Preservation of Lien Rights

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Distilled down to its absolute essentials, a mechanic's lien is a way for tradespeople to make sure they get paid for their work. As straightforward as this seems, the purpose and operation of mechanic's liens (also known as a construction lien, a materialman's lien, a supplier's lien, or a laborer's lien) is often confusing to many people.

In most business relationships, people either get paid up front for their work, or have ways of collecting afterwards. For example, if you ship something via Federal Express, they have the right to retroactively increase your charges if it turns out your package was overweight. The gas pump won't start until your credit card is approved, and so on.

But a plumber cannot exactly go back into a building and remove the pipes he's installed. An asphalt contractor can't rip up a driveway. And so, in situations where there's a dispute over whether work and materials have been paid for, and how much is owed, a mechanic's lien is a two-part enforcement mechanism to ensure payment. Incidentally, there's evidence that these liens were invented by Thomas Jefferson himself, to help promote construction in the then-new city of Washington, D.C.

Part One of the mechanism is actually doing the work, or supplying the materials. Whether it's a bathtub being delivered, weeks of labor by carpenters or any other kind of work; Part One is the act of actually putting labor or materials into a construction project. To obtain a lien, you first have to do the work.

Part Two is where it gets interesting. After the work is done, a series of legal steps must be taken, in a certain sequence, in order to obtain or "perfect" the lien. Legally, a lien is a security interest in a property. In other words, the lienholder (the tradesman) becomes a creditor, like a mortgage company, who owns a piece of the property until the debt is paid. This has all kinds of significant implications, such as limiting the owner's ability to obtain financing or transfer or sell the property, among other things. There is also a time limit.

More specifically, in South Carolina, a lienholder is required by law "within ninety days after he ceases to furnish labor or materials for a building or structure [to] … serve upon the owner (or person in possession of the property) and file with the register of deeds or clerk of court a notice or a certificate that includes a statement of the amount due him, together with a description of the property intended to be covered by the lien, the name of the owner of the property, if known, and other required information."

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In the real world, this can get very complex. On one side, you have a tradesperson who has completed work, and wants to get paid. On the other, you have a property owner who either can't or won't pay, for whatever reason. As the dispute is evolving, the tradesperson has ninety days to file the paperwork needed to perfect the lien. In the midst of negotiations, other jobs, partial payments, and unfulfilled promises, the deadline often looms quickly, and if the certification isn't filed, there's no way to get paid. And while the ninety-day period is very specific, the date when it begins to run – i.e. the date the last work or materials were delivered – can be restarted if additional work is done.

The challenge this rule imposes is the meaning of "additional work." After all, if all it took was dropping off a piece of lumber at a homeowner's residence, or spending ten minutes painting a mailbox, a lien could theoretically last forever. A little meaningless work and presto! The plumber (or whoever) has just gotten another three months to file the paperwork.

Although the specifics vary somewhat by jurisdiction, the basic principle is that the the work needs to be done in good faith, it needs to be connected with the purpose of completing the original contract, and not as a "friendly accommodation" or a gratuity. The cost of the work or materials doesn't matter – it has to be related to completing the original job.

Examples of this principle in action include:

- Providing $4 worth of pipe to repair a sink at the homeowner's request
- Warranty work to repair carpet five months after installation
- A roofer's removal of scaffolding after a roof was installed
- Providing extra tiles after a tile job had been completed, in case of breakage
- Training employees in the use of a supermarket checkout system after installing it

In each of these cases, actions which represented the last little bit of work to consider a project "done" restarted the ninety-day time limit for perfecting a lien. Again, these examples are from different jurisdictions – each has slight, but possibly important, case law that affects the applicability of a given set of facts. As always, it makes sense to check with one of our experienced construction attorneys to get advice concerning your specific situation.

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