

WISCONSIN CONSTRUCTION LIEN LAW CARD

Prepared by Robert J. Kay and Robert A. Mich, Jr.
Kay & Andersen, S.C.

One Point Place, Suite 201, Madison, WI 53719
(608) 833-0077

Website: www.kayandandersen.com

E-mail: law@kayandandersen.com

1. Notice Required to Preserve Lien Rights

- a. No lien notice is necessary to preserve lien rights if the lien claimant is a laborer or mechanic employed by any prime contractor or subcontractor, or the lien claimant contracts directly with the owner and is not a prime contractor, or the improvement involves more than 4 residential living units or is partly or wholly nonresidential in character, or the prime contractor is an owner of the land to be improved.
- b. In all cases other than those identified in sub. (a), a lien claimant must serve a notice on the owner to preserve the lien.
- c. Where the notice is required, a prime contractor must give owner notice in written contract or if there is no written contract, by separate written notice within 10 days after first furnishing or procuring labor, materials, services, plans, or specifications. See # 1 on the reverse side of this card for the form of the notice.
- d. Where notice is required for any lien claimant other than a prime contractor, the claimant must serve the owner with two signed copies of the notice within 60 days after first performing, furnishing, or procuring labor, services, materials, plans, or specifications. See # 2 on the reverse side of this card for the form of the notice.
- e. Any lien claimant other than a prime contractor may give late notice to the owner and protect the lien as to labor, services, materials, plans, or specifications which are performed, furnished, or procured after the late notice is actually received by the owner.

2. Written Notice of Intent to File Lien and Filing of Lien

- a. Owner must be served with written notice of intent to file lien at least 30 days prior to the filing of the lien. See # 3 on the reverse side of this card for the form for a written notice of intent to file lien.
- b. Lien must be filed within six months from date of last furnishing or procuring labor, materials, services, plans, or specifications, but no sooner than 30 days after the giving of written notice of intent to file lien.
Lien claim is filed in the office of the Clerk of Circuit Court of the county in which the improved property is located, and copies of the lien rights notice (if any) and the notice of intent to file lien must be attached to the lien claim.

3. Commencement of Lien Foreclosure Action

- a. A lien foreclosure action must be brought and summons and complaint filed within two years of the date the lien claim was filed. After filing the complaint, the claimant must file a lis pendens with the Register of Deeds in each county in which the property is located.
- b. The action may be to foreclose the lien and also to obtain a money judgment in the event the lien is worthless.
- c. After a lien foreclosure judgment is obtained, the real estate is sold by further legal proceedings. Among several competing lien claimants, if insufficient proceeds exist, they share on a prorata basis. No priority is given to the lien claimant who files first.

4. Lien Waivers

- a. Lien waivers are valid whether or not payment is given for them. Lien waivers waive all lien rights of a particular portion of the labor, services, materials, plans, or specifications.
- b. A lien claimant is entitled to refuse to furnish a lien waiver unless paid in full for the labor, services, materials, plans, or specifications to which the waiver relates. However, once the waiver is signed and released, it is valid and binding whether or not payment is made.
- c. A lien waiver may be limited in scope, although any ambiguity in a lien waiver will be construed against the party signing it.

5. Substitution of Bond for Construction Lien

- a. A contract between an owner and a prime contractor may contain a provision for the substitution of a bond for lien rights.
- b. Any claimant may commence an action against the prime contractor and bonding company not later than one year after completion of the contract for the construction of the improvement, if the subcontractor or materialman previously notified the prime contractor in writing within 60 days after first providing labor or materials that the subcontractor or materialman was providing labor or materials on the project. Such notice is not required for work up to \$5,000, claims brought by employees, or projects where the subcontractor, supplier, or service provider was listed in a contract with the prime contractor.
- c. On any project constructed pursuant to a contract and payment bond, any person furnishing labor, materials, services, plans, or specifications to any prime contractor or subcontractor shall have a lien on the money due the prime contractor or subcontractor if the lienor, before payment is made to the prime contractor or subcontractor, serves a written notice of the lienor's claim on the owner and any mortgage lender furnishing funds for the construction. The owner and lender must then withhold a sufficient amount to pay the claim. A copy of the notice must also be served by the lienor upon the prime contractor or subcontractor within 7 days after service of the notice upon the owner and lender. The prime contractor or subcontractor may dispute the claim by serving written notice on the owner and the lien claimant within 30 days, and if no dispute is made, the amount claimed is paid over to the lien claimant by the owner and charged to the prime contractor or subcontractor.
- d. If the prime contractor or subcontractor does not dispute the claims and the total of lien claims exceeds the sum due the prime contractor or subcontractor, owner may pay out money proportionately to lien claimants unless an action is started within 20 days after the owner serves written notice of its intention to issue proportionate payments to all lien claimants and the prime contractor or subcontractor.

