

Mechanic's Liens in Practice (MD)

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A Practice Note addressing statutory mechanic's liens arising from the improvement of privately owned residential and commercial real property in Maryland. This Note provides practical guidance on the procedures for perfecting, enforcing, and releasing a mechanic's lien under Maryland law.

A mechanic's lien is a powerful tool for a contractor, subcontractor, supplier, or other construction professional to secure payment for the work or services it performs or the materials or equipment it furnishes to improve real property.

Mechanic's liens in Maryland attach to privately owned residential and commercial real property and are governed by:

- Title 9, Subtitle 1 and Title 11, Section 118 in the Real Property Article of the Maryland Code (Md. Code Ann., Real Prop. §§ 9-101 to 9-114 and 11-118).
- Title 12, Chapter 300 of the Maryland Rules (MD Rules, Rule 12-301 to Rule 12-308).

Public property is not subject to a mechanic's lien (*Montgomery Cty. Bd. of Educ. ex rel. Carrier Corp. v. Glassman Constr. Co.*, 225 A.2d 448, 453-54 (Md. 1967)). Maryland's Little Miller Act protects parties that provide labor or materials for public projects (Md. Code Ann., State Fin. & Proc. §§ 17-101 to 17-111).

This Note discusses the processes and procedures for:

- Preparing a mechanic's lien claim.
- Perfecting and enforcing lien rights.
- Determining the priority of a lien.
- Releasing or waiving a lien.

PRE-LIEN MATTERS

Maryland law imposes various preconditions on any person seeking to create and enforce a mechanic's lien (claimant).

PERSONS ENTITLED TO A MECHANIC'S LIEN

A claimant acquires the right to a mechanic's lien by providing labor or materials under a contract to:

- Construct a new building.
- Repair, rebuild, or improve an existing building if the cost of all repairs and improvements (including those performed by other project participants) is at least:
 - 15 percent of the building's value; or
 - when ordered by a tenant or its employee, 25 percent of the building's value.

(Md. Code Ann., Real Prop. §§ 9-102(a) and 9-103(c)(2); *O-Porto Constr. Co., Inc. v. Devon/Lanham, L.L.C.*, 741 A.2d 576, 579 (Md. Ct. Spec. App. 1999).)

A claimant is considered:

- A contractor if it enters into a contract directly with the property owner or the owner's agent (for example, a prime contractor is a "contractor").
- A subcontractor if it contracts with anyone except the owner or the owner's agent.

(Md. Code Ann., Real Prop. § 9-101(d), (g); MD Rules, Rule 12-301(b)(3), (7).)

The claimant's contract may be either:

- Written or oral.
- Implied by conduct.

(Md. Code Ann., Real Prop. § 9-101(c); MD Rules, Rule 12-301(b)(2); *Judd Fire Protection, Inc. v. Davidson*, 773 A.2d 573, 578 (Md. Ct. Spec. App. 2001).)

Claimants typically include:

- Builders.
- Suppliers.
- Skilled trade contractors, such as plumbers and electricians.
- Other construction professionals, such as:
 - architects;
 - engineers;

- surveyors; and
- certified interior designers.

Any person meeting the statutory requirements is entitled to a mechanic's lien, including sub-subcontractors and remote suppliers (*Diener v. Cabbage*, 270 A.2d 471, 475-76 (Md. 1970); *Judd Fire Protection*, 773 A.2d at 578).

WORK COVERED BY A MECHANIC'S LIEN

A claimant may provide lienable labor or materials (lienable work) for more than just basic construction or remodeling. Lienable work can also include:

- Planting and landscaping.
- Grading, filling, and paving.
- Leasing equipment.
- Drilling and installing a water-supply well.
- Building a swimming pool.
- Performing professional services.

(Md. Code Ann., Real Prop. § 9-102(a).)

PROPERTY SUBJECT TO A MECHANIC'S LIEN

A mechanic's lien attaches to:

- The building subject to the claimant's lienable work.
- The real property covered by the building to the extent of the owner's interest.
- Adjacent land belonging to the owner if it is necessary for the building's use.

(Md. Code Ann., Real Prop. § 9-103(a).)

