



# Montana Construction Lien Laws



**JANUARY 14<sup>TH</sup> 2010**  
**12:00 – 1:00PM**  
**MBIA ONLINE CLASSROOM**  
**WEBINAR**

# Instructor



- **Bruce Spencer, Shareholder, Smith Law Firm**
  - J.D. University of Oregon 1992
  - Areas of practice include:
    - ✦ Commercial Law
    - ✦ Commercial collections
    - ✦ Real Estate
    - ✦ Litigation
    - ✦ Labor and employment laws

# Overview



- Intent of Lien Law
- Notice Requirement
- Lien Attachments
- Priority Among Lien Holders
- Bond Issues
  - Miller Act
  - MT Laws

# No Notice Required



- Notice NOT required:
  - If services and materials furnished at owners request
  - Lien filed by a wage earner or laborer
  - Lien filed on dwelling of five or more families
  - If project is Partially or wholly commercial
- Notice is required for All other times of projects

# Notice



- Notice ***must*** be given for Construction Liens
- No later than **20 Days** after the service/materials are furnished
- Must be sent to Contracting Owner
  - Certified Mail
  - Delivered in Person (written acknowledgement)
- Must be filed with the County Clerk and Recorder
  - Within 5 days after notice given to contracting owner
  - Must be in the county where the improved property is located
  - Good for 1 year.

## Notice (cont.)



- **Warning:** You cannot file a construction Lien unless you properly filed a notice with the County Clerk and Recorder. Notice cannot be expired.
- Upon request of subcontractors, General Contractors must provide:
  - A sufficient description of the property being improved.
  - Name and address of contracting owner.

# Forms of Notice



- Notice must be in writing
- Must state that it is a notice of a right to claim a lien against real estate for service or materials furnished
- Notice must contain a sufficient description to identify the property against which lien may be claimed

# Forms of Notice (cont.)



- **Must contain the following:**
  - Date of mailing
  - Owner's name
  - Owner's address
  - Name of person filing notice
  - Address of person filing notice
  - A description sufficient to identify the property that is being improved
  - A notice required by the State of Montana



## **NOTICE OF THE RIGHT TO CLAIM A LIEN**

**WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.** This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at ..... . If ..... is not paid, a lien may be filed against the property. **THIS IS NOT A LIEN.** It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME: .....

ADDRESS: .....

TELEPHONE: .....

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

**WAYS TO PROTECT YOURSELF ARE:**

- **RECOGNIZE** that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.
- **LEARN** more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.
- **WHEN PAYING** your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.
- **OBTAIN EVIDENCE** that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.
- **CONSULT** an attorney, a professional escrow company, or your mortgage lender.

# Construction Lien



**Notice is NOT a lien!**

## **Construction Lien**

I, ..... (insert name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

I claim this lien against ..... (give description of the real property against which the lien is claimed sufficient to identify it). The contracting owner is ..... (insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of ..... (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: ..... (give description of the services or materials provided). The amount remaining unpaid is ..... (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on ..... (give date) and last furnished services or materials on ..... (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by 71-3-531 on ..... (give date) to ..... (give name of contracting owner). ..... (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

# Attachment of Lien



- **90 day deadline**: Lien will not attach to property, and is not enforced unless you have filed a lien within 90 days of:
  - Your final furnishing of services or materials
  - The owner filing a notice of completion
- **Lien must be filed with the County Clerk and Recorder**
- You **must** certify that the lien has been served to **each** of the owners
  - Certified mail
  - Personally, with a written acknowledgment

## Attachment of Lien (cont.)



- **Warning:** A lien notice filed before services or materials are substantially furnished is not effective to create a construction lien.
- **Unless** the person claiming the lien was prevented from fulfilling their obligation because of the fault of another person.

# When Does Lien Attach?



- **First visible change:**
  - Lien attaches on the date of the first visible change in the physical condition of the real estate caused by the person furnishing services or materials.
  
- **When filed:**
  - If it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures.

# Priority Among Lien Holders



- **Equal Priority among claimants that contribute to the same improvement**
  - Regardless of who furnished services first
  - Regardless of who filed the lien first
  - If foreclosure sale does not cover all liens, each claimant receives a pro-rata share of proceeds
- **First Come – First Serve**
  - On Construction Liens filed on different improvements
- **Construction Comes First**
  - Construction liens have priority over liens attached after construction

# Priority (cont.)



- **Construction lien has priority over the following items filed before the construction lien attaches:**
  - Interest
  - Lien
  - Mortgage (if mortgage funds are used for construction project)
  - Encumbrance
- **If improvement may be removed, claimant may have the value determined and the work or improvement sold separately up foreclosure**
  - Proceeds go to claimant.



# Bond Issues



- **Federal Projects Governed by The Miller Act**
  - Notice must be give within 90 days of finishing work or providing services
  - Cannot file notice before work is completed, all service provided
  
- **Who has a claim?**
  - Direct contractual relationship with subcontractor – but no direct relationship with general contractor

# Miller Act: Content of Notice



- **Notice for Federal Projects**
  - Must be given to General first
  - Must state amount claimed
  - To whom the material/services were provided
- **Notice must inform prime contractor that supplier is looking for payment of the bill.**
  - Cannot just say you are owed money
  - **MUST** state that the **PRIME CONTRACTOR MUST PAY**
  - Amount should be substantially accurate (don't over inflate)

# Montana Bond Law



- Applies to any contracts with the state, county, city, town or other public body
- NOTICE
  - Must be given within 30 days of first delivery of materials or work
    - ✦ TIP: send notice immediately upon starting work
  - Must be delivered personally or sent via certified mail
  - Sent to general contractor, public entity, and subcontractor that hired you.

# Montana Bond Law



- **Content of Notice**
  - Must be in writing
  - Must state that notice is a “right of action on the security”
  - Must state the person, firm or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies.
  - Must state the name of the subcontractor or agent who placed the order or to whom placed the provender, provisions, materials, or supplies were delivered.
  - Must state that the contractor and the contractors security will be held for the unpaid price if the supplier is not paid.

# Montana Bond Law



- **WARNING:** If No Notice Provided you will have no legal right to sue the general contractor or the bonding company for any labor or materials provided

# Thank You For Attending



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