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NOTICE OF COMMENCEMENT OF WORK IN MECHANICS' LIEN LAWS

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You asked about states that provide for the filing of a notice of commencement of work when providing mechanics' lien rights.

SUMMARY

We found several states with mechanics' lien laws that require or allow an owner or other party to file a notice of commencement of work when contracting for improvements to real property. These states include Florida, Georgia, Michigan, Nebraska, Ohio, South Carolina, and South Dakota. Utah requires a notice of commencement only for government projects.

In these states, a notice of commencement is generally filed before the project begins or within a specified number of days of project commencement. Generally, in states with notice of commencement laws, when a notice is filed, mechanics' liens are effective from the filing of the notice, although there are exceptions. States with notice of commencement statutes generally require the notice to describe the property and provide the names and addresses of the property owner, contractor, and others connected to the project (e.g., some states require the lender's name and address). Some require the notice to describe the proposed improvement. Some also require a statement about lien rights and owner requirements and possible liabilities.

States with notice of commencement statutes generally require them to be both filed and posted on the work site. Some of these states require the owner or lessee contracting for the improvement to provide the notice to specified people connected with the project, either automatically or upon request. Contractors or subcontractors must also provide the notice to specified others in certain states.

Connecticut's mechanics' lien law does not provide for the filing of a notice of commencement of work. In 2011, Raised Bill 6644 would have created a process for the holder of a mechanics' lien to establish priority for the lien, effective upon filing a notice of commencement. The bill received a public hearing but no further action.

EXAMPLES OF STATES WITH NOTICE OF COMMENCEMENT LAWS

Below, we summarize laws regarding notices of commencement in the states listed above. Please note that these descriptions do not include all details of the applicable law or all ways that a notice of commencement may affect the mechanics' lien process. These descriptions also do not include all aspects of the specific requirements for what must appear on the notices themselves (e.g., whose name and address must be listed on the notice). If you would like more information about particular states or about particular aspects of the process, please let us know.

Florida

Florida's construction lien law generally requires the owner or owner's agent to file a notice of commencement for projects with a contract price over \$2,500. The notice must be filed in the clerk's office, before the work begins.

If the contract between the owner and contractor states a completion time of greater than one year, the notice of commencement must state that it is effective for a year plus any additional period of time. Payments the owner makes after the notice of commencement expires are considered improper. A copy of any payment bond must be attached to the notice when it is recorded (failure can negate an exemption from certain other provisions).

The notice is effective upon its filing. If the work described in the notice is not begun within 90 days from the notice's recording, the notice is void. The law specifies that the recording of the notice does not itself constitute a lien on the property, but gives constructive notice that claims of lien under the construction lien law may be recorded and may

take priority as provided by law. The posting of a copy of the notice does not constitute a lien, cloud, or encumbrance on real property or constitute actual or constructive notice of any of them.

The following statement must appear on the notice (the statement is in all capital letters in the statute):

Warning to owner: any payments made by the owner after the expiration of the notice of commencement are considered improper payments under Chapter 713, Part 1, Section 713.13, Florida Statutes, and can result in your paying twice for improvements to your property. A notice of commencement must be recorded and posted on the job site before the first inspection. If you intend to obtain financing, consult with your lender or an attorney before commencing work or recording your notice of commencement.

The owner must post the notice at the construction site. The law also provides a procedure for amending the notice.

The law requires a lender to record the notice of commencement before disbursing funds to the contractor. The lender's failure to record the notice makes the lender liable to the owner for all damages sustained by the owner as a result of the failure. Whenever a lender is required to record a notice of commencement, the lender must designate the lender, in addition to others, to receive copies of notices to the owner. These provisions do not give anyone other than the owner a claim against a lender for failure to record the notice (Fl. Stat. Ann. § 713.13).

With some exceptions (e.g., specified professional services and subdivision improvements), Florida law provides that construction liens attach and take priority when the notice of commencement is recorded. If such a notice is not filed, the liens attach and take priority when the claim of lien is recorded (Fl. Stat. Ann. § 713.07).