A building includes:

- Any structure intended for:
 - residential use and occupancy; or
 - some trade, manufacturing, ornamental, or other useful purpose.
- (*Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc.*, 179 A.2d 683, 685 (Md. 1962).)
- Any unit of a commercial building that is separately leased or sold (Md. Code Ann., Real Prop. § 9-101(b); MD Rules, Rule 12-301(b)(1)).

A mechanic's lien also attaches to:

- An unfinished building to the extent of the lienable work provided (Md. Code Ann., Real Prop. § 9-103(c)(1)).
- A machine, wharf, or bridge in the same manner as a building (Md. Code Ann., Real Prop. § 9-102(c)).
- Each lot and its improvements on a pro rata basis when an owner or its agent contracts to install any of the following in a development:
 - water lines;
 - sewers;
 - storm drains; or
 - streets.
- (Md. Code Ann., Real Prop. § 9-102(b).)

Tenant as Owner

If a contractor enters into an agreement with a tenant to provide lienable work:

- The tenant is considered the owner.
- The mechanic's lien attaches to the tenant's interest in the building and real property.

(Md. Code Ann., Real Prop. §§ 9-101(f) and 9-103(c)(2); MD Rules, Rule 12-301(b)(6).)

Condominiums

Special rules apply when performing lienable work on a condominium. For example, a mechanic's lien arising from repairs or improvements to:

- An individual unit attaches only to that unit.
- The common elements attaches to each unit in proportion to its percentage interest if the council of unit owners gives written authorization for the work.

(Md. Code Ann., Real Prop. § 11-118(a), (b).)

In most cases, a mechanic's lien does not attach to an entire condominium building unless each unit owner:

- Receives a notice of intention to claim a lien (if the claimant is a subcontractor).
- Is named as a defendant in the lien proceeding.

(*Southern Mgmt. Corp. v. Kevin Willes Constr. Co., Inc.*, 856 A.2d 626, 630 (Md. 2004); see *Serve a Notice of Intention to Claim a Lien (Subcontractors Only) and Name the Necessary Parties.*)

DESIGNATE THE LIENABLE REAL PROPERTY (OPTIONAL)

The owner or another interested party may designate the scope of the real property subject to a mechanic's lien when constructing a new building.

Before Construction Begins

The owner may designate the lienable portion of its real property before constructing a building by filing a notice to establish boundaries. The owner must file the notice with the clerk of the circuit court for the county where the property is located. The notice to establish boundaries is captioned and indexed under the owner's name and must describe:

- How the owner acquired legal title (for example, by providing the recording information for the vesting deed).
- The proposed boundaries in a manner sufficient to identify the designated portion of the property with reasonable certainty (for example, by using a metes and bounds description).
- The planned construction in general terms.

(Md. Code Ann., Real Prop. § 9-103(b); MD Rules, Rule 12-308(a).)

After Construction Begins

When construction starts, the owner or any other person interested in the property (including a mortgagee, judgment lien holder, or potential mechanic's lien claimant) may seek to designate the lienable portion of the property by filing a motion with the circuit court. The moving party must:

- File the motion:
 - ex parte; or
 - in the first of any existing mechanic's lien proceedings in which it is a party.
- Serve the motion on:
 - the owner;
 - any claimant that has moved for or established a mechanic's lien; and
 - any other person designated by the court.
- Request in the motion that the court issue a writ of survey. (Md. Code Ann., Real Prop. § 9-103(b); MD Rules, Rule 12-101(a) and Rule 12-308(b)(1), (2).)

The writ of survey directs a surveyor to make a report both:

- Determining the portion of the property necessary to use the building for its stated or reasonably adaptable purpose.
- Describing the boundaries of the designated portion. (MD Rules, Rule 12-101(b) and Rule 12-308(b)(3).)

The moving party and each person required to be served with the motion:

- Receives a copy of the surveyor's report.
- May file a motion within 15 days after receiving the report requesting the court to determine boundaries different than those reported by the surveyor.

(MD Rules, Rule 12-308(b)(4).)

After the 15-day period expires or the court holds a hearing on an objection, the court must either:

- Issue an order determining the boundaries.
- Approve the surveyor's report for filing in the pending lien proceeding, if applicable.