6. Void Provisions in Construction Contracts

Provisions in construction contracts are void if they:

- a. Waive a contractor's rights to a construction lien or a claim against a payment bond before the lienholder has been paid,
- b. Make the construction contract subject to the laws of another state or require dispute resolution in another state, or

- c. Contain a provision making payment to a prime contractor a condition precedent to a prime contractor's payment to a subcontractor or supplier (pay-if-paid). However, a provision merely delaying a payment to a subcontractor until the prime contractor receives payment from the owner (pay-when-paid) is permitted.
- 7. Public Improvements (Lien Claims on Public Funds Due Prime Contractor)**
- a. Lien notice must be served on a clerk or treasurer of municipality or governmental agency responsible for the construction of the project, before payment is made to prime contractor. A copy of the notice must be served upon the prime contractor at the same time.
 - b. If prime contractor disputes the claim, action must be brought within three months from the time notice is served, otherwise the lien claim is barred.
 - c. If the prime contractor does not dispute claims and the total of lien claims exceed sum due prime contractor, governmental official shall pay out money on a proportional basis to lien claimants unless an action is started within 20 days after the official mailed notice to all claimants regarding the proposed distribution.
- 8. Suit on Bond in Public Improvements**
- a. A subcontractor, supplier, or service provider may sue prime contractor and sureties upon the bond for unpaid claims but action must be brought within one year after completion of work under the contract, provided the subcontractor, supplier, or service provider previously served the prime contractor with written notice of its work within 60 days after first performing, furnishing, or procuring labor, services, materials, plans, or specifications.
 - b. Some surety contracts require commencement of action before one year after completion of work. A copy of the surety bond should be obtained and complied with.
- 9. Federal Public Improvements (Miller Act, Title 40, Sections 3131 and 3133)**
- a. Performance and payment bonds are required on all United States contracts of more than \$100,000.
 - b. Suit may be brought against surety after expiration of 90 days from the date of last furnishing labor or materials, but suit must be commenced within one year of the date that labor or material was last furnished.
 - c. A sub of a subcontractor or materialman of a subcontractor must give written notice to the prime contractor furnishing the payment bond within 90 days of last furnishing labor or materials in order to preserve action.
- 10. Service of Notices**
- All notices must be in writing and served by personal delivery, delivery by registered or certified mail, or another means of delivery in which the recipient makes written confirmation of the delivery. Service upon the state of Wisconsin must be performed by registered or certified mail.

- 1. Prime Contractor Notice -**
- A prime contractor's notice of lien rights, whether included in a written contract or separately given within 10 days of first furnishing or procuring labor, materials, services, plans or specifications, shall be in at least 8-point bold type, if printed or in capital letters, if typewritten. It shall be given to the owner or the owner's authorized agent in substantially the following language: *"As required by the Wisconsin construction lien law, claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on owner's land may have lien rights on owner's land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned claimant, are those who contract directly with the owner or those who give the owner notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans, or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the owner and the owner's lender, if any, to see that all potential lien claimants are duly paid."*
- 2. Subcontractor, Supplier or Service Provider Notice -**
- Every person other than a prime contractor shall have a lien only if within 60 days after performing, furnishing, or procuring the first labor, materials, services, plans, or specifications, the claimant gives written notice, in two signed copies, to the owner or the owner's authorized agent. The notice shall be in substantially the following language, with the blanks filled in: *"As a part of your construction contract, your prime contractor or claimant has already advised you that those who perform, furnish, or procure labor, services, materials, plans, or specifications for the work will be notifying you. The undersigned first performed, furnished, or procured labor, services, materials, plans, or specifications on . . . (give date) for the improvement now under construction on your real estate at . . . (give legal description, street address, or other clear description). Please give your mortgage lender the extra copy of this notice within 10 days after you receive this, so your lender, too, will know that the undersigned is included in the job."*
- 3. Notice of Intent to File Lien -**
- No lien claim may be filed or action brought unless, at least 30 days before timely filing of the lien claim, the lien claimant serves on the owner a written notice of intent to file lien claim, in substantially the following language: *"You are hereby notified that the undersigned lien claimant intends to file a lien claim under the Wisconsin Construction Lien Law for labor, materials, services, plans, or specifications furnished in connection with the work of improvement done or being done on your real estate at (give legal description, street address or other clear description), said improvement being (describe briefly) and being done pursuant to a contract between (identify prime contractor and owner). Said lien claim of the undersigned is in the amount of \$_____. The undersigned last furnished labor, materials, services, plans, or specifications for said improvement on your land on (date) and intends to file a construction lien claim pursuant to § 779.06 of the Wisconsin Statutes, on a date no later than six months after said date of last furnishing labor, materials, services, plans, or specifications, and no earlier than 30 days after you receive this notice, unless you pay and satisfy said lien claim prior thereto."*

The user of this card is encouraged to consult with his or her own attorney regarding its contents.