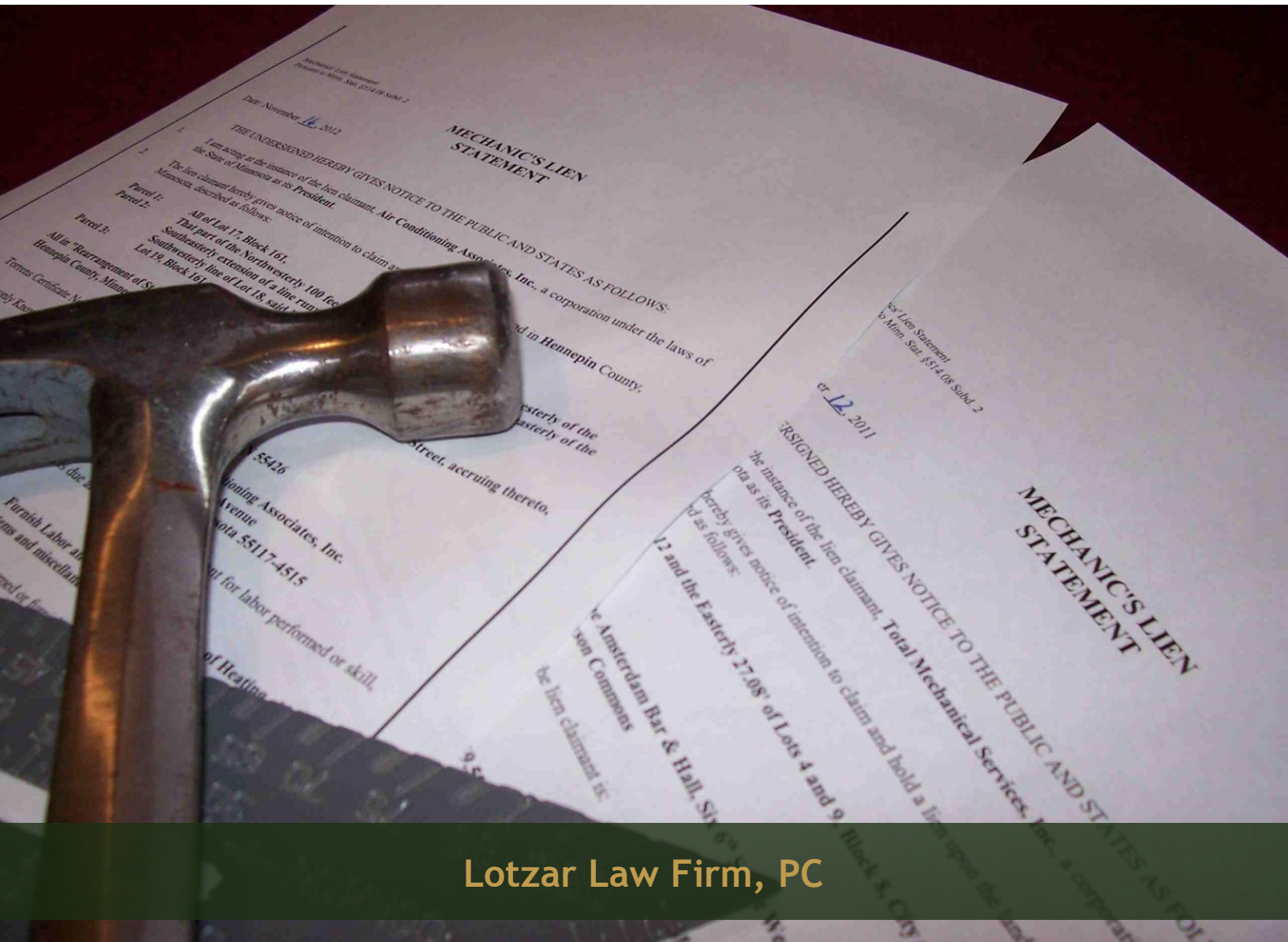


WHAT IS A MECHANIC'S LIEN?

Subcontractors Must Understand How Mechanic's Liens Work in Order to Protect Themselves from Nonpayment by General Contractors





A mechanic's lien is a claim on property made by a contractor who has performed work on the property. A contractor is given the right under Arizona law to file a mechanic's lien for unpaid work. The contractor will need to record his interest in the real

property in the county where the work was done.

Subcontractors must understand how mechanic's liens work in order to protect themselves from nonpayment by general contractors. Both general contractors and buyers/owners also need to know the process and laws related to mechanic's liens in order to protect their legal interests. An experienced real estate attorney can provide representation to general contractors, subcontractors and building owners in drafting construction contracts to protect their interests if and when mechanic's liens are filed on property.

