



A Contractor's Guide

Minnesota Mechanic's Lien Laws

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A CONTRACTOR'S GUIDE TO MINNESOTA MECHANIC'S LIEN LAWS¹

WHAT IS A MECHANIC'S LIEN?

1. A mechanic's lien is a statutory remedy (i.e., created by the State Legislature) for persons seeking payment for their provision of materials or labor for the improvement of real property. It is an action against real property itself.
2. Minnesota mechanic's lien statutes provide a vehicle by which contractors, subcontractors and certain suppliers can obtain a security interest in real property they improved and ultimately compel the sale of the property in order to pay for the improvements they provided.
3. Minnesota has had a mechanic's lien law since 1858, the year Minnesota attained statehood.
4. Today, Minnesota Statutes § 514 et. seq. provides for and governs mechanic's liens.

¹ This guide should not be considered a substitute for professional advice in specific situations.

WHY IS A LIEN IMPORTANT TO ME?

1. A mechanic's lien provides the lien holder with a security interest in the real estate to which he contributed value through his work or materials.
 - a. A security interest in the property is important because, should the owner or general contractor become insolvent, you still have a source of payment.
2. Attorneys' fees may be recovered by the successful lien claimant.
3. Owners do not want their property encumbered and sometimes react to mechanic's liens by making prompt payment or applying pressure to the general contractor to pay a subcontractor lien holder.
4. Following proper lien procedure puts the owner or general contractor on notice that you are serious about being paid for your work and are unlikely to be an easy victim.
5. Filing a mechanic's lien is not an automatic guarantee of payment, for if the property is encumbered by prior mortgages, tax liens or other security interests, then a mechanic's lien may have little practical value because there is little or no equity available to pay off the mechanic's lien.
 - a. For major contracts with unknown parties, you should inquire of the other parties' solvency and encumbrances upon the land.

FOUR BASIC STEPS TO PERFECTING A MECHANIC'S LIEN

1. Serve pre-lien notices if required.
 - a. General Contractor – at time of making the contract with owner.
 - b. Subcontractor/Supplier – within 45 days of starting work.

2. Draft, serve and file a mechanic's lien statement within 120 days of the last date of contribution to the property.
3. Commence a mechanic's lien foreclosure action within one year of the last date of contribution to the property.
4. Initiate a sheriff's sale of the property following a successful foreclosure action.

The above requirements must be followed exactly as required by Minnesota Statute § 514, otherwise the mechanic's lien will be unenforceable.

PRE-LIEN NOTICES

1. Unless a property falls within certain specified exceptions, in order to secure a valid lien, the lien claimant must provide the owner with pre-lien notice of his right to assert a lien for the value of work and materials he is to provide to the property.
2. The purpose of pre-lien notice is to prevent the owner from being surprised by the filing of a mechanic's lien by an unpaid subcontractor after the owner has fully paid the general contractor who did not pay his subcontractors.
3. A person contracting directly with an owner has different pre-lien notice requirements than someone contributing indirectly through a general contractor. (See Appendix "A").
 - a. The general contractor's pre-lien notice must contain the specific language set forth in Minnesota Statute § 514.011, subd. 1; and
 - b. Must be included in the written contract with the owner or, if no written contract exists, provided in writing to the owner via personal service or certified mail within 10 days after the work or improvement is agreed upon.
4. Subcontractor/supplier pre-lien notice is set forth in Minnesota Statute § 514.011, subd. 2. (See Appendices "B and C").

- a. This notice must be provided to the owner by personal delivery or certified mail no later than 45 days after the lien claimant first furnished labor, skill or materials to the project.
 - b. This notice must contain the language specified in the statute and must be in at least 10-point bold type or, if printed, in capital letters.
5. As a matter of practice, both general contractors as well as subcontractors and suppliers should provide lien notices at the time they enter into their respective contracts.
- a. Subcontractors and suppliers should get the name and address of the owner from the contractor when they sign their contracts with the general contractor.
 - b. One need not make a special trip to the post office in order to send pre-lien notices by certified mail. Certified mail stickers are available for your office use from the post office.

EXCEPTIONS TO PRE-LIEN NOTICE

1. Pre-lien notice is not required for improvements to property which is not in agricultural use and which is wholly or partially non-residential in use if the improvement:
 - a. provides or adds more than 5,000 useable square feet of floor space; or
 - b. is an improvement where the existing property contains more than 5,000 total useable square feet of floor space; or
 - c. is an improvement to property which contains more than 5,000 square feet and does not involve the construction of the new building or an addition to an existing building.
2. If in doubt, provide pre-lien notice.

WHO QUALIFIES FOR A MECHANIC’S LIEN AND FOR WHAT TYPE OF CONTRIBUTION?

