice provisions through course of dealing
7. Other actions inconsistent with intent to rely on notice clause

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Change Order Provisions

- Construction contracts universally require written change orders signed by both parties before performing extra work
- Parties frequently ignore these provisions
- What happens when there is a dispute?
 - Other party acknowledges oral directive
 - Course of dealing ignoring “changes clause”
 - Other party's knowledge of extra work

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Limits on Reasons for Time Extensions

- Contractor wants “non-exclusive” list
- Owners want agreement in advance of limited grounds for time extensions
- Be careful of contract provisions that list sole reasons for time extensions
- Exposure to liquidated and actual damages

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Flow Down Clauses

- Prime contract requirements “flow down” to subcontractor
- Have you even seen the prime contract?
 - Realize you have to adhere to GC/owner contract?
- Make sure lower-tier subcontractors sign corresponding agreements

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Incorporation by Reference Provisions

- What are the terms of your contract?
- Make sure to receive and review every document incorporated by reference into your contract
- Many contracts contain “receipt acknowledgements” whereby you agree that you have received all contract documents incorporated into your contract

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Final Payment Provisions

- AIA contracts and many privately drafted contracts contain “final payment” provisions
- Submitting request for final payment and/or acceptance of final payment is a waiver of all claims
 - Except those previously asserted in writing and noted as pending at time of final payment
- Make sure to note pending claims

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Protecting Your Rights

- Avoid Waiving Claims
 - Avoid signing boilerplate waivers on change orders and payment applications—instead, affirmatively preserve claims
 - Return “payment in full satisfaction” checks
 - Re-assert any unresolved claims in writing when applying for final payment
 - Follow claim resolution procedures in contract

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Some Contract Provisions are Barred by Statute

- The Courts are the third party to your contract
- § 337.10
 - No lien right contracts
 - No bond right contracts
 - Foreign law
 - Foreign venue
 - “Broad form” indemnity

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Indemnity Clauses

- Broad form indemnity agreements
- Have to indemnify the other party for its own negligence
- Anti-Indemnity Statute applies
- Indemnity agreements are strictly construed against the party seeking indemnity
- No indemnity for intentional acts or other conduct that would warrant punitive damages

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Subcontractor Claims and Disputes

- The General Contractor’s Perspective when a Sub is Making a Claim
 - Notice Requirements
 - Pass Through Claims and Claims Prosecution Agreements
 - Mechanics’ Lien and Bond Claims
 - Exposure to Claims for Attorney’s Fees
 - Obligation to indemnify the Owner

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Subcontractor Claims and Disputes

- The Subcontractor's Perspective
 - Hurdles?
 - notice of claim requirements and waiver
 - waiver of delay damages, consequential damages
 - contract disputes procedures
 - mechanic's liens and bond claims
 - contractual limits on damages

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Prompt Payment Rights

Prompt Payment Statutes

- Public Projects
 - Federal: U.S. Treasury rate applies to determine interest rate
 - » GC not paid by owner within 14 days of pay request
 - » Lower tier subcontractors not paid within 7 days of payment to GC
 - Minnesota
 - » 18% annual interest (1.5% per month) if GC not paid within 30 days of invoice
 - » Lower tiers not paid within 10 days of owner payment to GC
 - » Retainage not to exceed 5% unless expressly contracted
 - Local
 - » 18% annual interest (1.5% per month) if GC not paid within 35/45 days of invoice, depending on size of municipality and regularity of municipality's meetings
 - » Lower tiers not paid within 10 days of owner payment to GC
 - » Recover attorney's fees

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Bill of Rights

Prompt Payment Statutes (continued)

- Private
 - Contractual rate
 - Minn Stat. §337.10, subd.3
 - 18% annual interest (1.5% per month)
 - Recover attorney's fees

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Protecting Your Rights

- TRIGGER INTEREST OBLIGATIONS
 - Prompt payment contract
 - Submit invoice/pay request
 - Accounts stated
 - Indicate interest on invoices
 - Show payments being applied to interest first
 - Law imposes duty to dispute invoice
 - Separate claim from breach of contract