UNDERSTANDING A MECHANIC'S LIEN

A mechanic's lien gives a contractor a security interest in real property. A contractor who performs work may record a mechanic's lien to evidence his interest in real property and improvements upon the property. The recorded lien serves as a pre-judgment remedy that allows contractors to assert a claim against an owner's property.



A contractor, certain materials suppliers and a limited number of other professionals may use a mechanic's lien to protect their interests when there is no privity of contract. Mechanic's liens are an important legal exception to the standard rule of contract law that requires privity.

Generally, only parties who sign a contract are bound by the contract and are vested with legal rights by the contractual agreement. These parties are said to be in privity. For example, an owner and a general contractor are the two parties who are in privity to a construction contract. The owner and the general contractor negotiate the contract terms and sign the contractual agreement. Because both are in privity to the contract, if either the owner or the contractor fails to fulfill their obligations, there are legal remedies. The owner or contractor can sue the nonperforming party for breach of contract to obtain compensation.

Subcontractors, however, are not parties to the contract and are not in privity with the owner. This means that there is no common law right for a subcontractor to sue an owner if the subcontractor does work and is not paid

for it. Suppliers who provide material are also not in privity to the contract and would not have legal standing to make a breach of contract claim against an owner.

The laws requiring privity to seek remedies for nonperformance of a contract can put suppliers and subcontractors at significant risk because they may make improvements or provide materials for property improvements without having a remedy if they are not paid. A mechanic's lien corrects this problem.

Mechanic's liens eliminate the need for privity and make it possible for subcontractors and suppliers to act against an owner's property. A person who performs work on a property is able to place a lien on the property equal to the materials supplied or the fair market value of the work performed to improve a property. The mechanic's lien itself does not result in a monetary judgment for the subcontractor or lienholder paid by the owner, but instead gives the worker or supplier a legal interest in the owner's property. The lienholder has a limited amount of time to sue the owner and foreclose on the lien, however, or it will be lost forever.

DO I HAVE LIEN RIGHTS?

The rules and requirements for mechanic's liens vary by state. In Arizona, except for owner-occupied dwellings or when a "lien discharge" payment bond is recorded, every person who labors or who provides a professional service in connection with a property has lien rights, as do those who provide materials. This can include architects with written agreements with a property owner.

Those who have lien rights in Arizona include:

- Architects
- Companies or individuals who provide machinery, materials, tools or fixtures in connection with construction, alteration or repair of property
- Engineers
- Land surveyors
- Persons rendering agricultural services
- Contractors
- Subcontractors
- Builders

Commercial tenants in possession and other individuals or corporations with responsibility for construction, alteration or repair of a property may enter into enforceable contracts on behalf of the owner. These contracts make the owner liable for the reasonable value of labor or material and vest lien rights in subcontractors or suppliers.



Those who are eligible for a mechanic's lien must understand the steps require to claim a lien. Requirements include providing notice to the owner or the reputed owner; the contractor; and construction lenders.

An experienced attorney can help those who are entitled to mechanic's liens to perfect their security interest in property and to understand their legal rights. Call today for assistance with issues regarding mechanic's liens or construction contracts.

About the Author

Lotzar Law Firm, P.C. was founded in 2005, and serves clients throughout the U.S. We pride ourselves on the level of service we provide our clients and are determined to see each project through to positive results.

In addition to bringing a legal expertise to the table, we offer clients sound ideas and invaluable advice that enhances their business. One of our greatest attributes is our ability to approach projects from a business-owner perspective. Rather than narrowing in on the setbacks of a challenge and informing clients of what stands in the way, we prefer to seek innovative ways to transcend issues and create a better path for clients. With an unparalleled savvy in developing modern methods of financing, we can present you with viable and efficient options.

Our diversified portfolio of clients is comprised of entrepreneurs, real estate developers, contractors and property managers. We also do business with numerous nonprofit clients including Chicanos Por La Causa, Inc.; Tiempo, Inc.; and The Industrial Development Authority of the City of Tucson, Arizona.

We work in a team-based environment, supported by a skilled and caring staff, eager to answer your questions and provide you with consistent access to your team. Whether your needs are small or large in scope, we look forward to working with you.

Lotzar Law Firm, P.C.
7150 East Camelback Road, Suite 455
Scottsdale, AZ 85251
Phone: (480) 905-0300
Fax: (480) 905-0321
Email: info@lotzar.com
Website: www.lotzar.com