(MD Rules, Rule 12-308(b)(4).)

SERVE A NOTICE OF INTENTION TO CLAIM A LIEN (SUBCONTRACTORS ONLY)

To preserve its rights to a mechanic's lien, a subcontractor must serve a notice of intention to claim a lien (notice of intention) within 120 days after completing its lienable work (Md. Code Ann., Real Prop. § 9-104(a); MD Rules, Rule 12-301(b)(7); see Persons Entitled to a Mechanic's Lien).

Because a residential owner may raise its payment to the contractor as a defense, a subcontractor should serve the notice of intention as soon as practicable after starting lienable work for a single-family residence (see Confirm the Lien Amount and Payment Defense for Residential Owner).

Form of the Notice of Intention

The notice of intention must follow the statutory form and contain:

- The subcontractor's name.
- A brief description of:
 - the lienable work, including the dates that the subcontractor performed the work and the person that requested it; and
 - the building subject to the lienable work.

- The total amounts (as of the date of the notice of intention) that:
 - the subcontractor earned for the lienable work; and
 - remain due and unpaid.
- A declaration signed by the subcontractor. (Md. Code Ann., Real Prop. § 9-104(b).)

Service Requirements

The subcontractor must serve the notice of intention on the owner or the owner's agent by either:

- Registered or certified mail, return receipt requested.
- Personal delivery.

(Md. Code Ann., Real Prop. § 9-104(c).)

Service is effective only on receipt (*Mardirossian Family Enters. v. Clearail, Inc.*, 596 A.2d 1018, 1023-24 (Md. 1991)). The subcontractor is not required to serve the notice of intention at any particular address as long as the notice reaches the owner or the owner's agent (*Jakenjo, Inc. v. Blizzard*, 155 A.2d 661, 663 (Md. 1959)). If there are multiple owners, service on any single owner is sufficient (Md. Code Ann., Real Prop. § 9-104(d)).

If the subcontractor cannot complete service by mail or personal delivery (for example, because the owner has died and there are no successors identified in the public records), the subcontractor or its agent may serve the notice of intention by posting it on the door (or other front part) of the subject building in the presence of a competent witness (Md. Code Ann., Real Prop. § 9-104(e)).

A subcontractor seeking a mechanic's lien against an entire condominium building must serve a notice of intention on each unit owner (*Southern Mgmt.*, 856 A.2d at 630).

CREATING AND PERFECTING A MECHANIC'S LIEN

The claimant must create and perfect its mechanic's lien through a court action. The court establishes the lien only after the owner has an opportunity to challenge the lien and the claimant's right to assert it (*AMI Operating Partners Ltd. P'ship v. JAD Enters., Inc.*, 551 A.2d 888, 891 (Md. Ct. Spec. App. 1989)).

FILE A PETITION TO ESTABLISH MECHANIC'S LIEN

The claimant must file a petition (complaint) to establish mechanic's lien (petition to establish):

- In the circuit court for the county where the property is located.
- Within 180 days after the claimant completes its lienable work. (Md. Code Ann., Real Prop. § 9-105(a); MD Rules, Rule 12-302(a).)

Before preparing the petition to establish, the claimant should order a title search to confirm:

- The property's legal description.
- Whether there are any liens or other encumbrances against the property.
- That the petition includes all necessary parties.

Name the Necessary Parties

The claimant must name the owner as the defendant in the petition to establish (MD Rules, Rule 12-302(c)). If asserting a mechanic's lien

against an entire condominium building, the claimant must join all unit owners as defendants (*Southern Mgmt.*, 856 A.2d at 630).

The claimant can add as a defendant any other person that may have both:

- An interest in the property.
- A right to share in the proceeds when the property is sold.

(MD Rules, Rule 12-302(c).)

