

Mechanic's Liens

Quick Reference Guide



	Virginia	Maryland	DC
Statute/Rule	Va. Code § 43-1, et seq.	Md. Code, Real Property, § 9-101, et seq.; Md. Rule 12-301, et seq.	D.C. Code § 40-301.01, et seq.
How lien initiated	File memorandum of lien at any time after work has commenced/material furnished, but not later than 90 days from the last day of the month in which labor/material was last provided, and in no event later than 90 days from the time the building is completed or work terminated	File petition to establish lien within 180 days after the work is finished or materials furnished (as relates to claimant's work, not overall completion of the project) (see separate time limit for subcontractor lien below)	File notice of intent in land records within 90 days after the earlier of completion or termination of the project; this notice of intent must be given to the owner within 5 days of the recording
Where to file	Clerk's office in county where property is located	Clerk's office in county where property is located	DC Land Records (Recorder of Deeds)
Items of note	May not include sums for labor/materials furnished more than 150 days prior to the last day on which labor/materials were last provided (excluding retainage)	In the context of building improvements, the (overall) value of such improvements must be 15 percent or greater	Contractor's lien can be in the amount of the contract or the "reasonable value of the project"; sub-contractors are not entitled to lien (must have contracted directly with contractor)
Can lien amount include retainage?	Yes	Not established by statute, but case law would suggest that retainage is an acceptable element of a lien	Yes ("or to become due, but unpaid")
Can lien amount include sums not yet paid by owner?	Yes	Not established by statute, but claimant should be entitled to claim for any work/materials furnished	Yes ("or to become due, but unpaid")
Subcontractor lien	May not exceed the amount for which the owner is indebted to the general contractor at the time of the memorandum of lien is filed	Must provide written notice to owner within 120 days after performing work or furnishing materials (this notice must precede the petition to establish)	No lien where owner has paid contractor all amounts due; however, if owner makes payment while on notice of a sub lien, that payment will be deemed to have been made in bad faith
Does the lien relate back to the claimant's start of work?	Yes	No - lien is established by judge at show cause hearing and does not relate back to the claimant's start of work	Yes
Time limit on suit to enforce	Suit must be filed within 6 months from the time the lien memorandum is recorded or 60 days from the time the building is completed or work terminated, whichever occurs last	Petition to establish may be styled as a petition to establish and enforce; nonetheless, enforcement must commence within 1 year from the date the petition was filed (enforcement proceedings are commenced by moving the court for a show cause hearing)	Suit must be filed within 180 days of the date the notice of intent is recorded in the land records (thereafter a notice of pendency must be filed in the land records within 10 days)
Can party waive lien rights?	Yes	Lien rights cannot be waived in advance, e.g., in a contract, but lien waivers as a condition of payment are acceptable if clear and unambiguous	Yes, but lien waiver in the prime contract is not effective against subcontractors
Priority of mechanic's lien in relation to other encumbrances	Mechanic's lien has priority over preexisting encumbrances (except that upon sale the value of the land shall be used to satisfy pre-existing liens/encumbrances with the residual to the lien claimant)	No lien exists if prior to establishment legal title has been transferred to a bona fide purchaser for value; lien does not relate back, so encumbrance established prior to establishment of lien takes priority over lien	Priority over all encumbrances or other liens that attach "subsequent to the commencement of the work upon the building" if in place before work begins; but no priority as to a mortgage or deed of trust given to secure the purchase money for the land
Priority among liens	Sub-subcontractor lien preferred to that of subcontractor lien; subcontractor lien preferred over general contractor lien	Sale proceeds are distributed accordingly to priority where funds are sufficient to satisfy all liens; where sale proceeds are insufficient, amount proportionate to lien claims are distributed to all lien claimants	Subcontractors recover ahead of contractor; subcontractors' recovery based on priority, but where sale proceeds are insufficient, subs recover ratably
Bonding off the lien	(§43-70 and §43-71) Bond or money, in twice the amount of the lien plus costs of suit, may be paid into court through a petition before or after suit is initiated	(§9-106) Court's interlocutory order will establish bond amount (generally in the amount of the lien) and owner or general contractor may petition for release of lien	(§40-303.16 and .17) Payment in the amount of lien plus costs, or undertaking by 2 or more sureties; petition may be brought prior to initiation of suit