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Public Jobs – Payment Bonds

- Payment bond rights on public construction projects
- No mechanic's lien rights on public construction projects
- Statutory requirement to have payment bonds under Federal Miller Act and "little Miller Acts" in all 50 states

See, e.g., Minn. Stat. § 547.26-.32

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Minnesota's Payment and Performance Bond Statute, Minn. Stat. § 574.26 - .32

- Bonds for public construction projects
- Statute applies to public contracts, not private contracts
- Purpose of payment bonds: ensure that contractors and suppliers who work on public construction projects are paid
- Mechanic's liens cannot be filed against public projects so payment bonds developed as an alternative remedy. *GME Consultants, Inc. v. Oak Grove Dev. Inc.*, 515 N.W. 2d 74, 75-76 (Minn. Ct. App. 1994)

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"Private" Payment Bonds

- Some private jobs have payment bonds
- The bond's terms controls, not the Miller Act or little Miller Act
- Watch for shortened deadlines (i.e., perfecting bond rights within 60 or 90 days of last date of work)

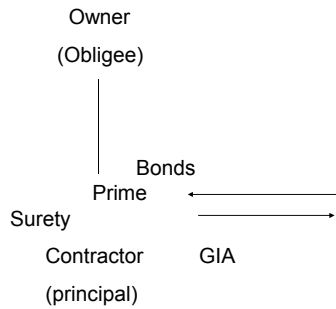
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Payment Bond Overview

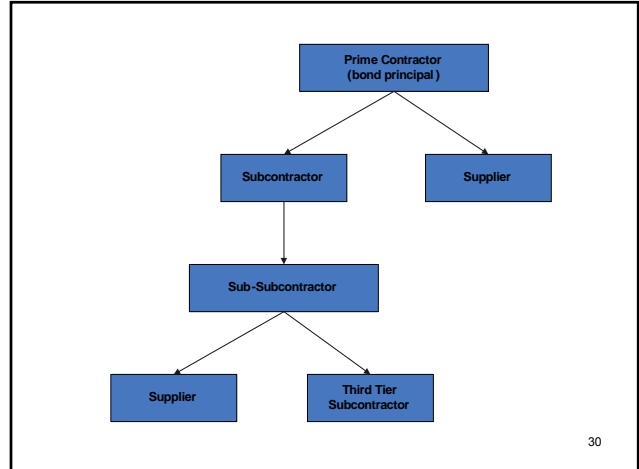
- Remedy for subcontractors in case GC does not pay subs / suppliers
- Always available on public construction projects
- Recover contract amount + attorneys' fees
- Simultaneously sue bond surety and GC

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Diagram of Bond Relationships



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General Indemnity Agreement (“GIA”)

- Personal indemnification of the surety by corporate owners/officers and spouses if bond claim is paid
- Exception: well-established, profitable contractors sometimes are not required to provide GIAs
- Typical GIA key provisions
 - bond principal and indemnitors must indemnify surety for all losses of every kind, including attorneys’ fees
 - surety’s decision to settle or defend is final and binding
 - upon default, principal transfers and assigns all rights, title, and interest to surety
 - right of access to principal’s books and records
 - release of one indemnitor does not release other indemnitors

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How To Protect Your Payment Bond Rights

- Keep records of what you supplied
- Satisfy all conditions precedent to payment
- Do not breach the contract
- Let the bond principal and the owner know you have not been paid
- Comply with the statutory deadlines
 - on public jobs, serve notice within 120 days of last date at work
 - commence suit within one year of last date of work

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How To Protect Your Payment Bond Rights Cont.