Plead the Required Facts

The petition to establish must comply with general pleading requirements and contain:

- The claimant's name and address.
- The name and address of the owner and any other defendant.
- Details about the lienable work, including:
 - the nature of the work;
 - the amount of materials furnished by the claimant, if applicable;
 - the dates the claimant performed the work; and
 - the name of the person that requested the work.
- An accounting of the amount due for the lienable work, including prejudgment interest and deductions for any credits given by the claimant (see Confirm the Lien Amount and Request Prejudgment Interest). Allocate the amounts due for lienable work on multiple properties owned by the same person (see Multiple Mechanic's Liens).
- The property's legal description, including an adequate description of the building subject to the lienable work. State whether any portion of the property is in another county (see Property in Multiple Counties).
- If the claimant is a subcontractor, a statement that the claimant properly served a notice of intention (see Serve a Notice of Intention to Claim a Lien (Subcontractors Only)).
- If the claimant provided lienable work for an existing building, a statement that the cost of all repairs or improvements is at least:
 - 15 percent of the building's value; or
 - if a tenant or its employee ordered the lienable work, 25 percent of the building's value.
- A demand for relief in the form of a judgment establishing the mechanic's lien.

(Md. Code Ann., Real Prop. § 9-105(a)(1); MD Rules, Rule 2-303 to Rule 2-305 and Rule 12-302(b); see State Q&A, Commencing an Action: Maryland: Questions 7 and 9. ([W-011-0325](#)))

Include the Required Attachments

The claimant must attach both:

- An affidavit:
 - stating the facts proving the claimant's right to a mechanic's lien in the amount specified; and
 - signed by the claimant or another person acting on its behalf.
- The material papers forming the basis of the lien. The claimant may provide sworn, certified, or photostatic copies instead of originals.

(Md. Code Ann., Real Prop. § 9-105(a)(2), (3).)

If the claimant cannot produce any material papers, it must explain that fact in its supporting affidavit (Md. Code Ann., Real Prop. § 9-105(a)(3)). Failing to attach material papers often results in a dismissal or denial of the action.

The material papers typically include:

- The contract.
- Change orders.
- Payment applications.
- Any statement of account.
- Any relevant correspondence.
- A copy of the notice of intention, if the claimant is a subcontractor.

If there is no written contract, the claimant may submit invoices or delivery tickets. A basic account summary without further evidence substantiating the lienable work is usually insufficient to support a mechanic's lien (*AMI Operating Partners*, 551 A.2d at 897).

The claimant should also consider attaching:

- A proposed show cause order (see Serve a Show Cause Order).
- A petition to enforce mechanic's lien (petition to enforce), if desired. It is common practice for the claimant to file a combined petition to enforce and establish (see Enforcing a Mechanic's Lien).

Confirm the Lien Amount

The rules for determining the amount of the claimant's lien vary based on whether the claimant is considered a contractor or subcontractor (see Persons Entitled to a Mechanic's Lien).

If the claimant is a contractor, the lien amount depends on the pricing method in the contract. For example:

- **Lump sum.** Also known as a fixed-price contract, this pricing mechanism requires the parties to set a total price for the lienable work in advance. If the contract uses this method, the lien amount is the unpaid balance of the contract price. The court may deduct the cost of completing any unfinished work. (*Gamble v. Woodlea Constr. Co., Inc.*, 228 A.2d 243, 246 (Md. 1967).)
- **Cost-plus.** Also known as the cost of the work plus a fee approach, this pricing mechanism requires paying the claimant the actual cost of performing the lienable work and a separate fee for the claimant's overhead and profit. If the contract uses this method, the lien amount is the total of:
 - the agreed percentage of the amount actually spent for lienable work furnished by the claimant that becomes part of the finished product;
 - premiums for workmen's compensation and liability insurance;
 - hauling, storage, and other equipment-related expenses; and
 - the claimant's profit.
- **No method specified.** If the contract does not state a price or pricing method, the claimant is entitled to the reasonable value of the lienable work it performs.
- (*House v. Fissell*, 51 A.2d 669, 671-72 (Md. 1947).)

If the claimant is a subcontractor:

- The lien amount may not exceed the subcontract price.
- The owner is not bound by the subcontract price but has the burden of demonstrating that the price is unreasonable.
- The claimant is entitled to the reasonable value of the lienable work it performs.

(*Diener*, 270 A.2d at 474-75.)

The subcontractor may not be able to recover the full subcontract price if both:

- The subcontractor provides lienable work for an owner-occupied single-family home.
- The owner has already paid the contractor.