1. In order to be entitled to a lien, the party contributing to the improvement of the property must have done so under contract with the owner or at the instance of any “agent, trustee, contractor or subcontractor of such owner.” Minnesota Statute § 514.01.
 - a. Therefore, a material supplier who contracts with a subcontractor may be entitled to a mechanic’s lien.
 - b. However, a material supplier who contracts with another material supplier who contracts with the owner, contractor or a subcontractor is not entitled to a mechanic’s lien. The same is true for material suppliers who have provided materials to a contractor’s or supplier’s inventory as opposed to providing materials for a specific project. (See Appendix “D”).
2. Minnesota Statute § 514.01 states the type of work that qualifies a person to assert a mechanic’s lien upon the improved property. The statute language is very broad and includes almost all commonly performed construction work.
 - a. Examples of work for which a lien may be asserted:
 - i. Engineering, surveying, architectural design;
 - ii. Demolition (but only when done to facilitate the construction of a building or other improvement;
 - iii. Clearing and grubbing of vegetation;
 - iv. Grading, excavating, or filling;
 - v. Landscaping;
 - vi. Erection, alteration, or repair or any building; and

- vii. Almost any other work commonly considered construction which contributes to the improvement of the real estate upon which it is constructed.
- b. The type of work or materials supplied determines whether one is a “subcontractor” or a “material supplier.”
- c. Work or materials provided pursuant to a lessee’s construction or installation of trade fixtures do not constitute improvements under the statute and do not provide a basis for a mechanic’s lien.

NO LIEN CONTRACT PROVISIONS

Under Minnesota law, contract provisions which require a contractor, subcontractor, or material supplier to waive his right to a mechanic’s lien or his claim against a payment bond before that person has been paid for his contribution to the property, are void and unenforceable. Minnesota Statute § 337.10, subd. 2.

DIRECT PAYMENT FROM OWNER TO SUBCONTRACTORS AND SUPPLIERS

The mechanic’s lien statute allows an owner to withhold from the general contractor payment sufficient to pay subcontractors or suppliers who have performed work upon the property. Any amounts actually paid to these persons by the owner may be deducted by the owner from the amounts due to the general contractor. Minnesota Statute § 514.07.

THE MECHANIC'S LIEN STATEMENT

1. Minnesota Statute § 514.08 states the content and procedure relating to the mechanic's lien statement itself. (See Appendix "E").
 - a. The mechanic's lien statement must contain all of the information required by Minnesota Statute § 514.08, and
 - b. Must be served and filed as stated below within 120 days of the last date of contribution to the property.
2. If the subject property is Abstract property, the mechanic's lien statement must be recorded in the local county recorder's office. If it is Torrens property, the statement must be recorded with the county registrar of titles.
3. A copy of the lien statement must also be served personally or by certified mail upon the owner or the person who entered into the contract with the contractor.
4. The lien statement must be made by or at the direction of the claimant, be sworn under oath and notarized, and set forth:
 - a. A notice of claimant's intention to claim and hold a lien, and the amount of the lien;
 - i. If the amount of the mechanic's lien is intentionally overstated the lien becomes unenforceable. Minnesota Statute § 514.74.
 - b. That the claimed amount due and owing for labor, skill, material, or machinery furnished to the subject property, and for what improvement the work was furnished;
 - c. The name of the claimant and the name of the person for whom the claimant performed the work;

- d. The dates of the first and last items of the claimant's contribution to the improvement of the property;
- e. A description of the property to be charged with the lien;
- f. The name of the property owner at the time of making the statement;
- g. The post office address of claimant;
- h. A statement acknowledging that a copy of the mechanic's lien statement is being served personally or by certified mail upon the owner, or the person who entered into the contract with the contractor; and
- i. A statement acknowledging that pre-lien notice required by Minnesota Statute § 514.011, subd. 2 if any, was given.

LIEN WAIVERS

- 1. Once paid for his contribution to the property, or for a portion of his contribution to the property, the lien holder is required to provide the owner with a lien waiver corresponding to the amount he was paid. Minnesota Statute § 514.07.
- 2. Use the appropriate standard lien waiver forms when issuing lien waivers. Lien holders have been burned by attempting to modify full lien waiver forms for use as partial lien waivers.

FORECLOSURE OF THE LIEN

- 1. Within one year from the date of last providing improvement to the project, foreclosure procedures must be commenced and a Notice of Lis Pendens filed with the county recorder. Minnesota Statute § 514.12.

2. If not commenced within one year, the mechanic's lien becomes unenforceable. (Be aware that filing an arbitration demand will not toll the running of the one year period.)
3. The foreclosure proceeding is a trial before a judge where all parties with an interest in the property present their evidence and arguments.

