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WISCONSIN CONSTRUCTION LIENS 101

Most Wisconsin construction contractors know that the construction lien law exists, but few know how it works or how to use it. With the economy reeling from the COVID-19 crisis, construction lien rights will become more vital than ever to businesses in the construction industry.

Wisconsin's construction lien law (provided in subchapter I of ch. 779, Wisconsin Statutes) creates a statutory payment remedy available only to construction contractors, subcontractors, suppliers, service providers, and design professionals engaged in the improvement of real property. Excluding public improvements, a construction contractor is entitled to place a lien against the construction site and the improvements being built as collateral to secure payment for the work it has performed. In case of nonpayment, the lien may be enforced through a legal action for foreclosure just like a mortgage. A construction lien claim puts pressure directly on the owner by placing the owner's title to the property at risk. It also allows non-prime claimants (those that did not contract with the owner) to seek payment directly from the owner, providing them with another deep pocket and another path to collect payment aside from the claimant's contract with a higher tier contractor.

To take advantage of the benefits of the construction lien law, a lien claimant must comply with the express requirements of the statute within the short time limits prescribed by law. These steps generally must be followed to the letter and the deadlines cannot be extended. The statutes prescribe in detail what must be done and how it must be done. A failure to comply with the statutory requirements will likely result in a loss of lien rights.

The process of creating a lien generally consists of the following steps. The lien is created by filing a claim for lien with the office of the clerk of circuit court in the county where the property is located. This must be done no later than six months after the claimant has last performed work or provided materials. At least 30 days before filing the lien, the lien claimant must serve the property owner with a written notice of intent to file a lien claim. Within 30 days after the lien claim is filed, the claimant must serve the owner with a copy of the claim for lien. Once the lien has been filed, the claimant has two years in which to enforce it through a foreclosure lawsuit.

Respecting small residential projects (up to four family living units), an additional first step may be required—an early notice of lien rights must also be served upon the owner, subject

to certain exceptions. A prime contractor must include this notice in its written contract with the owner, or it must serve the owner with a separate written notice within 10 days of commencing work if there is no written contract. A non-prime claimant must serve the owner with two copies of a written notice within 60 days of commencing its work.

Contractors often wait until a payment problem has festered before scrambling to pursue their lien rights, but that may be too late. It is easy to make a mistake or to miss a deadline, but the Construction Lien Law has zero tolerance for either. With the economic impact of the COVID-19 crisis, construction contractors, suppliers, service providers, and design professionals must take extra care to preserve and to properly exercise their statutory construction lien rights. A failure to do so could mean the difference between getting paid and not getting paid.

If you have any questions or need assistance, contact Steve Slawinski at 414-276-5000 or steve.slawinski@wilaw.com.