(Md. Code Ann., Real Prop. § 9-104(f)(3); see *Payment Defense for Residential Owner*.)

The subcontractor does not have to state whether the owner has fully paid the contractor (*Winkler Constr. Co., Inc. v. Jerome*, 734 A.2d 212, 224-25 (Md. 1999)).

For more information on pricing methods in construction contracts, see Practice Notes, *Construction Pricing: Understanding Pricing Structures* (9-554-3926) and *Guaranteed Maximum Price Contracts: Drafting Strategies* (7-556-4665).

Request Prejudgment Interest

The claimant may request prejudgment interest as part of the lien amount. Courts often permit prejudgment interest calculated at the legal rate of six percent (Md. Const. Art. III, § 57; *Burdette v. Burrows*, 180 A.2d 833, 836 (Md. 1962)). A court may also exercise its discretion to approve a higher rate of interest provided in the claimant's contract (*AMI Operating Partners*, 551 A.2d at 897-98 (applying 18 percent rate stated in supplier's invoices and delivery tickets)).

AMEND THE PETITION

The claimant may amend the petition to establish in the same manner as any other pleading (MD Rules, Rule 2-341; see State Q&A, *Commencing an Action: Maryland: Questions 21 and 22* (W-011-0325)). However, after the period for serving the notice of intention (if a subcontractor) or filing the petition expires, the claimant may not make any amendment that:

- Increases the lien amount.
- Materially alters the description of the property.

(Md. Code Ann., Real Prop. § 9-112; MD Rules, Rule 12-303.)

SERVE A SHOW CAUSE ORDER

After the claimant files the petition to establish, the court:

- Reviews the petition and the supporting documents.
- May require the claimant to supplement or explain any portion of the petition.

(Md. Code Ann., Real Prop. § 9-106(a)(1); MD Rules, Rule 12-304(a).)

The court must issue a show cause order if it determines there are reasonable grounds for the claimant's lien to attach to the building or property. The show cause order:

- Sets a deadline for service of the order and all documents filed in the action.
- Directs the owner to file an answer to the petition to establish by a specified deadline after timely service of the petition.
- Schedules a show cause hearing to take place within 45 days after the date of the order.
- Informs the owner that:
 - it may appear and present evidence at the hearing; and
 - failing to file a timely answer waives the right to a hearing, admits all the facts in the petition to establish, and permits the court to enter an order establishing the lien.

(Md. Code Ann., Real Prop. § 9-106(a)(1); MD Rules, Rule 12-304(b)(1).)

Most claimants prepare and attach a proposed show cause order to the petition to establish (see *Include the Required Attachments*).

The claimant must serve the show cause order:

- With copies of the petition to establish and all other pleadings and exhibits filed in the action.
- On the owner and any other defendant in the same manner as a regular civil complaint.

(MD Rules, Rule 2-121 and Rule 12-304(b)(2); see State Q&A, *Commencing an Action: Maryland: Question 15*. (W-011-0325))

ATTEND THE SHOW CAUSE HEARING

The court must hold a show cause hearing (also known as a probable cause hearing) if the defendant files an answer. The show cause hearing is an evidentiary hearing with witness testimony and cross-examination. The owner's failure to verify its answer or submit a counter-affidavit is deemed an admission of the facts in the petition to establish. (Md. Code Ann., Real Prop. § 9-106(a)(2), (3); MD Rules, Rule 12-304(c), (d).)

OBTAIN A JUDGMENT

After the show cause hearing, the court must issue either:

- A judgment (final order) establishing or denying the claimant's lien.
- An order:
 - granting interim relief and scheduling the matter for trial; or
 - dismissing the lien unless the claimant timely requests the matter be assigned for trial.

Judgment Establishing or Denying the Lien

If the court finds both that there is no genuine dispute as to any material fact and that as a matter of law:

- A mechanic's lien should attach to the property, the court must enter a judgment establishing the lien. Alternatively, the court may affirm the validity of an undisputed part of the lien and reserve any outstanding claims for trial.
- The claimant failed to prove its right to a mechanic's lien, the court must enter a judgment denying the lien.

(Md. Code Ann., Real Prop. § 9-106(b)(1), (2); MD Rules, Rule 12-304(e)(1).)

