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CONSTRUCTION

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LAW BULLETIN®

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LEGISLATURE CLARIFIES "NOTICE OF POSSIBLE LIEN" PROVISIONS IN RHODE ISLAND MECHANICS' LIEN STATUTE

For the past nine years, contractors that contracted directly with an owner or lessee/tenant were arguably unable to file a lien unless they served the owner or lessee / tenant with a Notice of Possible Lien by certified mail within ten (10) days of starting work. The Notice of Possible Lien provisions are set forth in Section 4.1 of the mechanics' lien statute (R.I. Gen. Laws § 34-28-4.1).

There was however, another provision in the Rhode Island Contractors Registration Board statute which suggested that the contractor did not have to send the notice by certified mail, but could simply include the notice in its contract with the owner or lessee/tenant. The two differing provisions created some ambiguity as to what the contractor was required to do.

The legislature recently clarified this ambiguity and revised the mechanics' lien statute. The revised statute now states that if a contractor has a contract with a property owner or lessee/tenant, the contractor will lose its right to file a mechanic's lien unless it does one of the following:

1. Incorporates a clear and conspicuous Notice of Possible Mechanic's Lien in its written contract with the owner or lessee/tenant and provides the contract to them *before* starting work or delivering materials.

Or

2. Sends a Notice of Possible Mechanic's Lien to the owner or lessee/tenant by certified mail *before* starting work or delivering materials.

In most cases the contractor's choice should be simple - include a Notice of Possible Mechanic's Lien in all owner/lessee contracts. Once that is done no further action is required. Compliance should be automatic if the contract is provided to the owner/lessee *before* the work begins. If the contractor fails to comply with the revised Section 4.1, the contractor will lose its right to file a mechanic's lien against the property and would be obligated to indemnify and hold harmless the owner (pay for cost of legal defense and any judgment) from certain subcontractor liens (unless owner did not pay contractor).

Most contractors prefer to include the Notice of Possible Mechanic's Lien in their contract, rather than starting their relationship with the new owner by sending a certified letter. The legislature has now expressly stated that this is an acceptable practice. Contractors seeking to protect their mechanics' lien rights should consider consulting with legal counsel to make sure that they have the appropriate provision in their contract.

The form of the Notice of Possible Mechanic's Lien is statutory and is provided below:

"NOTICE OF POSSIBLE MECHANIC'S LIEN

To: Insert name of owner, lessee or tenant, or owner of less than the fee simple.

The undersigned is about to perform work and/or furnish materials for the construction, erection, alterations or repair upon the land at (INSERT 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 mechanic's 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."

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

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