

August 6, 2010

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We Don't Need to Know About Construction Liens, Because We Are Not Building Anything

But are you remodeling or renovating anything? Are you installing any equipment? Are you doing any landscaping, repairs or paving?

Contrary to common perception, construction liens are not only an issue for new facilities. Construction liens can arise as a result of equipment installation, improvements, routine repairs, excavation and even landscaping or paving projects. Under Michigan law, an unpaid tradesman who supplies any of these, or certain other services, may be entitled to claim a construction lien against the real property where the services were supplied. Property owners like hospitals, physician practices and other health care entities that plan on making any renovations, repairs and improvements, or entering into equipment leases or purchases should be aware of the circumstances under which a lien may arise and how to manage or avoid them.

Even a responsible property owner that makes timely payments could be subject to an unanticipated construction lien and the onerous process associated with remedying it. For example, an owner of real property that orders a new piece of medical equipment and pays the vendor directly could be subject to a lien if the vendor hires contractors, electricians or mechanics to complete the installation and fails to pay the contractors in full. Similarly, subcontractors retained by an independent lead developer may remain unpaid despite the property owner's payment to the lead developer. An unpaid tradesman has the right to file a construction lien, which may attach to the owner's interest in the real estate. The holder of the lien can then file a lawsuit to enforce the lien and begin proceedings to foreclose on the real estate. Property owners usually can remedy a construction lien prior to foreclosure, but proceedings to manage and alleviate a construction lien can be quite costly and time consuming.

What can you do to prevent a construction lien from attaching to your real estate?

Understanding and complying with Michigan law on construction liens can help property owners minimize the risk of liens and avoid costly future proceedings. For example, before renovations or improvements begin, an owner should file a document known as a "notice of commencement" with the office of the registrar of deeds for the county in which the property is located and post a copy of the

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notice at the job site. Prior to making payment, a prudent owner also should obtain sworn statements listing everyone working on the job. Lastly, as payments are made, contractors and subcontractors should be asked to execute a waiver of lien to acknowledge payment for completed work and surrender any rights to enforce a lien.

Click here for a "Simplified Guide to Construction Lien Law in Michigan" (<http://www.honigman.com//files//upload/July 2010-Construction Lien Alert - HC.pdf>).

For more detailed information regarding the circumstances under which liens can be imposed and how to manage or avoid them, contact Stuart Teger at 313.465.7576 or steger@honigman.com or any member of Honigman's Health Care Department.

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