Interlocutory Order

The court must issue an interlocutory order if it both:

- Cannot establish or deny a mechanic's lien as a matter of law.
- Determines there is probable cause to believe the claimant is entitled to a lien.

(Md. Code Ann., Real Prop. § 9-106(b)(3); MD Rules, Rule 12-304(e)(2).)

The interlocutory order:

- Establishes a lien.
- Describes the property to which the lien attaches.
- States the lien amount supported by probable cause.
- Specifies the amount of a bond to release the property from the lien (lien release bond) (see Set the Amount of the Lien Release Bond).
- May require the claimant to file its own bond in an amount sufficient to cover potential damages, including attorneys' fees.
- Assigns a date within six months for a trial of all matters in dispute.

(Md. Code Ann., Real Prop. § 9-106(b)(3); MD Rules, Rule 12-304(e)(2), (4).)

No Probable Cause

If the court does not enter a final or interlocutory order, it must issue an order dismissing the petition to establish (or the relevant portion of the petition) unless the claimant files a written request within 30 days that the matter be assigned for trial (MD Rules, Rule 12-304(e)(3)).

Judgment After Trial

After conducting a trial on any unresolved claims, the court must enter a judgment either:

- Continuing or terminating a lien created by an interlocutory order.
- Establishing or denying the claimant's lien.

(Md. Code Ann., Real Prop. § 9-106(d); MD Rules, Rule 12-304(e)(5).)

SET THE AMOUNT OF THE LIEN RELEASE BOND

The owner or any other person interested in the property may file a lien release bond. The bond must be in an amount sufficient to protect the claimant. The court determines this amount either:

- When issuing an interlocutory order after the show cause hearing.
- After providing an opportunity for a separate hearing.

(Md. Code Ann., Real Prop. § 9-106(c); MD Rules, Rule 12-307(b); see Releasing or Waiving a Mechanic's Lien.)

The claimant or another interested person may file a motion requesting an additional bond if it objects to either:

- The bond amount.
- The surety.

(Md. Code Ann., Real Prop. § 9-106(c).)

PROPERTY IN MULTIPLE COUNTIES

The claimant may attach the mechanic's lien to any portion of the property in another county by filing certified copies of the following documents with the clerk of the circuit court in that county:

- The docket entries for the lien action.

- The court's judgment or order establishing the lien.
- Any required bond.

(Md. Code Ann., Real Prop. § 9-107(a).)

The lien attaches in the other county when the required materials are filed with the clerk (Md. Code Ann., Real Prop. § 9-107(b)).

ENFORCING A MECHANIC'S LIEN

The claimant must enforce its mechanic's lien within one year after filing a petition to establish. The claimant cannot begin enforcement proceedings until the court enters a judgment creating the lien (see Obtain a Judgment).

To enforce the lien, the claimant must file one of the following in the original lien action:

- A petition to enforce.
- A petition to execute on a lien release bond, if any.

(Md. Code Ann., Real Prop. § 9-109; MD Rules, Rule 12-305(a).)

Most claimants submit a petition to enforce simultaneously with the petition to establish (see Include the Required Attachments). Filing a combined petition to establish and enforce increases efficiency and reduces the risk that the claimant misses the one-year enforcement deadline. The claimant maintains the rights to its lien and any lien release bond while the enforcement proceedings are pending (Md. Code Ann., Real Prop. § 9-109; MD Rules, Rule 12-305(a)).

Whether filing the petition to enforce separately or together with the petition to establish, the claimant should ensure that it requests relief in the form of an order permitting the sale of the property. However, enforcing a mechanic's lien does not prohibit the claimant from obtaining a separate money judgment against the owner or any other party personally liable for the lien amount (Md. Code Ann., Real Prop. § 9-111).

JUDICIAL SALE OF THE PROPERTY

An order granting a petition to enforce mandates the sale of the property unless the lien amount is paid by a date specified in the order. The payment deadline must be within 30 days after the date of the order. (MD Rules, Rule 12-305(b).)