FORECLOSURE SALE

1. Following the completion of the trial and the rendering of the verdict, the successful lien claimant must request a foreclosure sale.
 - a. At the foreclosure sale, the property is sold and the proceeds from the sale used to pay off the interest holders in the property based upon their priority of interest.
 - b. It is important to note that the mechanic's lien holder's interest assumes priority based upon the date of the first visible improvement to the property.

ATTORNEYS' FEES

1. Under Minnesota law, a mechanic's lien holder who successfully forecloses upon his lien is entitled to recovery of reasonable attorneys' fees. See Minnesota Statute § 514.14, See also, Automated Building Components, Inc. v. New Horizon Homes, Inc., 514 N.W. 2d 826 (Minn. Ct. App. 1994).

PENALTIES FOR FAILURE TO MAKE PAYMENT TO SUBCONTRACTORS AND SUPPLIERS UNDER MINN. STAT. §514.02

Minnesota Statute §514.02 provides both civil and criminal penalties against the general contractor who has received payment from an owner, but fails to pay its subcontractors and

suppliers for their work for which the contractor has received payment from the owner. The statute provides that the funds received by the contractor “shall be held in trust” for the benefit of the persons who furnished the improvements. Although the statute uses the term “trust,” some, but not all of the legal obligations related to a trust are imposed by this statute.

In essence, the use of the term "trust" and the intent of the statute is to convey to general contractors the concept that the money they receive from owners for the work performed by its subcontractors and suppliers does not belong to the general contractor to use as it wishes, but is merely being passed through the general to those who provided the improvements.

A subcontractor or supplier who has been injured due to the general contractor’s failure to pass on the owner’s payment for its provision of improvements may bring a civil lawsuit against the general contractor to recover the unpaid amount, together with costs and attorneys’ fees incurred in pursuing payment. In situations where the general contractor was licensed or should have been licensed as a residential contractor under Minn. Stat. §326.84, and the subcontractor or supplier was not paid for improvements made to residential property, civil claims may also be brought against a shareholder, officer, director, or agent of the general contractor who knowingly received proceeds of the owner’s payment as salary, dividend, or otherwise.

Where a party fails to use funds received from the owner to pay its subcontractors or suppliers for their improvements provided to residential real property, they also could be found guilty of theft under Minnesota criminal statute §609.52. And, where the improvements were made to residential real property by a person who was or should have been a licensed residential contractor, an officer, shareholder, director, or agent of the corporation responsible for the payment not reaching the proper vendor theft may be found guilty of theft.

CONCLUSIONS

1. A mechanic's lien is a powerful statutory remedy created by the state legislature to assist persons in obtaining payment for improvements to real property.
2. Mechanic's lien law is important for the following reasons:
 - a. it provides a security interest in real estate; and
 - b. attorneys' fees may be recovered.
3. The four basic steps to perfect a mechanic's lien are as follows:
 - a. provide pre-lien notice within the statutory time period, preferably at a time you enter into the contract;
 - b. draft, serve and file a mechanic's lien statement within 120 days of the last date of work;
 - c. commence a mechanic's lien foreclosure action and file a lis pendens within one year of the last date of work; and
 - d. initiate a foreclosure sale of the property.
4. Be proactive; protect your mechanic's lien rights by providing pre-lien notices and filing your lien statements on time. Don't wait until your accounts receivables are overdue, it might be too late.

APPENDIX A

PRIME CONTRACTOR PRE-LIEN NOTICE

MINN. STAT. § 514.011, Subd. 1

The following language must be included in a pre-lien notice provided by a prime contractor to an owner. The notice must be in at least 10-point bold type and included in a written contract or if no written contract exists it may be served via certified mail or personal delivery within 10 days of reaching an agreement to do the work.

“(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice.”

APPENDIX B

SUBCONTRACTOR/SUPPLIER PRE-LIEN NOTICE

MINN. STAT. § 514.011, Subd. 2

The following language must be included in a pre-lien notice provided by a subcontractor or supplier to an owner. The notice must be in at least 10-point bold type, if typewritten, or in capital letters, if printed, and be served upon the owner via certified mail or personal delivery within 45 days of the subcontractor's or supplier's contribution.

“This notice is to advise you of your rights under Minnesota law in connection with the improvement to your property.

Any person or company supplying labor or materials for this improvement may file a lien against your property if that person or company is not paid for the contributions.

We _____ (name and address of subcontractor) have been hired by your contractor _____ (name of contractor) to provide _____ (type of service) or _____ (material) for this improvement. To the best of our knowledge, we estimate our charges will be _____ (value of service or material).

If we are not paid by your contractor, we can file a claim against your property for the price of our services.

You have the right to pay us directly and deduct this amount from the contract price, or withhold the amount due us from your contractor until 120 days after completion of the improvement unless your contractor gives you a lien waiver signed by me (us).

We may not file a lien if you paid your contractor in full before receiving this notice.”

