

Insights

Preserving (or Defeating) Mechanic's Lien Rights Amid COVID-19

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While many construction projects across the state remain active – albeit with social-distancing and other measures in place to prevent the spread of COVID-19 – many others are temporarily suspended or have altogether been scrapped. For these projects, all parties should be mindful of the importance of preserving their rights pursuant to the contract documents and Indiana law, including Indiana's Mechanic's Lien Act.

For Contractors, Subcontractors, Suppliers, Materialmen, and Equipment Lessors:

Besides providing proper contractual notices following work stoppages or suspension,¹ Indiana contractors, subcontractors, suppliers, materialmen, and other entities must keep in mind the deadline for filing a notice of intention to hold a mechanic's lien under Indiana Code § 32-28-3-3 (the "Notice Statute"). The Notice Statute requires those seeking to acquire a lien to record in duplicate a sworn statement and notice of the person's intention to hold a lien on the property for the amount of the unpaid claim for labor, services, supplies, material, and the like.

For nearly all commercial property and projects, the deadline for recording the notice of intention is no later than ninety (90) days after performing labor or furnishing materials or machinery. Indiana Code § 32-28-3-3(a). As to the notice of intention's contents, the notice must contain certain information, including but not limited to: amount claimed, the property owner's name and address, and the legal description of the property.

Courts applying the Mechanic's Lien Act have held generally that ancillary tasks incidental to the contract do not mark the last day of work for the purpose of triggering the ninety-day filing deadline. **That means careful attention must be paid to when the clock actually starts ticking on the notice deadline. If a lien is not timely recorded or is otherwise defective, it generally cannot be revived, and the would-be-claimant misses out on recovery of statutory attorneys' fees and other protections not typically afforded by contract to contractors, subcontractors, suppliers, materialmen, and others.**²

For Owners:

When a lien has been recorded against real property, an owner has several remedies besides contractual defenses. For example, an owner can issue a notice to commence suit under Indiana Code § 32-28-3-10. If the holder of the



lien fails to file an action to foreclose the lien within thirty (30) days, the lien is void.

Additionally, an owner should carefully analyze the lien to determine if the lien amount is intentionally overinflated, does not include necessary information, or is otherwise improper. If any of these situations occur, additional defenses and causes of action against the person holding the lien are likely available, including but not limited to voiding of the lien.

With projects stalled, suspended, or canceled due to COVID-19, all parties involved in the construction process need to remain cognizant of lien rights and lien-avoidance. While litigation-avoidance and all parties working towards a common goal are the preferred method for dispute resolution, sometimes that is simply not possible, and parties must ensure their rights are protected.

Krieg DeVault is committed to helping you and your business during these unprecedented times. If you have any questions, comments or concerns regarding this Alert or mechanic's lien rights, please feel free to reach out to **Christopher W. Bloomer** or a member of our **Construction Law Industry Group**.

[1] <https://www.kriegdevault.com/blog/1533-covid--every-construction-owner-entity-should-do-right-now>.

[2] *Capital Drywall Supply, Inc. v. Jai Jagdish, Inc.*, 934 N.E.2d 1193, 1199 (Ind. Ct. App. 2010) (because the mechanic's lien statutes are in derogation of the common law, the statutes are generally strictly construed).