

# Contractors – Know Your Lien Rights

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Preserving lien rights can be important in any type of economy, but is even more important when the economy is uncertain. Taking the following important steps can protect your lien rights on projects located in Wisconsin.

**Step 1 – Give Your Initial Lien Notice.** On wholly residential projects involving up to four family living units, contractors who have a contract directly with the owner (i.e., prime contractors) who will contract with any subcontractors or suppliers for labor or materials on the project have to provide a statutory notice using substantially the following language:

“As required by the Wisconsin construction lien law, claimant hereby notifies owner that persons or companies performing, furnishing, or procuring labor, services, materials, plans, or specifications for the construction on owner’s land may have lien rights on owner’s land and buildings if not paid. Those entitled to lien rights, in addition to the undersigned claimant, are those who contract directly with the owner or those who give the owner notice within 60 days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, owner probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. Claimant agrees to cooperate with the owner and the owner’s lender, if any, to see that all potential lien claimants are duly paid.” Wis. Stat. § 779.02(2)(a).

If a prime contractor has a written contract with the owner, the notice has to be included in or attached to the contract. If a prime contractor’s contract with the owner is not written, the notice has to be “served” on the owner within 10 days after first providing labor, services, materials, plans or specifications for the project (whether by the prime contractor or any of its subcontractors or suppliers). “Serve” or “served” under the lien law means either personal delivery, delivery by registered or certified mail, any other means of delivery where there is written confirmation of delivery, or service consistent with how you serve a lawsuit.

Regardless of whether a prime contractor’s notice is in a contract or separately served on the owner, the law requires the notice to “be in at least 8-point bold type, if printed, or in capital letters, if typewritten...” Wis. Stat. § 779.02(2)(a). Whether any particular contract or notice form would be considered “printed” or “typewritten” is always a question, so the best practice is to format the notice in at least 8-point type, all capitals, and bold. That way, you cover your bases.

If you do not have a contract directly with the owner (i.e., you are a subcontractor or supplier) on a wholly residential project involving up to four family living units, the timing and content of your initial lien notice will be different. A subcontractor or supplier has to serve (same service methods as noted above) two signed copies of a subcontractor identification notice on the owner within 60 days after first providing labor or materials on the project, using substantially the following language (filling-in the blanks as appropriate):

“As a part of your construction contract, your prime contractor or claimant has already advised you that those who perform, furnish, or procure labor, services, materials, plans, or specifications for the work will be notifying you. The undersigned first performed, furnished, or procured labor, services, materials, plans, or specifications on .... (give date) for the improvement now under construction on your real estate at .... (give legal description, street address or other clear description). Please give your mortgage lender the extra copy of this notice within 10 days after you receive this, so your lender, too, will know that the undersigned is included in the job.” Wis. Stat. § 779.02(2)(b).

There are no specific font size or similar format requirements for a subcontractor identification notice, but the best practice is to use a font size and format that make the notice stand out.

A prime contractor who was required to give an initial notice but did not do so may still be able to file a lien as long as all of its subcontractors and suppliers were paid and did not give subcontractor identification notices, or as long as all subcontractors and suppliers have waived their lien rights in full.

If a subcontractor identification notice was required but not given on time, a late subcontractor identification notice will save lien rights only for labor or materials provided after the owner actually receives the notice.

Initial notices and subcontractor identification notices are not required on wholly residential projects involving more than four family living units or on projects that are partly or wholly nonresidential.

**Step 2 – Give Your Notice of Intent to File Claim for Lien.** A written notice of intent to file claim for lien has to be given on all projects by all types of lien claimants (prime contractors, subcontractors and suppliers). The notice of intent has to be served on the owner at least 30 days before you can file a claim for lien, and “shall briefly describe the nature of the claim, its amount and the land and improvement to which it relates.” Wis. Stat. § 779.06(2).

Because a claim for lien has to be filed within 6 months after the last date you provided labor or materials on the project, that means a notice of intent has to be served within approximately 5 months of the last date you provided labor or materials on the project. Given intervening weekends and potential holidays, it is best practice to plan for at least a few extra days to make sure your notice of intent is served on time. You will have no lien rights if you do not timely serve the notice of intent.

**Step 3 – File Your Claim for Lien.** As noted above, a claim for lien has to be filed within 6 months after the last date you provided labor or materials on the project.

A claim for lien has to be signed by the lien claimant (or its attorney), and “shall contain a statement of the contract or demand upon which it is founded, the name of the person against whom the demand is claimed, the name of the claimant and any assignee, the last date of performing, furnishing, or procuring any labor, services, materials, plans, or specifications, a legal description of the property against which the lien is claimed, a statement of the amount claimed and all other material facts in relation thereto.” Wis. Stat. § 779.06(3). Copies of any required initial lien notice/subcontractor identification notice and the notice of intent also have to be attached to the claim for lien.

A claim for lien gets filed with the circuit court in the county where the project is located, and there is a \$5.00 filing/docketing fee. You then have to serve a copy of the filed claim on the owner within 30 days after the lien was filed.

In order to enforce a claim for lien, you will have to file a lawsuit to foreclose the lien within 2 years from the date you filed the lien.

Different notice, claim, and other rules apply on private bonded projects and public projects.

A claim for lien does not guarantee payment, but it does provide a measure of security for payment depending on the value of the property and the existence of other liens that may have priority. Notices of intent and claims for lien also often provide incentives for owners to pay.

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