After construction is completed, or after construction has ended before completion but all lienors have been paid, an owner can end the effectiveness of the notice of commencement by filing a notice of termination and meeting other requirements (Fl. Stat. Ann. § 713.132).

When someone applies for a building permit, the issuing authority (among various other requirements) must inform the owner of the requirement to record a notice of commencement and the consequences for failing to do so, and provide at least two copies of the notice form (Fl. Stat. Ann. § 713.135).

Georgia

Georgia's mechanics' lien law requires the owner, owner's agent, or contractor to file a notice of commencement with the superior court clerk within 15 days after the contractor begins work on the project. The contractor must give a copy of the notice to subcontractors, materialmen, or others upon written request.

The failure to file the notice of commencement renders inapplicable certain requirements regarding a "notice to contractor" that generally apply to subcontractors and others who are not in privity of contract with the contractor and attempt to enforce a lien. The contractor's failure to provide a copy within 10 days of receipt of a written request, as specified above, similarly renders these requirements of the lien law inapplicable to the subcontractor or other person who requested it.

The law specifies that the filing of the notice of commencement does not (1) constitute a cloud, lien, or encumbrance upon or defect to the title of the property described in the notice, (2) change the allowable aggregate amount of liens, (3) affect the priority of any loan in which the property is to secure payment of the loan filed before or after the notice, (4) affect the future advances under any such loan, or (5) affect specified provisions regarding dissolving liens (Ga. Code Ann. § 44-14-361.5).

Georgia also requires a notice of commencement in other circumstances (e.g., a contractor furnishing a payment bond or security deposit on a public works construction project) (Ga. Code Ann. § 13-10-62).

Michigan

Michigan's construction lien law has separate statutes for residential and non-residential property. For residential property, an owner or lessee contracting for physical improvements to property must prepare and provide a notice of commencement to a contractor, subcontractor, supplier, or laborer, on their written request. For non-residential property, an owner or lessee contracting for such improvements must record a notice of commencement in the office of the registrar of deeds, before the work begins. In either case, a blank notice of furnishing (a notice by a subcontractor, supplier, or laborer who provides labor or material to the project) must be attached to each copy of the notice of commencement.

The following statement must appear on the notice of commencement, for both residential and non-residential projects:

To lien claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the above named owner or lessee; the designee; or the person with whom you have contracted.

The following notice must also appear on notices for residential projects only:

WARNING TO HOMEOWNER

Michigan law requires that you do the following:

1. Complete and return this form to the person who asked for it within 10 days after the date of the postmark on the request.
2. If you do not complete and return this form within the 10 days you may have to pay the expenses incurred in getting the information.
3. If you do not live at the site of the improvement, you *must* post a copy of this form in a conspicuous place at that site.

You are not required to but *should* do the following:

1. Complete and post a copy of this form at the place where the improvement is being made, even if you live there.
2. Make and keep a copy of this form for your own records.

While there is substantial overlap in the requirements for residential and non-residential projects, there are differences. For example, for non-residential projects, the owner, lessee, or designee must automatically provide a copy to the general contractor, if any, and must provide a copy to specified others within 10 days of a written request. For residential projects, the notice must be provided within 10 days of the contractor's or specified others' written request.

Both statutes have similar requirements for contractors or subcontractors to provide the notice to specified others in direct contract with them, on written request. Under the residential statute, if contractors or subcontractors receive such a request but have not been given a notice of commencement, they must give the requester the name and address of the owner or lessee. Failure to meet these requirements makes the contractor or subcontractor liable to the lien claimant for expenses sustained in obtaining the information provided by the notice. The owner or lessee is similarly liable for failing to (1) post the notice as required by law or (2) provide the notice to the general contractor (non-residential only).

The owner's, lessee's, or designee's failure to record the notice (non-residential only) or provide the notice upon request as specified above extends the time a subcontractor or others have to provide a notice of furnishing. If a notice of commencement furnished by or for an owner or lessee contains incorrect information, a lien claimant's rights against the owner's or lessee's property are not adversely affected.

