

PROTECT YOUR LIEN RIGHTS BEFORE THE PROJECT BEGINS

by DANIEL MURDOCK

CLAIMS OF LIEN ARE COMMON ISSUES in any construction dispute. Filing claims of lien can often be complicated and sometimes tricky, especially for contractors and subcontractors performing work in multiple states. Although lien law greatly varies from state to state, several states in the Southeast have specified certain steps that parties must take, before the project begins or soon after starting work, to protect the project from liens of unknown sub-subcontractors or to protect their lien rights.

For prime contractors, they can often take certain steps, such as filing a notice of commencement, to protect the Project from liens of unknown sub-subcontractors. Also, subcontractors or sub-subcontractors' right to a claim of lien can often be affected by whether or not that party sent or filed a notice after starting work on the project.

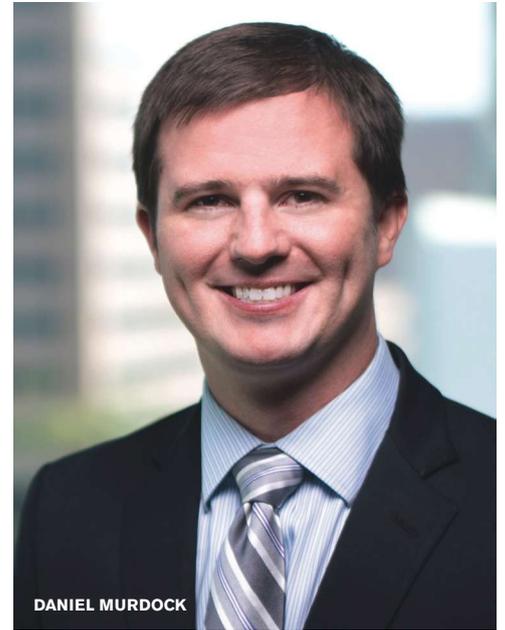
For example, in Georgia, a prime contractor, or the owner, may file a Notice of Commencement in the county property records within 15 days after the contractor commences work on the project. The prime contractor, or the owner, must also post a copy of the Notice of Commencement at the project site and send a copy of the Notice of Commencement to any subcontractor that requests a copy of such notice within 10 days after receiving the subcontractor's request. Even if a Notice of Commencement is filed, the sub-subcontractor can still preserve its lien rights by sending a Notice to Contractor within 30 days of beginning work. If the prime contractor, or the owner, correctly follows the steps to perfect the Notice of Commencement and a sub-subcontractor does not timely provide a Notice to Contractor, then any lien filed by such sub-subcontractor is invalid. Although the procedures are different, North Carolina and South Carolina have notice of commencement and notice to contractor concepts that are relatively similar to Georgia.

In Florida, a subcontractor must serve the owner with a Notice to Owner, which is a

statutory form, within 45 days of commencing work on the project. A sub-subcontractor must adhere to a similar notice procedure. If a subcontractor or sub-contractor does not correctly provide the Notice to Owner, then any lien filed by that subcontractor or sub-subcontractor is invalid.

This article serves as a reminder that prime contractors and subcontractors must verify and follow the particular procedures required for the particular state in which the project is located before beginning work on the project. To wait longer risks losing your lien rights. As the old axiom goes, "an ounce of prevention is worth a pound of cure." This is especially true when dealing with liens.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.



DANIEL MURDOCK

Mr. Murdock is an attorney with Bradley Arant Boult Cummings LLP. He focuses his practice on representing various clients throughout the construction industry, including owners, design professionals, general contractors, and subcontractors, with drafting their construction contracts, providing project counsel, and resolving construction disputes.

PRIME CONTRACTORS AND SUBCONTRACTORS MUST VERIFY AND FOLLOW THE PARTICULAR PROCEDURES REQUIRED FOR THE PARTICULAR STATE IN WHICH THE PROJECT IS LOCATED BEFORE BEGINNING WORK ON THE PROJECT. TO WAIT LONGER RISKS LOSING YOUR LIEN RIGHTS.

Bradley
Bradley Arant Boult Cummings LLP

Birmingham Office
Phone: 205.521.8000
Email: dmurdock@bradley.com