

LOUISIANA MECHANICS' LIEN LAW

Chapter Survey...

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What is a Lien?

Mechanic's and materialmen's liens "cloud" the title to real property but can be an effective method (and sometimes the only method) for securing payment for labor or materials used in the improvement of real property. The lien stops the owner from selling the property with a clear title. The lien may be foreclosed in a lawsuit. The court can order that property be sold and the proceeds used to pay the contractor, subcontractor, laborer, or material supplier. This may be true even if the owner has already paid a general contractor, meaning that the owner may have to pay twice.



This is one of the reasons that a lien can be such a powerful collection tool.

The law governing liens is found in the Louisiana Revised Statutes, Title 9, starting in Section 4801. The state statutes and court opinions establish a strict procedure to perfect and foreclose a lien. It is strongly recommended that a professional be routinely used to record and foreclose on construction liens.

Who is Entitled to a Lien?

The state statutes give the following persons lien rights against property for which they have provided labor, material, or services (usually at the direct request of the owner):

- ✓ contractors,
- ✓ laborers or employees of the owner,
- ✓ suppliers for items sold to the owner,
- ✓ lessors for items rented to the owner, and
- ✓ registered or certified surveyors or engineers or licensed architects or their professional subconsultants.

The state statutes also give the following persons lien rights against the owner's property and a claim against the owner and contractor. Many of these people have contracts with the contractor, not the owner, but have still provided labor, material or services for the benefit of the owner's property:

- ✓ subcontractors;
- ✓ laborers or employees of the contractor or subcontractor;
- ✓ suppliers for items sold to the contractor or subcontractor;
- ✓ lessors who rent items to the contractor or subcontractor; and
- ✓ registered or certified surveyors or engineers or licensed architects or their professional subconsultants employed by the contractor or subcontractor.
- ✓ These persons must give written notice of the general nature of the work to be performed to the owner within thirty days after being employed.

Work Eligible for Lien: Work eligible for lien is defined as a "single continuous project for the improvement, construction, erection, reconstruction, modification, repair, demolition, or other physical change of an immovable or its component parts," such as a building or structure.

Work not eligible for lien includes

- ✓ drilling of any well(s);
- ✓ construction or other work done on the permanent bed and structures of a railroad; and
- ✓ public works.

Notice of Contract

Before beginning work, the contractor must file a notice of contract.

Required Information: The notice of contract should include the following information:

- ✓ Name and address of the persons entering into the contract
- ✓ Name of the project and legal description of the property where the work is being performed
- ✓ Price of the work being performed or method by which the price is to be calculated and estimate
- ✓ Schedule of payments
- ✓ General terms of the contract
- ✓ Signature of the owner and contractor

Time is of the Essence: If the notice of contract is not filed in a timely manner and the price of work exceeds \$25,000, the contractor may lose lien rights.

Not a "Cloud" on the Title of the Property: Filing a notice of contract does not constitute a cloud, lien, or encumbrance on the title of the real property involved. It is a step that preserves the contractor's right to lien the property later if not paid.

Required Bond: To protect against liens from the contractor's subcontractors, suppliers, design professionals and laborers, the owner can require that a bond in the following amounts be attached to the notice of contract when it is filed.

Contract Price	Bond Amount
\$10,000 or less	100% of the price
More than \$10,000 to \$100,000	50% of the price but not less than \$10,000
More than \$100,000 to \$1,000,000	33 1/3% of the price but not less than \$50,000
More than \$1,000,000	25% of the price but not less than \$333,333

Priority

The priority of lien rights is in the order as follows:

1. Taxes and local assessments against the property
2. Laborers and employees of the owner, contractor, or subcontractor
3. Mortgages or vendor's privileges
4. Subcontractors, suppliers for items sold to the owner and contractor, and lessors for items rented to the owner and contractor
5. Contractors and registered or certified surveyors or engineers, and licensed architects or their professional subconsultants
6. All other mortgages and privileges

A person acquiring or intending to acquire a mortgage, privilege, or other right under L.R.S. 9:4820(D) has priority, regardless of whether work has begun or materials were delivered to the jobsite after the effective date and time of the affidavit, but prior to the recordation of the mortgage, privilege, or other right, provided that the document creating the right was filed before or within four business days of the filing of the affidavit.