For non-residential projects, additional provisions apply if the owner, lessee, or designee fails to provide, record, and post the notice within 10 days of the contractor's written request to do so after the work has begun. In that case, the owner or lessee is generally barred from requiring the contractor to hold the owner or lessee harmless from liens to the extent the claims could have otherwise been avoided through proper payment, had the owner or lessee complied with the request. If the contractor pays a valid lien claim at the direction of the owner, lessee, or designee after that person's failure to comply with the notice of commencement requirements, the owner or lessee is generally liable to the contractor to the extent the lien claim could have otherwise been

avoided through proper payment had such request been complied with (Mich. Comp. Laws Ann. § 570.1108 (non-residential); Mich. Comp. Laws Ann. § 570.1108a (residential)).

Michigan law provides that the recording of a notice of commencement or a claim of lien operates as constructive notice to subsequent purchasers or encumbrancers in the same manner as the recording of a real estate mortgage (Mich. Comp. Laws Ann. § 570.1112).

Nebraska

Nebraska law allows a contracting owner or others to file a notice of commencement in residential construction projects. The notice must have a duration of at least six months, although the owner can extend it. If a notice does not state its duration, it has a duration of one year.

If there is no notice of commencement applying to an improvement, a claimant entitled to record a lien may record such a notice. Such a notice has an automatic one-year duration. A claimant who records a notice of commencement must send a copy to the contracting owner no later than the day of recording. A claimant who fails to do so is liable to the owner for any damages caused by the failure (Neb. Rev. Stat. Ann. § 52-145).

Nebraska law specifies that if a claimant records a lien while a notice of commencement is effective as to the improvement in connection with the lien, the lien attaches as of the time the notice is recorded, even if visible commencement of the work occurred before the notice was recorded (Neb. Rev. Stat. Ann. § 52-137).

A claimant who records a notice of commencement after recording a lien has equal priority with claimants who record a lien while the notice of commencement is effective. Any priority which the claimant gained over third parties by recording the notice of lien is preserved for the benefit of all claimants having equal priority under this provision (Neb. Rev. Stat. Ann. § 52-138).

Nebraska law provides for an owner to terminate a notice of commencement, by recording a notice of termination (which can take effect no earlier than 30 days after its recording) and meeting other requirements, such as notifying claimants who have requested to be notified of such a termination notice and publishing a notice in a newspaper (Neb. Rev. Stat. Ann. § 52-146). If an owner records a notice of termination before abandonment or substantial completion of all the improvements covered by the terminated notice of commencement, he or she is personally liable to any lien claimant to the extent that the

claimant is unable to realize on a lien because the notice of termination was recorded before abandonment or substantial completion (Neb. Rev. Stat. Ann. § 52-156).

Ohio

For improvements to private real property, Ohio law requires an owner or lessee to record a notice of commencement in the county recorder's office, before starting the project, when contracting for labor, work, or the furnishing of materials which could give rise to a mechanics' lien. The requirement does not apply to home construction contracts, unless the lender requires it.

Among other requirements, the notice must include the following statement:

To lien claimants and subsequent purchasers:

Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanics' lien may preserve the lien by providing a notice of furnishing to the above-named designee and the above-named designee's original contractor, if any, and by timely recording an affidavit pursuant to section 1311.06 of the Revised Code.

A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee, or the person with whom you have contracted.

Ohio law provides that if a notice of commencement furnished by or for an owner or lessee contains incorrect information, the owner or lessee is liable for a lien claimant's loss of lien rights and actual expenses the claimant incurs in maintaining lien rights, including attorney's fees, if the loss and expenses are a direct result of the claimant's reliance on the incorrect information.

In addition to filing the notice of commencement, the owner, lessee, or designee must (1) serve a copy on the original contractor and (2) provide a copy to a subcontractor, supplier, or laborer within 10 days of their written request. Contractors and subcontractors who have been provided a copy of the notice and who receive a written request from specified others (e.g., supplier) who have a direct contract with them must also provide it within 10 days of the request. Failure to meet these requirements makes the owner, lessee, contractor, or subcontractor

liable for actual expenses the other person incurs in obtaining the information. Similar liability applies if the owner, lessee, or designee fails to post the notice.