- Give the proper notice
 - Minn. Stat. § 574.31, Subd. 2 provides form notice and describes how to serve the notice
 - Do not vary from the language of the statutory notice
 - Serve notice within 120 days of last date of work
 - certified mail or personal service
 - not U.S. Mail or facsimile
 - in contrast, service under Miller Act is sufficient if in writing and delivery can be confirmed by third-party

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No Bond Posted on Public Job

- Consequences for public entity's failure to require bond
 - Minn. Stat. § 574.29
 - Public entity liable to all persons furnishing labor and materials for any loss
 - Exhaust remedies against prime contractor simultaneously

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Surety Waives Defenses

National Union Tire Ins. Co. of Pittsburgh v. Wadsworth Golf Constr. Co. et al., 2004 WL 2006848 (Md. Ct. Spec. App. Oct. 12, 2004)

- Payment bond required substantive answer by surety within 45 days of claim
- Surety failed to timely answer
- Surety waived all defenses to the bond claim
- Examine your payment bond
- Did the surety promise to respond within a set time period?
- In response to this ruling (and other similar rulings), surety industry is changing its forms

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Mechanic's Lien Overview

- Draconian Remedy – that is why mechanic's liens are so effective
- Security for your payment claim
- Foreclosure upon real property
- Right to recover attorney's fees
- Simultaneously prosecute breach of contract, accounts stated, and equitable claims
- Deadlines:
 - Serve and file lien statement within 120 days of last date of work
 - Commence lawsuit within one year of last date of work
- Lien rights on private projects only; no lien rights on public construction projects

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Who May Assert a Lien?

- Engineers or Land Surveyors
- Architect
- Contractors
- Subcontractors
- Suppliers of contractors or subcontractors
- Not lawyers

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Minn. Stat. § 514.02

- a. Owner's payments held in trust by recipient for benefit of parties who contributed to the improvement
- b. Criminal penalty for non-payment to subcontractors and suppliers
- c. Minn. Stat. § 514.02, subd. 1a
 - claim against individual officer and company who did not pay "downstream" vendors
 - recover attorney's fees

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Lien Waivers

1. Important element of the payment procedure used in private building construction.
2. Partial versus full lien waivers.
3. There must be consideration supporting the lien waiver.
 - Exception: reliance by third parties
4. Lien waivers may only waive rights for labor or materials furnished prior to the date of waiver.

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CONDITIONS & DEADLINES FOR PRESERVING LIEN RIGHTS

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A. Pre-Lien Notice Requirements

1. Contractors
 - a. Minn. Stat. § 514.011
 - b. Contractor who has or will contract with subcontractors must give pre-lien notice
 - c. Pre-lien notice must be contained in written contract, a copy of which must be given to the owner
 - d. If there is no written contract, a separate notice must be prepared and delivered personally or by certified mail to the owner within 10 days of the time the work is agreed upon.

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2. Subcontractors
 - a. Subs must give notice to the owner, either personally or by certified mail, not later than 45 days after the first item of improvement.
 - b. Importantly, a sub may not lose its lien rights for failing to strictly comply with this provision, provided a good faith effort to comply was made, unless the owner or another lien claimant can show prejudice due to the sub's failure to comply.
3. Form of notice
 - a. The notices required for both contractor and sub are specifically set forth in the mechanic's lien statute.
 - b. Do not vary from the language of the statutory notice.
 - c. Bold and at least 10 point.

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4. Exceptions to pre-lien notice requirement:
 - a. Notice is not required if the contractor is the property owner.
 - b. Notice is not required if the owner is a corporation and the contractor is an officer or controlling shareholder.
 - c. Notice is not required if the contractor is managed or controlled by the same entity who manages or controls the real estate.
 - d. Notice is not required if more than four residential family units.
 - e. Notice is not required if the property is non-agricultural and wholly or partially non-residential, provided it:
 - 1) adds more than 5,000 sq. ft. of usable floor space; or
 - 2) if the existing property exceeds 5,000 usable sq. ft.; or
 - 3) it is an improvement to real property which contains more than 5,000 square feet and doesn't involve the construction of a new building or the addition to an existing building

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B. The Mechanic's Lien Statement

1. Mechanic's Lien Statement must be served and filed within 120 days of the claimant's last day of work.
2. Parties cannot extend the lien filing time period by agreement.
3. "Screen Door Doctrine"
 - a. incidental work on the project, such as moving equipment and materials not belonging to the owner is not a contribution and does not revive a lien.
 - b. on the flip side, where the final contribution was not made for the sole purpose of extending the lien, courts have allowed the work to constitute the last contribution.