If the lien remains unsatisfied, the claimant may execute against the property under the regular procedures for judicial sales (MD Rules, Rule 12-305(c) and Rule 14-301 to Rule 14-306). The court often appoints a trustee to sell the property (MD Rules, Rule 14-302(b)). The sale typically takes place as a public auction in the county where:

- The property is located.
- The lien action is filed (if the property is in more than one county). (MD Rules, Rule 14-101 and Rule 14-304.)

The post-sale requirements are similar to those governing the foreclosure of a deed of trust or mortgage. For example:

- The person conducting the sale must file a report of sale.
- The court must ratify the sale.
- An auditor must prepare a final account for the court's approval (MD Rules, Rule 2-543).

(MD Rules, Rule 12-306 and Rule 14-305; see Practice Notes, Residential Foreclosures (Power of Sale) (MD): Post-Sale Requirements ([W-016-4176](#)) and Commercial Foreclosures (Power of Sale) (MD): Post-Sale Requirements. ([W-016-4198](#)))

PRIORITY OF MECHANIC'S LIENS

In Maryland, a mechanic's lien does not attach to a property until the court establishes the lien (see Obtain a Judgment). This differs from the typical practice in many states where a mechanic's lien attaches when the claimant first performs lienable work.

The priority of liens in Maryland is generally determined by the order in which they are recorded. Mechanic's liens enjoy priority over most other liens or interests that are subsequently recorded or otherwise subordinated. Exceptions to this rule include:

- Property tax liens (Md. Code Ann., Tax-Prop. §§ 14-804(a) and 14-805(a)).
- Liens for unpaid assessments filed by a homeowners association or condominium council of unit owners (Md. Code Ann., Real Prop. §§ 11-110(f)(2) and 11B-117(c)(2)).
- Certain refinance mortgages (Md. Code Ann., Real Prop. § 7-112(c)).

Because they attach later, mechanic's liens usually do not have priority over a deed of trust or mortgage securing a construction loan.

Multiple Mechanic's Liens

The proceeds from a judicial sale are applied to any liens against the property according to their priority. A mechanic's lien loses priority to other mechanic's liens if both:

- The lien attaches to more than one property owned by the same person.
- The claimant fails to allocate the amount due for the lienable work on each property in its petition to establish.

(Md. Code Ann., Real Prop. § 9-105(a)(1)(v); see Plead the Required Facts.)

If the sale proceeds are insufficient to pay all mechanic's liens against a property:

- The auditor states the total proceeds available to satisfy the mechanic's liens in its account.
- The mechanic's liens are combined in one class and paid pro rata without regard to priority.

(Md. Code Ann., Real Prop. § 9-108.)

OWNER'S RIGHTS AND REMEDIES

Maryland law provides owners and purchasers with certain protections against mechanic's liens.

BONA FIDE PURCHASER FOR VALUE

A property is not subject to a mechanic's lien if legal title is transferred to a bona fide purchaser for value before the court establishes the lien. However, filing a petition to establish is sufficient notice to defeat a prospective purchaser's bona fide status. (Md. Code Ann., Real Prop. § 9-102(d), (e); *Wolf Org., Inc. v. Oles*, 705 A.2d 40, 49-50 (Md. Ct. Spec. App. 1998).)

The transfer of equitable title to a bona fide purchaser for value also extinguishes a claimant's right to assert a mechanic's lien (*York Roofing, Inc. v. Adcock*, 634 A.2d 39, 43-45 (Md. 1993); *Himmighoefer v. Medallion Indus., Inc.*, 487 A.2d 282, 286-88 (Md. 1985)). A purchaser typically acquires equitable title when it enters into a purchase and sale agreement for the property (*Himmighoefer*, 487 A.2d at 286-87; *Wolf Org.*, 705 A.2d at 45-46).

The claimant has the burden of proving that a party does not qualify as a bona fide purchaser for value (*Talbott Lumber Co. v. Tymann*, 428 A.2d 1229, 1233 (Md. Ct. Spec. App. 1981)).

PAYMENT DEFENSE FOR RESIDENTIAL OWNER

A subcontractor's lien rights may be restricted when it provides lienable work for a single-family home that is both:

- On the owner's property.
- Used by the owner as a residence.