Failure to record or serve the notice of commencement also extends the time a subcontractor or supplier has to serve a notice of furnishing. If an owner, lessee, or designee fails to record a notice of commencement, a subcontractor or material supplier who performs labor or work upon or furnishes material for the improvement does not have to serve a notice of furnishing to preserve lien rights. Additional consequences apply if the owner, lessee, or designee fails to serve, record, or post a notice of commencement after the work has begun and the contractor requests that the notice be served, recorded, or posted.

If the owner or lessee fails to record a notice of commencement within certain time frames, the contractor or someone holding a mortgage may record one on the owner's or lessee's behalf. In that case, the owner or lessee is liable to the contractor or mortgage holder for costs and expenses incurred in (1) obtaining the information contained in the notice and (2) preparing and recording it.

A notice of commencement expires six years after its filing, unless the notice or amendments to it specify otherwise (Rev. Ohio Code Ann. § 1311.04).

With some exceptions, after a notice of commencement is recorded, liens are effective from the date of the notice's recording. Ohio has several other provisions regarding the interplay of the notice of commencement with lien effective dates and lien priority, including for situations where a lien secures a claim for work performed both before and after the notice is recorded (Rev. Ohio Code Ann. § 1311.13).

Ohio has a separate notice of commencement statute that applies to improvements of public property. A public authority must prepare a notice of commencement, and make it readily available to the public upon request, before the performance of any labor, work, or furnishing of materials for a public improvement (Rev. Ohio Code Ann. § 1311.252).

South Carolina

South Carolina law allows someone entering into a direct agreement with an owner for real property improvements, or someone with the owner's consent, to file a notice of project commencement with the court clerk or register of deeds.

The notice must be filed within 15 days after work begins. Among other requirements, a location notice must be posted at the job site, containing the following statement:

The contractor on the project has filed a notice of project commencement at the county courthouse. Sub-subcontractors and suppliers to subcontractors shall comply with Section 29-5-20 when filing liens in connection with this project.

Failure to file a notice of project commencement has several consequences, such as rendering specified provisions of the lien law inapplicable (e.g., provisions relating to requirements for a notice of furnishing and proration of payments among lienors).

The law specifies that the filing of a notice of project commencement does not constitute a cloud, lien, or encumbrance upon, or defect to, the title of the real property described in the notice. The filing also does not (1) change the aggregate amount of liens allowable under the law regarding workers employed by someone other than the owner, (2) affect the priority of any mortgage filed before or after the notice, or (3) affect any future advances under any mortgage (S.C. Code § 29-5-23).

South Dakota

Under South Dakota's mechanics' lien law, the owner, owner's agent or representative, or someone entering into a direct agreement with the owner, may file a notice of project commencement with the county register of deeds, within 30 days of the start of the work (S.D. Codified Laws § 44-9-50).

Among other requirements, anyone filing a notice of project commencement must post a location notice at the job site, containing the following statement:

The contractor on this project has filed a notice of project commencement at the county courthouse. Any sub-subcontractor and any supplier to a subcontractor shall comply with the notice provisions of § 44-9-53 before filing liens in connection with this project (S.D. Codified Laws § 44-9-51).

The law specifies that the filing of a notice of project commencement does not constitute a cloud, lien, or encumbrance upon, or defect to, the title of the real property described in the notice. The filing also does not (1) alter the aggregate amount of liens allowable by law or (2) affect the priority of a mortgage or future advances under a mortgage (S.D. Codified Laws § 44-9-52).

When someone has filed a notice of project commencement, sub-subcontractors or suppliers to subcontractors (except for individual laborers with liens under \$2,000) must provide a notice of furnishing to the contractor and owner before extending a lien as specified by law (S.D. Codified Laws § 44-9-53).

Utah

In Utah, a notice of commencement is required for construction work at government project sites. The contractor, owner, or owner-builder must file the notice in the state construction registry, within 15 days of the project's start. If the notice is not timely filed, certain provisions of the lien law do not apply (e.g., the requirement that certain subcontractors on government projects file a preliminary notice with the registry) (Utah Code Ann. § 38-1-31.5).

2011 legislation eliminated the requirement to file notices of commencement for private projects (H.B. 260).

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