

When Good Liens Go Bad

The path to the County Recorder's Office was paved with good intentions. A dispute arose over non-payment and the contractor filed a Mechanics' Lien. Ninety days passed and the dispute remained unresolved. The contractor failed to preserve his lien rights by filing a complaint in Superior Court to "perfect" the lien – nor did he remove the lien. Now what happens?

Court Action to Release Lien. The Mechanics' Lien is now considered "stale" and the lien rights extinguished. However, the lien remains on record with the County Recorder's Office and "clouds" the title of the property. If the homeowner requests a release but is ignored, he or she may then file a petition in Superior Court not only to have the stale lien removed but also to recoup legal fees (up to \$2,000) and costs.

The property owner must notify the contractor of the date of the court hearing by certified mail at the address listed on the Contractors State License Board website. The petition can be opposed with a showing of good cause as to why the lien was neither perfected nor removed in the first place.

Should the judge not be swayed by opposition to the petition (and usually they are not), the court will likely issue an order to remove the petition **and** a judgment for attorney's fees (again, up to \$2,000).

Contractors State License Board Consequences. With the order, the property owner can go to the County Recorder's Office and remove the lien. More importantly, the property owner can notify the Contractors State License Board's Judgment Enforcement Unit. This starts another ninety day clock ticking. Should the judgment go unpaid, the Board will suspend the contractor's license.

If the contractor cannot pay the total \$2,000 plus judgment in full before the 90 days runs, the Board will refrain from suspending the license if the contractor and the property owner agree to a payment plan, commit the agreement to writing, and submit it to the Board.

So, What To Do? How do you avoid becoming the contractor who finds himself in this predicament? First, only file liens that you intend to pursue with diligence. Be smart about it - they are most effective when a sale or refinance are pending.

Second, calendar your deadlines and be sure to comply with the 90 day requirement to file a court complaint to perfect the lien. It will cost you additional legal and court fees, but it is the only way to preserve your rights.

Should you have a lien go "stale" and receive a request to have it removed, do so before that request blossoms into a court order and an expensive (and license threatening) judgment against you.

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