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THE REQUIRED ELEMENTS OF A MECHANIC'S LIEN STATEMENT

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A. Contents of Statement Minn. Stat. § 514.08

1. Verification
 - lien statement must be verified under oath
 - person signing lien statement must have knowledge of facts in the statement (Minn. Stat. § 514.08, subd. 2)
 - lien statement usually signed by individual lien claimant or officer of lien claimant
 - attorney may sign lien statement if he or she has knowledge of the claim (not recommended)

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2. Notice of Intent to Claim Lien and Amount of Lien
 - a. statement must include notice that the claimant intends "to claim and hold a lien upon" the subject property
 - b. the statement must set forth the lien amount
 - Caution: Minnesota courts will invalidate liens which are intentionally overstated. Minn. Stat. §514.74.
 - An honest mistake should not invalidate a lien.

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3. Improvement Description
 - a. Minn. Stat. § 514.08, subd. 2 provides that the statement describe the improvement.
 - b. Failure to include a sufficient description of the improvement provided may invalidate the lien.
 - c. The improvement description should be complete enough to inform the owner of the work which is the basis of the claimant's lien.
 - e.g., "furnished sod and landscaping to property" or "installed concrete slab in building"

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4. Name of Claimant

5. Dates of Work

- a. Must set forth the first date and last date work or materials were furnished to the subject property by the claimant.
- b. If dates are wrong, the lien is lost only if the owner can show prejudice resulted due to the error.
 - last date of work will be scrutinized
- c. The date specified for the last day of work is significant because the lien statute requires that the mechanic's lien statement be recorded within 120 days of that date.
- d. A lien statement which shows on its face that it was not filed within the 120 day period invalidates the lien.
 - slander of title claim by owner

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6. Legal Description

- a. Description of property must be described with "reasonable certainty."
- b. The lien statement should include the legal description of the property.
 - legal description can be obtained from the county's property records
- c. Minor inaccuracies in the legal description will not render the lien invalid, provided the remaining accurate portion of the description is sufficient to identify the lien property with reasonable certainty.

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7. Owner's Identity

- a. The lien statement must contain the name of the person or entity the claimant believes to be the property's owner.
- b. The term "owner" does not just include the fee simple owner, but also includes the "owner" of any interest which can be sold (i.e., long-term lease).
- c. Owners and Encumbrances Report will identify fee and other interests

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8. Claimant's Address

9. Service or Mailing Affidavit

- The lien statement must contain an acknowledgment that a copy of the statement was personally served or mailed by certified mail to the owner.
- Cannot serve by facsimile or regular U.S. mail.

- 10. Affirmation Regarding Pre-Lien Notice: lien statement must state that any pre-lien notice was given.

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D. Service of Lien Statement

The lien statement must be served on the property owner(s) or the person who entered into the contract with the contractor.

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E. Filing Of A Lien Statement

1. Filing Requirements:
 - a. The lien statement must be filed within 120 days after the last item of contribution.
 - b. The lien statement must contain all necessary information required by Minn. Stat. § 514.08.
 - c. The lien statement must be filed in the county where the property is located. If the property is located in more than one county, the statement must be filed in all counties.
 - d. If the property is abstract, the lien statement must be filed in the County Recorder's office. If the property is Torrens, the lien statement must be filed with the Registrar of Titles. If the property is both Abstract and Torrens, the lien statement must be filed with both the County Recorder and the Registrar of Titles.

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2. Practice Pointer

→ If the lien statement is filed in the wrong office, i.e., the County Recorder's Office instead of the Registrar of Title's office, the claimant's lien rights are not preserved.

→ Although mechanics' lien laws are liberally construed after the lien attaches, the laws are strictly construed as to the creation of the lien.

3. Filing of Notice of Lis Pendens at time of commencement of mechanic's lien foreclosure action

→ put all other persons on notice of claim to real estate

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SETTLING LIEN CLAIMS

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A. Release of Property From The Mechanics' Lien Claims By Posting Security

1. Minn. Stat. § 514.10: statutory procedure to release lien by depositing cash or posting a bond

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B. Extinguishing Mechanic's Liens

1. Full payment for a party's contribution to an improvement ends that party's right to enforce a mechanic's lien.
2. Giving a full mechanic's lien release/waiver extinguishes any right to enforce a mechanic's lien.
3. Failure to file a mechanic's lien statement or to commence a foreclosure action within the applicable statutory deadlines also terminates the right to enforce a lien.

