

# Client newsletter



APRIL 2014

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## Mississippi's New Construction Lien Law

Effective April 11, 2014, Mississippi has a brand new comprehensive construction lien law. Historically, on private, non-bonded construction projects, contractors who had direct contracts with the property Owner had the right to file a lien against the property to secure payment for services rendered or materials supplied in connection with construction on the property. Subcontractors and material suppliers to the general contractor had no such right, but did have a right to send the Owner a letter alerting the Owner to nonpayment by the prime contractor and potentially binding funds in the hands of the Owner sufficient to pay the subcontractor or supplier.

As a result of recent federal court litigation which declared unconstitutional Mississippi's "Stop Notice" remedy for subcontractors and material suppliers, the Mississippi legislature totally revamped Mississippi's construction lien law. All duly licensed persons who provide labor, material and construction services on private, non-bonded construction projects now have the right to file and pursue remedies for construction liens. This apparently includes anyone in the contractual chain, no matter how far removed.

But the requirements for asserting such a "Claim of Lien" are very detailed and specific. They also carry potential liability for damages and attorney's fees against the claimant if the claim is not properly made or pursued.

Some examples of the new requirements are the following:

1. The Claim of Lien requires a specific form of notice to be filed in the land records of the Chancery Clerk where the property is located within 90 days following the *last* labor, services or materials provided;
2. Copies of the Claim of Lien must be provided to the Owner within two days of filing by statutory overnight delivery;
3. The Claim of Lien must follow a statutory form which informs the Owner of the right to contest the Claim of Lien;
4. A "Payment Action" and/or a "Lien Action" must be started within 180 days after the "Claim of Lien" is filed;
5. Persons who don't have a direct contract with the Prime Contractor or, on projects that don't have a Prime Contractor, persons who don't have a direct contract with the Owner must provide notice within 30 days of the *first* delivery of labor, services or material as a pre-condition for asserting a Claim of Lien.
6. On residential projects, the notice requirements are slightly different. Lien claimants must give the residential Owner notice at least 10 days before filing a Claim of Lien.

7. The new law provides a method to “bond off” a lien with a bond equal to 110% of the amount of the Claim of Lien;

The new law also carries a number of penalty provisions which must be carefully considered. To knowingly file a false Claim of Lien will result in a penalty three times the amount of the lien claim. There is also a triple penalty to a contractor who fails to pay a subcontractor without good cause after securing a waiver and release of lien from the subcontractor. There is a \$500 per day penalty for failing to cancel a Claim of Lien within 15 days after being fully paid.

In an action to enforce a lien, the Court is authorized to award attorney’s fees and costs to the prevailing party.

The information above is only a sample of the many changes and requirements of Mississippi’s new construction lien law. It is not intended to be a complete summary and should not be relied upon in filing a Claim of Lien. Owners, contractors, subcontractors, material suppliers and architects and engineers should consult an attorney when either filing a Claim of Lien or when responding to or defending a lien claim.

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