

Law: Owner and lessee of real property must be served with a mechanic's lien

The lessee of real property who hires a contractor to perform construction work in its leased space has an obligation to pay the contractor for that work. When the lessee does not pay the contractor, the contractor may file a mechanic's lien against the real property to secure payment for its work.

The contractor may then serve the fee simple owner with the mechanic's lien, but it may fail to serve the lessee with a copy of the lien. The contractor's failure to serve both the fee simple owner and the lessee with the lien, however, renders the lien defective and subject to cancellation by the court.

In order to avoid cancellation of a lien, under the facts stated above, a mechanic's lien must be served on both the fee simple owner and the lessee of real property. Pursuant to Lien Law §4(1), a lien extends "to the owner's right, title or interest in the real property and improvements, existing at the time of filing the notice of lien..."

Lien Law §2(3) defines an owner to include both the owner in fee simple of real property and the lessees of that real property. As such, a leaseholder is considered an owner within the definition of Lien Law §2(3). Moreover, a leasehold is a lienable interest, and the tenant is an "owner" of its leasehold under Lien Law §2(3).

Under Lien Law §11, the owner of real property must be served with a notice of mechanic's lien, otherwise the lien must be canceled and discharged of record. Not only does Lien Law §11 require a party to serve a notice of lien upon the owner, but proof that the lien was served on the owner must be filed with the county clerk where the real property is located.

A court has no discretion if a party fails to comply with Lien Law §11, and must discharge the lien, when a party fails to either serve the notice of lien on the owner or fails to timely file proof of service for the lien with the county clerk. Thus, it is imperative that a contractor who is contracted directly by a tenant to perform work, in filing its mechanic's lien, serve both the fee simple owner and the tenant with the lien to its avoid cancellation.



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