Notice of Termination of the Work

A notice of termination of the work must be filed in writing, and it must contain the following elements:

- ✓ Reasonable identification of land upon which the work was done, also identifying the notice of contract, if filed or recorded, with the names of the parties to the contract
- ✓ Certification that the work has been substantially completed, that it has been abandoned by the owner, or that a contractor is in default under the terms of the contract
- ✓ Signature of the owner or his representative
- ✓ Shall be conclusive of the matters certified if it is made in good faith by the owner or his representative

A notice of substantial completion containing this information may also be filed.

Statement of Claim or Privilege

Contracts with the General Contractor, Subcontractors, and Suppliers: Thirty days after filing a notice of termination of work, a statement of claim or privilege must be filed by those who contracted with the general contractor, subcontractors or suppliers.

General Contractor: Sixty days after filing a notice of termination of work or substantial completion of work, a statement of claim or privilege must be filed by the general contractor.

Contracts with the Owner: Sixty days after filing a notice of termination of work or substantial completion of work, a statement of claim or privilege must be filed by those who contract with the owner.

Contents of the Statement of Claim or Privilege: A statement of claim or privilege must be in writing and contain the following elements:

- ✓ Signature of the person asserting the claim
- ✓ Description of the project and work performed or services rendered

- ✓ Person for whom the contract was performed
- ✓ Itemization of the amount claimed including the materials supplied and services rendered

Time in which to Foreclose on a Lien

A lawsuit to foreclose on the lien must be filed within one year after filing the statement of claim or privilege.

Residential Truth in Construction Act

Before entering into a contract for residential home improvements, the contractor must deliver to the owner or owner's agent a notice of lien rights. A copy of the signed notice must be given to the owner or owner's agent and all parties entitled to lien rights. The following is an example of an acceptable notice of lien rights.

NOTICE OF LIEN RIGHTS

Delivered this _____ day of _____, 20____, by _____, Contractor.

I, the undersigned owner of residential property located at _____ (street address) in the city of _____, parish of _____, Louisiana, acknowledge that the above named contractor has delivered this notice to me, the receipt of which is accepted, signifying my understanding that said contractor is about to begin improving my residential property according to the terms and conditions of a contract, and that in accordance with the provisions of law in Part I of Chapter 2 of Code Title XXI of Title 9 of the Louisiana Revised Statutes of 1950, R.S. 9:4801, et seq.:

(1) A right to file a lien against my property and improvements is granted to every contractor, subcontractor, architect, engineer, surveyor, mechanic, cartman, truckman, workman, laborer, or furnisher of material, machinery or fixtures, who performs work or furnishes material for the improvement or repair of my property, for the payment in principal and interest of such work or labor performed, or the materials, machinery or fixtures furnished, and for the cost of recording such privilege.

(2) That when a contract is unwritten and/or unrecorded, or a bond is not required or is insufficient or unrecorded, or the surety therefore is not proper or solvent, I, as owner, shall be liable to such subcontractors, materialmen, suppliers or laborers for any unpaid amounts due them pursuant to their timely filed claims to the same extent as is the herein above designated contractor.

(3) That the lien rights granted herein can be enforced against my property even though the contractor has been paid in full if said contractor has not paid the persons who furnished the labor or materials for the improvement.

(4) That I may require a written contract, to be recorded, and a bond with sufficient surety to be furnished and recorded by the contractor in an amount sufficient to cover the cost of such improvements, thereby relieving me, as owner, and my property, of liability for any unpaid sums remaining due and owing after completion to subcontractors, journeymen, cartmen, workmen, laborers, mechanics, furnishers of material or any other persons furnishing labor, skill, or material on the said work who record and serve their claims in accordance with the requirements of law.

I have read the above statement and fully understand its contents.

Owner or Agent

Date

Final Inspection...

What is a Lien? A lien is a legal claim against real property for payment of fees owed for the improvement of that property.

Who is Entitled to a Lien? State statutes give lien rights to contractors, subcontractors, laborers, employees, suppliers, lessors, surveyors, engineers, and licensed architects.

Notice of Contract: To preserve lien rights, contractors must file a notice of contract before commencing work.

Priority: State statutes establish an order of priority for liens.

Notice of Termination of the Work: A notice of termination of the work or notice of substantial completion must be filed and contain the proper information to be valid.

Statement of Claim or Privilege: The statement of claim or privilege is filed after the notice of termination of the work. The timeline to file depends on the relationship of the contracting parties.

Timeline in Which to Foreclose on a Lien: After filing the statement of claim, a lawsuit to foreclose on a lien must occur within one year.

Residential Truth in Construction Act: The owner or owner's agent must receive a notice of lien rights from the contractor before entering into a residential home improvement contract.