

# Mechanic's Liens and Your Condominium Unit

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Andrew Felice specializes in assisting and representing clients in the construction industry including property owners, general contractors, subcontractors and material suppliers. Felice's practice

focuses on construction-related contract issues such as negotiating contracts, avoiding potential claims, resolving change order disputes, filing mechanic's liens and pursuing payment bond claims.



Alison Mullins' practice focuses on all aspects of commercial dispute resolution. In particular, she often represents and works with design professionals to (1) assist in preparing,

negotiating and enforcing contracts; (2) assist in risk analysis, evaluation, allocation and management; and (3) assist in negotiation, mediation, litigation and/or arbitration of claims.

**The mechanic's lien laws in each of the three jurisdictions within our area allow a contractor the right to file a mechanic's lien on account of improvements made to real property within a condominium setting.**

**Y**our condominium association embarked upon a much needed and costly renovation of the common areas of your building. At a recent meeting of your association, you learned that a dispute has arisen between your association and the contractor concerning the balance due claimed by the contractor. At the meeting, one of the board members stated that she feared the contractor may file a "mechanic's lien" against the development. At that point, a long and somewhat confusing discussion ensued concerning the mechanic's lien issue, which raised more questions than actual answers.

If this sounds familiar, you and your association are not alone. The scenario described above happens frequently in our area where condominium associations seek to improve their facilities through construction and renovation projects.

## **Mechanic's Lien Basics**

A mechanic's lien provides a contractor, subcontractor or material supplier who has furnished labor or materials adding value to real property a remedy for the collection of its debt that may be due. Mechanic's liens exist only as the result of state laws. Hence, each of the 50 states and the District of Columbia have enacted their own mechanic's lien statutes, which regulate who has lien rights and how such rights must be perfected and enforced. In the Washington metro area, Virginia, Maryland and the district have remarkably distinct mechanic's lien statutes, which must be strictly followed by the claimant to secure the benefits of the lien law.

When properly exercised by a claimant, a mechanic's lien attaches to the property interest of the owner in the real property improved by the claimant's work. As a result, a mechanic's lien can act as a cloud on the ti-

tle of the owner's property (e.g., affect an owner's ability to sell or refinance the property). To take advantage of the statutory mechanic's lien remedy, the claimant must timely take the appropriate actions mandated by the laws of the jurisdiction where the property is located.

In Virginia and the district, the claimant is required to first record a mechanic's lien document in either the land records office of the Clerk of Circuit Court in the county or city where the real property is situated for Virginia projects or with the Recorder of Deeds Office for projects located in the district. In both jurisdictions, the lien claimant is required to mail a copy of the lien document to the owner of record of the property. Next, in these two jurisdictions, the claimant is required to file suit within a specified time period to enforce the mechanic's lien it previously recorded.

In Maryland, a claimant must institute a lawsuit seeking a court order to establish and enforce a mechanic's lien. Unlike Virginia and the district, only subcontractors and suppliers (e.g., parties that do not have a contract with the property owner) are required to provide the owner with written notice before commencing a suit to establish and enforce a mechanic's lien.

Ultimately, in all of the jurisdictions, the claimant must prove at trial that he is owed what he claims and that the lien was properly prepared and recorded. Offering proof of a properly prepared and recorded mechanic's lien is complex, as mechanic's lien statutes mandate strict adherence to technicalities, such as specific time periods, property identification and service of process. Therefore, there may be valid defenses, which you, your condominium association and legal counsel can raise to defeat a mechanic's lien claim. 