(Md. Code Ann., Real Prop. § 9-104(a)(2), (f)(3); *Ridge Heating, Air Conditioning and Plumbing, Inc. v. Brennen*, 783 A.2d 691, 696 (Md. 2001).)

In that circumstance:

- The subcontractor is not entitled to a mechanic's lien if the owner fully pays the contractor before receiving the subcontractor's notice of intention.
- Even if the contractor is not fully paid, the amount of the subcontractor's lien cannot exceed the amount that the owner still owes the contractor when the owner receives the notice of intention.

(Md. Code Ann., Real Prop. § 9-104(a)(2), (f)(3); see Serve a Notice of Intention to Claim a Lien (Subcontractors Only) and Confirm the Lien Amount.)

The combination of the owner's payment defense and the protections for bona fide purchasers may limit a claimant's ability to establish a mechanic's lien against residential property.

WITHHOLDING FUNDS FROM THE CONTRACTOR

After receiving a notice of intention from a subcontractor, the owner may withhold the delinquent amount stated in the notice from any payments it owes to the contractor. Once the court establishes the subcontractor's mechanic's lien, the owner must only pay the contractor the balance remaining after deducting the lien amount. (Md. Code Ann., Real Prop. § 9-104(f)(1), (2); see Obtain a Judgment.)

CONTRACTOR'S OBLIGATION TO OBTAIN RELEASES

After the owner makes full payment to the contractor, the contractor must give the owner a signed mechanic's lien release from each subcontractor that provided lienable work under the contract. The owner's property is not subject to a mechanic's lien for any labor or materials covered by the release. (Md. Code Ann., Real Prop. § 9-114.)

RELEASING OR WAIVING A MECHANIC'S LIEN

The owner may compel the release of a mechanic's lien in several ways:

- **Motion to release, modify, or dissolve.** The owner or another interested person may file a motion to:
 - release the lien any time after the petition to establish is filed (MD Rules, Rule 12-307(a)); or
 - modify or dissolve a lien created by an interlocutory order (Md. Code Ann., Real Prop. § 9-106(b)(3)(vi); MD Rules, Rule 12-304(e)(2); see Interlocutory Order).
- **Lien release bond.** The court must release the property from the lien if the owner or another interested person files a bond in the amount set by the court (MD Rules, Rule 12-307(b); see Set the Amount of the Lien Release Bond).
- **Payment or other satisfaction.** If the lien amount is paid or otherwise satisfied:
 - the claimant must promptly file an order of satisfaction releasing the lien; or
 - if the claimant fails to act, the owner or another interested person may file a motion for entry of an order of satisfaction (MD Rules, Rule 2-626).
- (MD Rules, Rule 12-307(c).)

PROSPECTIVE WAIVERS

A contractor may prospectively waive its mechanic's lien rights if the waiver is clear and unambiguous (*Port City Constr. Co. v. Adams & Douglass, Inc.*, 273 A.2d 121, 122-24 (Md. 1971)). Merely accepting

a promissory note or other form of security does not constitute a waiver (Md. Code Ann., Real Prop. § 9-110). A contractor may not waive or release lien rights on behalf of its subcontractors (*Judd Fire Protection*, 773 A.2d at 580).

Lien waivers in subcontracts are void in Maryland. Specifically, a contract for lienable work between a contractor and subcontractor may not:

- Require the subcontractor to waive its rights to:
 - claim a mechanic's lien; or
 - sue on the contractor's bond.
- Include a pay-if-paid provision that infringes on those rights (see Practice Note, Pay-if-Paid Versus Pay-when-Paid in Construction Contracts (9-604-7025) and Prompt Payment Acts (Private Projects): State Comparison Chart (W-000-7032)).

(Md. Code Ann., Real Prop. § 9-113.)

For more information on waivers and releases in construction contracts, including those affecting mechanic's lien rights, see:

- Practice Note, Waivers and Releases in Construction Contracts: Drafting Strategies (W-001-0219).
- Practice Note, Payment Provisions in Construction Contracts: Drafting Strategies: Waiver and Release of Claims (1-568-1506).
- Standard Document, Partial Lien Waiver and Release (Construction) (W-008-8952).
- Standard Document, Final Waiver and Release of Liens and Claims (Construction) (W-009-8445).

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