



How contractors can use mechanic's liens to avoid getting 'burned' by Construction DIVE, ft. Andrew Richards

Andrew Richards, Co-Managing Partner at Kaufman Dolowich & Voluck, LLP in Long Island, was quoted in an article written by Kim Slowey for Construction DIVE, (April 26, 2016) –

She wrote about getting paid in the private construction business – whether it involves a particularly evasive general contractor or an owner who's in a tight financial spot – can be a challenge. Fortunately, no matter the size of their legal budgets, contractors have an alternative to waiting out a check indefinitely, and it's called a mechanic's lien.

Andrew commented on the mechanic's lien process in New York

In contrast, attorney Andrew Richards of Kaufman Dolowich & Voluck, LLP in New York said the state of New York has no preliminary notice requirements that must be met in order to file a mechanic's lien.

"You have eight months to file a mechanics lien from the last day you perform labor or supply materials," he said. That generous timeframe shrinks to four months for residential projects. "You also have to serve notice on the owner, commercial or residential," he said, "either five days before filing a lien or within 30 days thereafter."

Once a mechanic's lien is filed, Richards said, the contractor has one year to foreclose on the lien. However, it can be extended for additional one-year periods before the contractor is required to foreclose. In Florida, that deadline is also a year unless the lien is contested, but California contractors must act to enforce their liens within 90 days.

In the cases of subcontractors who file liens, Richards said, the owner is required to withhold the amount specified in the lien from the general contractor. "If they don't," he said, "(the owner) could have to pay the sub later on again."

In lieu of the owner withholding payment, Richards said, the general contractor can put up a bond for 110% of the disputed amount.

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Richards said owners will sometimes try to persuade contractors not to file a lien, but Richards said that's never a good idea for contractors. "They're a good security. Don't waive your rights," he said.

Richards added, "If you look the other way, and you just hope for the best, that's not a very good way to run a business, and chances are that you're probably going to get burned. In six months or a year down the road, when you're out tens of thousands of dollars or more on that project, you probably won't be saying what a good person that guy was."