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### Understanding Mechanic's Liens

Mechanic's liens, despite their name, are typically used by subcontractors and suppliers, and are a legal claim against property that has been remodeled or improved. For example, if you are remodeling your bathroom and the supplier who supplied the bathtub isn't paid by the general contractor, a lien can be placed against your house to recover the money.

What can be surprising to most homeowners is that it doesn't matter if you already paid the general contractor for the bathtub. If the subcontractor or supplier isn't paid by the general contractor, the law allows the subcontractors to come after you and the property that was improved (which is often your house). In the end, you may be responsible for paying for the work twice or being forced to sell your house, so it is important to understand how mechanic's liens work and how to avoid them.

#### **Why Mechanic's Liens are Allowed**

It may seem fundamentally unfair that you can end up paying for the general contractor's irresponsible behavior. The rationale for allowing mechanic's liens in the first place is that between the person with improved property (you) and the person who supplied your new marble bath tub, the supplier's needs to get paid are greater.

The law also presumes that you can in turn sue the general contractor. While this is true, this doesn't really help you in the short-run. Suppose a supplier places a mechanic's lien against your house because the general contractor failed to pay him when the general contractor lost all of his money gambling. You can certainly go file a lawsuit against the general contractor, and over time maybe garnish his wages or force him to sell his property, but that takes time and wringing money out of someone who doesn't pay his subcontractors and suppliers can be difficult. Meanwhile, you owe twenty thousand dollars and have a matter of days or months to pay the supplier or else your house will be sold to satisfy the mechanic's lien against you.

#### **How Mechanic's Liens Work**

To get a mechanic's lien, state law will usually require the subcontractor or supplier to do the following:

- The subcontractor/supplier (who does not contract directly with the homeowner) must provide notice to the homeowner of what is being contributed (e.g., supplying the bathtub), typically within 20-30 days of contribution.
- If the subcontractor/supplier isn't paid, they must file a "claim of mechanic's lien" in the county where the property is located.
- The subcontractor/supplier then has typically two to six months to work out a solution with the property owner or file a lawsuit.

If the lawsuit isn't filed in time, then in most states the lien should have no further effect. However, it is still worth your time to get a court order (well after the lawsuit should have been filed), to clear your property of the lien. Otherwise you may have difficulties selling the property down the road.

#### **Avoiding Mechanic's Liens -- Option 1: Pay with Joint Checks**

One way to ensure that subcontractors and suppliers get paid is to write a series of checks, made out jointly to the general contractor and the particular subcontractor or supplier. The check then can only be cashed if the ultimate beneficiary endorses it, helping to ensure that the subcontractor or supplier gets paid.

#### **Avoiding Mechanic's Liens -- Option 2: Get a Lien Waiver**

Another way to avoid mechanic's liens is to have the contractor get lien waivers from everyone who the contractor is responsible for paying. In many states, a contractor must provide a waiver for all work for which the contractor has been

paid before accepting further payments from the owner. Keep in mind, however, that in many states, there can be no waiver of a mechanic's lien until payment is actually made (a few state allow waiver before payment is made).

### **Avoiding Mechanic's Liens -- Option 3: Pay Subcontractors/Suppliers Yourself**

This is probably the least favorable option, but you can make direct payments to the subcontractors and suppliers and deduct those payments from the general contractor's amount. The difficulty with this option is that you can end up looking like the employer to the subcontractor or supplier, which would make you responsible for doing things such as withholding income for taxes and Social Security. To avoid ambiguity, it's recommended that you try the first two options before even considering this.

**Final Advice on Avoiding Mechanic's Liens** It goes without saying that you should keep all the receipts and paperwork you receive from the contractor, subcontractor or supplier, especially notices from subcontractors or suppliers of services or goods rendered. It may also be helpful as the project is finishing up to follow up on those notices to determine whether the subcontractors and suppliers have been paid. If they haven't, you can request waivers from them when you next meet with the general contractor.

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