

# HEALD & LEBOEUF, LTD. Attorneys At Law

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## CONSTRUCTION

Spring 2014 Newsletter

LAW BULLETIN®

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### AN UPDATE ON BOND AND LIEN RIGHTS

#### RHODE ISLAND AND MASSACHUSETTS

With this issue we provide an overview of the bond claim and lien process in Massachusetts and Rhode Island with emphasis on issues that you need to be aware of to protect your rights.

**Massachusetts Mechanics' Lien** - Subcontractors - The basic rules are as follows:

If you are a subcontractor you must file a Notice of Contract within ninety (90) days of the general contractor's last day of work. More importantly, you should file your lien at the earliest possible time. Massachusetts is an "owner pays once" state. If on the date you lien the job the owner has paid the general contractor in full, your lien will be of no value. The value of your subcontractor lien is limited to the amount due or to become due the general contractor by the owner on the date the owner receives notice of your lien.

**Massachusetts Public Works Bond Claims** - If you are a second tier subcontractor (you do not have a contract with the general contractor) you must give the general contractor notice of your claim within forty five (45) days of your last day of work by certified mail, return receipt requested. In addition, you must file suit on the general contractors bond within one (1) year of your last day of work.

A subcontractor having a direct contract with the general contractor must simply file suit within one (1) year of their last day of work.

**Rhode Island Mechanics' Lien** - Many contractors are losing their lien rights in Rhode Island when they have a direct contract with the owner or tenant of the property in question. If you have a direct contract with the owner or tenant, to maintain your lien rights, you must send to the owner and/or tenant a Notice of Possible Lien within ten (10) business days of the start of your work. The Notice of Possible Lien must be in the following form (*see page 2*) and must be sent by certified mail, return receipt requested.

This requirement may also be met by including specific language in your contract with the owner or tenant.

**Heald & LeBoeuf, Ltd. Mechanics' Lien & Bond Claim Deadline**

**Summary** - (*see page 3*) for a copy of our Mechanics' Lien & Bond Claim Deadline Summary which addresses all lien and bond claim situations in Massachusetts and Rhode Island.

Please feel free to call us if you have further questions.

#### BOARD OF EDITORS

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This newsletter is intended to provide general information of interest to the construction community.

It is not intended to provide specific legal advice or to address fact specific legal issues. For that you should consult your own legal counsel. Heald & LeBoeuf, Ltd. assumes no liability in connection with the use of this newsletter.

Please contact Thomas W. Heald, Esq. with any Questions with respect to this newsletter.

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The Rhode Island Supreme Court may consider this material advertising.

# NOTICE OF POSSIBLE LIEN

(Name & Address of Owner /Tenant)\_\_\_\_\_

\_\_\_\_\_

Re: Notice of Possible Mechanics' Lien

To: \_\_\_\_\_

(Name of Owner/Tenant)

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations or repair upon the land at \_\_\_\_\_

(property address)

under contract with you. This is a notice that the undersigned and any other persons who provide labor and materials for the improvement under contract with the undersigned may file a mechanics' lien upon the land in the event of nonpayment to them. It is your responsibility to assure yourself that those other persons under contract with the undersigned receive payment for their work performed and materials furnished for the construction, erection, alteration or repair upon the land.

Company Name \_\_\_\_\_

By: \_\_\_\_\_

Its: President

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

(Certified Mail #) \_\_\_\_\_



## MECHANICS' LIEN & BOND CLAIM DEADLINE SUMMARY

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### RHODE ISLAND

- Mechanics' Lien – Must record / file Notice of Intention within 200 days of first unpaid day of work – i.e. a Notice of Intention filed today only covers labor and materials provided to job in last 200 days (retainage covers back to job start). Cannot lien public works jobs (some exceptions). Must also mail to owner / tenant. Contractors (not material suppliers) that have a contract with the owner / lessee / tenant of the property must mail a “Notice of Possible Mechanic’s Lien” to the owner / lessee / tenant within ten (10) days after they start work on a project unless the contract contains such a provision. Rhode Island is an “owner pays twice” state. If owner pays general contractor in full, subcontractor can lien and cause owner to pay twice.
- Bond Claims
  - Private Jobs
    - Direct Sub/Supplier – Must act according to conditions in bond – usually give notice to general contractor, bonding company and owner and file suit within one year of your or the general contractor’s last day of work.
    - Second/Third Tier Sub/Supplier – Must act according to conditions in bond – usually give notice to owner and general contractor within ninety (90) days of your last day of work or the general contractor’s last day of work and file suit within one year of your or the general contractor’s last day of work.
  - Public Jobs (State, City, Town)
    - Direct Sub/Supplier – Must file suit within two years of your last day of work.
    - Second/Third Tier Sub/Supplier – Must give notice to general contractor within ninety (90) days of your last day of work (not mandatory in many cases) and file suit within two years of your last day of work.
  - Public Jobs (Federal)
    - Direct Sub/Supplier – Must file suit within one year of your last day of work.
    - Second/Third Tier Sub Supplier – Must give notice to general contractor within ninety (90) days of your last day of work and file suit within one year of your last day of work.

### MASSACHUSETTS

- Mechanics' Lien
  - General Contractor/Direct Sub/Supplier – Must record Notice of Contract within ninety (90) days of general contractor’s last day of work (some exceptions). Sub/Supplier must serve owner with copy of Notice of Contract.
  - Second/Third Tier Subs/Supplier – Must serve general contractor with Notice of Identification within thirty (30) days of commencement of work on project (failure to serve Notice of Identification may not be fatal) and must record Notice of Contract within ninety (90) days of general contractor’s last day of work (some exceptions) and must serve owner with copy of Notice of Contract. Cannot lien public works jobs. Massachusetts is an “owner pays once” state. Lien only has value to the extent that owner owes general contractor money when lien filed. File lien early / promptly.
- Bond Claims
  - Private Jobs
    - Direct Sub/Supplier – Must act according to conditions in bond – usually give notice to general contractor, bonding company and owner and file suit within one year of your or the general contractor’s last day of work.
    - Second/Third Tier Sub/Supplier – Must act according to conditions in bond – usually give notice to owner and general contractor within ninety (90) days of your last day of work and file suit within one year of your or the general contractor’s last day of work.
  - Public Jobs (State, City, Town)
    - Direct Subs/Supplier – Must file suit on bond within one year of your last day of work.
    - Second Tier Subs/Supplier – Must give notice to general contractor within sixty five (65) days of your last day of work and must file suit within one year of your last day of work.
  - Public Jobs (Federal)
    - See Rhode Island above.

Notes: All notices to be served or given by certified mail return receipt requested. The purpose of this summary is to provide general information to clients and other persons in determining the validity of lien or bond claims and calendaring when they should seek legal assistance. It is not intended to be a comprehensive outline of the legal process related to mechanics’ liens and bond claims. It is not intended to provide specific legal advice or address fact specific issues or circumstances.

Revised: 3/2014