

How to Preserve and Enforce a Mechanic's Lien in SC

November 19, 2019

A mechanic's lien is a construction lien created by statute to protect contractors, subcontractors, suppliers, and laborers "to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells." S.C. Code Ann. § 29-5-10. The mechanic's lien statute sets forth a series of requirements that must be strictly followed, which if executed properly, allows a contractor, subcontractor, supplier, or laborer to recover the value of their labor or materials plus attorney's fees and costs, up to the amount of the lien. However, a mechanic's lien is limited to the building or structure that the labor and/or materials are connected, meaning the labor and/or materials used to erect, alter or repair the building or structure on which the lien is filed.

In order for a contractor to use a mechanic's lien to protect itself, it must undertake the required steps as set forth by the statute. First, the general contractor must file a notice within 15 days of a project commencement, as well as posting a notice at the job site. Subcontractors, suppliers and laborers, in turn, must notify the general contractor, by registered or certified mail, upon first providing labor and materials.

Second, to protect and perfect a lien, the contractor must notice and serve a copy of the lien on the property owner, and subsequently, file a notice of the mechanic's lien with the clerk of court in the county where the real property is located. The filing of the lien with the clerk of court must occur within 90 days of completion of the project.

Finally, enforcement of a mechanic's lien is administered through a foreclosure. A suit foreclosing a lien must be filed within 6 months after the completion of the project or the last day labor or materials were furnished, or the lien will expire.

The South Carolina Mechanic's Lien Statute is riddled with intricacies and time limitations that are difficult to navigate; therefore, it is important for property owners and contractors to consult legal counsel when contemplating a construction project or the protection of mechanic's liens to understand the rights and obligations of all parties.