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3. Failure to file a mechanic's lien statement or to commence a foreclosure action within the applicable statutory deadlines also terminates the right to enforce a lien.
4. Payment
 - a. Full Satisfaction of Mechanic's Lien
 - b. Partial Satisfaction of Mechanic's Lien

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Quiz on Mechanic's Lien Rules

- Outrageous Owner failed to pay \$100,000 to Good Guy Contractor. Good Guy's last date of work was mid-August 2008. Good Guy is concerned about having its mechanic's lien rights expire. Outrageous Owner is threatening to bring frivolous claims arising out of Good Guy's work. Outrageous Owner suggests an end of December 2008 meeting and Outrageous says it will agree to toll the 120 day deadline to file and serve mechanic's liens. What should Good Guy do?
- Answer: File the mechanic's lien.
- Statutory deadlines to perfect a mechanic's lien cannot be extended by agreement of the parties.
- 120 day deadline from last date of work to file and serve a mechanic's lien statement.

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Quiz

- Outrageous Owner failed to pay \$100,000 to Good Guy Contractor. Good Guy's last date of work occurred 119 days ago. Good Guy is concerned about legal fees and Good Guy decides to handle serving and filing a mechanic's lien statement, rather than hiring a lawyer to do so. Outrageous knows that Good Guy's last date of work was 119 days ago so Outrageous leaves work early and goes skiing in Tahoe to avoid personal service of the mechanic's lien. Good Guy decides to fax and e-mail the mechanic's lien statement to Outrageous and to camp out at his place of business on the 119th and 120th days. Is service effective?
- Answer: No.
- Mechanic's liens must be perfected in accord with Minnesota statutes.
- Only serve mechanic's lien by registered mail or personal service. Fax and e-mail are insufficient.
- Lesson learned is not to wait until the eve of lien rights expiring.
- Good Guy should have sent the lien statement by certified mail as service is effective upon mailing.

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Quiz

- Gullible Subcontractor is owed \$100,000. Pugnacious Prime Contractor demands that Gullible sign and deliver a final lien waiver before \$100,000 is paid. Pugnacious delivers a \$100,000 check to Gullible in exchange for a final lien waiver signed by Gullible. Pugnacious tells Gullible not to cash the check until after a December 9, 2008, closing. At the closing, Pugnacious is paid \$500,000 by Owner after Pugnacious delivers final lien waivers, including Gullible's lien waiver. After the closing, Pugnacious stops payment on the \$100,000 check. Can Gullible file a mechanic's lien?
- Answer: No.
- Owner relied upon final lien waivers, including Gullible's lien waiver, so Gullible is out of luck.
- *McLellan v. Hamernick*, 118 N.W.2d 791 (Minn. 1962).

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Quiz

- Questionable General Contractor is desperate. Questionable has used contract funds to pay subcontractors and suppliers on other projects and cannot pay its subcontractors and suppliers on your project. Questionable forges your signature on a final lien waiver and delivers the lien waiver to Happy Owner at closing. Can Concerned Subcontractor file a mechanic's lien if Concerned Subcontractor does not get paid?
- Answer: Yes
- Prior rule does not apply to forgery situation.
- Concerned Subcontractor can pursue trust fund claim against Questionable General Contractor and its individual shareholders/ officers.

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Quiz

- Cranky Contractor agrees to build Owner's house for \$100,000. Cranky is only paid \$40,000. Cranky says it is owed \$60,000 on its contract balance and \$30,000 for disputed change orders. Cranky files a mechanic's lien for \$90,000. Valid?
- Answer: Depends.
- Overstated mechanic's liens are void in their entirety. Minn. Stat. § 514.74.
- Cranky definitely has a claim for \$60,000 and has a colorable claim for \$30,000.
- If Owner shows that any of the disputed change orders were frivolous, then Owner will try to get the entire mechanic's lien dismissed as overstated.