APPENDIX C

**DRAFT COVER LETTER FOR SERVICE OF
SUBCONTRACTOR MECHANIC'S LIEN PRE-LIEN NOTICE UPON AN OWNER**

<Date>

John & Mary Doe
270 Deer Run Lane
Woods, MN 55555

**Re: 270 Deer Run Lane
Woods, MN 55555**

Dear Mr. & Ms. Doe:

This letter is to notify you that I will be providing work or materials for the improvement of your property. **This notice is not a lien.** For your own protection, Minnesota law requires that I provide you with the pre-lien notice attached to, or included in, this letter. I provide you with this notice in order to preserve my right to assert a mechanic's lien against your property at a later date, should I not receive payment for my work or materials.

I look forward to working with you on this project.

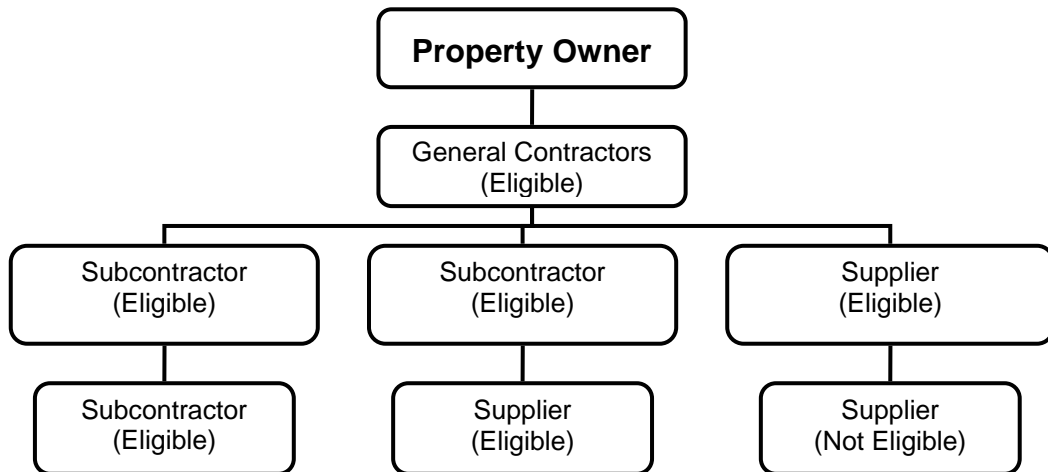
Very Truly Yours,

APPENDIX D

**Mechanic's Lien
WHO IS ELIGIBLE?**

Minn. Stat. § 514.01

“Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes herein after stated, whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated...”



APPENDIX E

MECHANIC'S LIEN STATEMENT

The undersigned hereby gives notice to the public and states as follows:

1. I am acting at the instance of the lien claimant, _____, a _____ under the laws of the State of _____ as its _____.
2. The lien claimant hereby gives notice of intention to claim and hold a lien upon the land in _____ County, Minnesota, described as follows:
3. The name and mailing address (and license number, if applicable) of the lien claimant is:
4. The amount of the lien claimed is \$_____, plus interest and attorneys' fees and costs, and is due and owing to the lien claimant for labor performed or skill, material or machinery furnished to the land.
5. The lien claimant did or supplied the following: _____.
6. The lien claimant's contribution to the improvement was performed or furnished from _____ to _____, for the following persons:
7. The name of the present owner of the land according to the best information lien claimant now has is:
8. The lien claimant acknowledges that a copy of this statement must be served personally or by certified mail on the owner, the authorized agent of the owner or the person who entered into the contract with the lien claimant within 120 days of doing the last work or furnishing the last item of such skill, material or machinery.
9. Notice as required by Minnesota Statutes Section 541.011(2), if any, was given.

STATE OF MINNESOTA) (Name of Company) _____
) ss.
COUNTY OF _____) (Name of Person Signing) _____

Check here if part or all of the land is Registered (Torrens) _____

_____, being duly sworn, on oath says that I am the _____ of the lien claimant in the within statement, and have knowledge of the facts stated in the statement. This statement is made at the instance of said lien claimant and is true of my own knowledge.

(Name of Person Signing)

Subscribed and sworn to before me this _____ day of _____, _____.

(Signature of Notary Public or other official)

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):	NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)
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JOHN T. TROUT is a partner with Hellmuth & Johnson, PLLC and concentrates his practice in the area of construction law, including construction and design defects, mechanic's liens, bonds, delay and disruption, payment, insurance and other disputes. Prior to becoming an attorney, Trout was a successful commercial construction contractor.

HELLMUTH & JOHNSON, PLLC is one of Minnesota's fastest growing law firms. Our construction practice represents general contractors, subcontractors, material suppliers and related entities in all facets of the construction industry, including litigation, arbitration, mechanic's liens, bond claims, collections and contract drafting and review.

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