

I haven't been paid for work that I did to improve real estate. Can I file a mechanic's lien and will I get paid if I do?

Mechanic's liens are a right created by statute to allow contractors, sub-contractors and certain material suppliers to claim a lien on real estate they improved. A mechanic's lien can require the claimant to be paid before the property is sold or allow the claimant to obtain the property. There are different rules for residential and commercial real estate lien claims. There are also different rules for residential property if it is new residential property or existing residential property. A lien claim does not guarantee that a contractor will get paid. Payment depends in part on the priority of the lien (are other liens ahead of the mechanic's lien), whether the lien was properly filed and whether the lien was timely foreclosed. To establish a lien a very particular set of rules have to be followed within time limits set by the various statutes.



The procedure to obtain a mechanic's lien differs slightly in each state. Generally, to obtain a lien the person claiming the lien has to file the mechanic's lien with all the required information and supporting documents in the county where the property is located within the time allowed by the statute. In Kansas that is initially 3 or 4 months, although it can be extended, depending on the type of claimant. In Missouri it is generally 6 months. In both states a lawsuit has to be filed to foreclose the lien. In Kansas it must be filed within one year of the lien filing. In Missouri it must be filed within 6 months of the lien filing.

The lien of all workers on the project relate back to the date of first work. If there is more than one lien claimant the claimants may have to share pro rata in any sale proceeds. If there is a lien that was on the property prior to the work it may have to be paid before a claimant receives money - such as a first mortgage. These are technical filings and an attorney should be consulted well in advance of the deadlines to avoid mistakes and to assist in determining whether a lien filing will aid in getting the claimant paid.

