

Indiana Mechanics Lien Law

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INDIANA MECHANICS LIEN LAW

Indiana mechanics lien law is similar to Illinois mechanics lien law. The basic terms and definitions used under Indiana law are basically the same as those used in Illinois.

Under Indiana Code 32-28-3-1, a mechanics lien is available specifically for a contractor, a subcontractor, a mechanic, or a lessor leasing construction and other equipment and tools. Section 32-28-3-1 also states that a mechanics lien is available to:

any person who performs labor or furnishes materials or machinery for: (1) the erection, alteration, or repair of a house or other building; or (2) the construction, alteration, repair or removal of a walk or sidewalk located on the land or bordering the land; or (3) any other earth moving operation.⁴²

The Indiana statute distinguishes between three different categories of private projects.

Type 1 – Residential Dwellings: “Class 2” structures, which are basically defined to include single or double unit dwellings and auxiliary outbuildings and improvements.

Type 2 – Regulated Utilities: Property that is (a) owned, operated, managed or controlled by state-regulated utilities and (b) intended to be used and useful for the production, transmission, delivery or furnishing of heat, light, water or power to the public. Telecommunications, sanitation and waste disposal projects are not included in this category.

Type 3 – All Other Projects: A catch-all category to cover the vast number of commercial, industrial and other projects that do not fall within the definitions for *Type 1* or *Type 2*.

There are several steps one must take in order to perfect a valid lien. On commercial projects and utilities, there is no pre-lien filing requirement before construction. However, on owner-occupied dwellings there is a requirement for a pre-lien notice. If the owner-occupied dwelling is undergoing remodeling, then the claimant must furnish to the owner, within thirty

(30) days after first delivery or work on the project, a pre-lien notice advising the owner of the claimant's right to hold a mechanics lien. If the owner-occupied dwelling is new construction, then the pre-lien notice must be recorded with the county recorder of deeds and furnished to the owner of record within sixty (60) days after first delivery or work on the project. If a claimant fails on an owner-occupied dwelling to furnish to the owner the pre-lien notice (and record the pre-lien notice in the case of new construction), any subsequent mechanics lien is null and void.

To create a valid lien, the claimant must file a sworn statement with the recorder of deeds for the county where the property is located. As stated in Indiana Code §32-28-3-3:

a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim in the recorder's office of the county where the real estate is located and not later than ninety (90) days after performing or furnishing materials or machinery.⁴³

However, if the construction project is a Class 2 structure (single- or double-family dwellings), then the mechanics lien must be filed in the county recorder's office where the real estate is located within sixty (60) days after the last labor or materials were provided to the project.

When filing a mechanics lien notice with the county recorder, the notice must contain several items required under §32-28-3-3 (c) of the code. The code sets forth specific language that must be in the notice:

A statement and notice of intention to hold a lien filed under this section must specifically set forth the amount claimed; the name and address of the claimant; the owner's name and address as shown on the property tax records of the county; and the legal description; and if any; of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.⁴⁴

⁴² Indiana Code §32-28-3-1

⁴³ Indiana Code §32-28-3-3

⁴⁴ Indiana Code §32-28-3-3(c)

The sworn statement of notice of intention to hold a mechanics lien must be filed with the county recorder's office in the county where the real estate is located. If the construction project is located in two counties, the mechanics lien must be filed with the recorder in both counties. The notice must be filed with the county recorder's office within the specific time limits set forth above. In addition, the statement of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.⁴⁵

Notice to the owners is made by the county recorder. Section 32-28-3-3 specifically states that the county recorder will mail first class one of the duplicates to the owners named in the notice within three (3) business days after recordation, post records as to the date of the mailing, and collect a fee of two dollars (\$2) from the lien claimant for each statement and notice that is mailed.⁴⁶ While it is the county recorder's job to mail the sworn statement of notice of intention to hold mechanics lien to the owner, it is the mechanic lien claimant's responsibility to properly set forth the owner's name and address within the sworn statement of notice of intention to hold mechanics lien.

To enforce a lien, the claimant should file a complaint in the circuit or superior court of the county where the real estate or property is the subject of the lien is situated. The complaint must be filed no later than one year after the date of the statement and notice of intention to hold a lien was recorded or the expiration of the credit, if a credit is given.⁴⁷ If a credit is given, then the complaint must be filed prior to the expiration of the credit period. A credit to extend time for filing a complaint to foreclose the mechanics lien must be in writing, signed by the lien

⁴⁵ Indiana Code §32-28-3-3(b)(2)

⁴⁶ Indiana Code §32-28-3-3(d)(1)-(3)

holder and all owners of record, and recorded in the same manner as the original notice of lien within one year from the date the notice of the lien was originally recorded.

A lien will be voided if both of the following occur:

- (1) The owner of property subject to a mechanics lien or any person or corporation having an interest in the property, including a mortgage or lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien; and
- (2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving notice.⁴⁸

Indiana will enforce a lien waiver and lien release as any other contract. However, for commercial projects (not class 2 or utility projects), any provision in a contract which conditions payment upon waiver of mechanics lien rights or right to claim against the payment bond is void. Also, in commercial projects, any contract provision in which a party agrees to refrain from recording a notice of intention to hold mechanics lien is void. Further, for commercial projects, any provision in a construction contract that conditions an obligor's payment to a laborer or material supplier upon the obligor's receipt of payment of a third-party may not be a condition precedent to, nor in any way limit or provide a defense to, a mechanics lien.

To enforce its lien, a material supplier must show that the materials were supplied with the consent, authority and direction of the owner of the project, that the materials were intended for use on the particular project, and that the materials were actually used on the project. The materials are presumed to have been used on the project if they were delivered to the project.

Indiana Code 32-28-3-1(e) provides that a general contractor and owner may include a provision in the contract that states a lien may not attach to the real estate, building, structure or

⁴⁷ Indiana Code §32-28-3-6(a)

⁴⁸ Indiana Code §32-28-3-10(a)

any other improvement of the owner. A contract containing this type of stipulation must meet the following requirements to be valid against subcontractors, mechanics, journeymen, laborers or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

Be in writing; contain specific reference by legal description of the real estate to be improved; be acknowledged as provided in the case of deeds; and be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

Finally, mechanics liens are not permitted to attach to public property held for public use. However, Indiana Code § 32-1-12-12 provides a scheme that enables subcontractors and materials suppliers on public contracts, precluded from filing conventional mechanics liens, to protect their right to payment by filing claims with the contracting entity. Indiana Code § 32-1-12-12 allows subcontractors on public work projects to obtain payment directly from the owner if the contractor fails to pay them provided they give notice of their claims within sixty (60) days of performing the work or supplying the materials. Section 36-1-12-12 provides for the payment of contractors, laborers, material suppliers, and those who perform services for public work projects. Compliance with Indiana Code Section 32-28-3-9 and Indiana Code Section 36-1-12-12 does not result in the creation of a mechanics lien. Rather, the purpose of the personal liability law is to place the subcontractor in the place that the general contractor would have occupied in the lawsuit with the state entity. Indiana Code Section 32-28-3-9 provides that if a subcontractor gives notice of its claim, it may recover the amount of the claim from the state entity if, after the amounts of other claims that have priority are subtracted from the amount due

from the property to the contractor, the remainder of the amount due from the property owner to the contractor is sufficient to pay the amount of the subcontractor's claim.⁴⁹

⁴⁹ *Mercantile National Bank of Indiana v. First Builders of Indiana, Inc.* 774 N.E.2d 488,490 (Ind. 2002)

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