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Quiz

- Cranky Contractor agrees to build Owner's house for \$100,000. Cranky walks off the job after finishing 60% of the work. Cranky files a mechanic's lien for \$100,000. What happens?
- Answer: Owner will seek to dismiss the entire mechanic's lien as overstated because Cranky only finished 60% of the work, but liened 100% of the job. Owner may also bring a slander of title claim.

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Quiz

- Unsophisticated Owner receives pre-lien notices from Cranky Contractor and 10 subcontractors. Unsophisticated pays Cranky 100% of the contract price. Cranky goes to Hawaii, uses the contract funds to buy oceanfront property, and (sadly) does not pay the subcontractors. Can the subcontractors file mechanic's liens or does Unsophisticated's payment of the contract price operate as a defense to subcontractors' mechanic's liens?
- Answer: In Minnesota, the owner is subject to paying twice. Once to Cranky, once to subcontractors.

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Quiz

- Dapper Developer and Owner get in a fight. Owner terminates Dapper. Dapper says it is owed \$1.0 million for "development work" attending city council meetings, recouping its development fee, helping select/interview contractors, and for its legal fees. The Owner's property remains undeveloped (i.e., it's a vacant lot). Dapper files a \$1.0 million mechanic's lien. What happens?
- Answer: Lien should be dismissed. No visible improvement. fees are not Also, legal lienable.

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Quiz

- Cheapskate Contractor is a do-it-yourselfer. Cheapskate decides to file its own mechanic's lien statement to save legal fees. Cheapskate downloads an internet form for mechanic's liens, completes the form, and files and serves the form. Cheapskate did not realize the job was located on land that is Registered, rather than Abstract property and Cheapskate files the mechanic's lien statement with the County Recorder rather than the County Registrar of Titles. What happens?
- Answer: The mechanic's lien is defective. Hopefully, Cheapskate has enough time to correct its mistake.

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Quiz

- Owner pays Jerky General 100% of the contract price to build a McMansion House on Lake Minnetonka. Jerky fails to pay any of the subcontractors. Subcontractors want to go after the Owner and Jerky. What should they do?

- Answer: File and serve mechanic's liens if the subcontractors provided pre-lien notice.

Sue Jerky for breach of contract and accounts stated. Also, sue Jerky's owner and/or corporate officer for misappropriating trust funds. Minn. Stat. § 514.02.

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Quiz

- Jerky General is based in New York. The job is located in Minnesota. Jerky demands that all subcontractors sign its contract forms and Jerky refuses to negotiate contract terms. Quirky Subcontractor signs Jerky's contract that says:

1. disputes have to be resolved in New York
2. the contract is governed by New York law
3. subs have to indemnify Jerky for Jerky's negligence
4. subs get paid 60 days after Jerky gets paid by owner
5. subs waive their mechanic's lien rights

- Quirky's Project Manager signs the contract and then leaves for a new job elsewhere. Jerky owes Quirky \$100,000. Does Quirky have to worry?

- Answer: No. All of the above contract terms are illegal and Quirky should file a mechanic's lien.

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Quiz

- Subcontractor works on a public school project. General fails to pay subcontractor \$100,000. Subcontractor files a mechanic's lien. Okay?

- Answer: No. There are no mechanic's lien rights on public jobs, but subcontractor has payment bond rights.

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Quiz

- Subcontractor is working on a public school renovation job. Subcontractor has heard rumors that General Contractor was paid 100% of the contract price. But General Contractor has not paid 50% of the subcontract price to Subcontractor. How can Subcontractor substantiate the "payment by Owner rumor" and determine whether the General Contractor was paid? What happens if the General Contractor was paid, but failed to pay the Subcontractor?

- Answer: Serve Data Practices Act Request to obtain copies of Public Owner's payments to General Contractor and General Contractor's pay applications.

- Answer Part II: Pursue prompt payment claims (principal, plus 18% interest, plus legal fees) if General Contractor was paid, but failed to pay Subcontractor.

- Answer Part III: Possible 2009 Legislation.

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