



May 17, 2011

Categories:
[Publications](#)

Authors:
[Dean R. Brackenridge](#)

Common Mistakes of Indiana's Mechanic's Lien Claimants (And How To Avoid Them)

The mechanic's lien is a powerful remedy available to Indiana contractors whose labor and/or materials are used to improve real property. However, Indiana's Mechanic's Lien Statute is highly technical in nature and includes numerous traps for the unwary. Numerous potential missteps in perfecting your right to a mechanic's lien right could ultimately invalidate your lien claim. In today's economy, where a contractor's success hinges more than ever upon the protection and collection of all available revenues, awareness and avoidance of these common traps can be of critical importance.

1. Failure to Properly Identify When the Work "Ends" and to Record Notice Within Required Time

You must know and should document the exact date your contract work ends. The lien filing deadline clock begins to run on the contractor the day it last performs work or delivers materials to the project. Indiana's Mechanic's Lien Statute generally requires a claimant to record its mechanic's lien within 60 days for work on residential projects or work upon improvements related to a residential project, or 90 days for commercial and industrial projects, "after performing labor or furnishing materials." Ind. Code § 32-28-3-3. A contractor "completes its work and the ... period for filing a notice of intention to hold mechanic's lien commences, when the [contractor] finishes the task for which it was hired." *Riddle v. Newton Crane Serv., Inc.*, 661 N.E.2d 6, 10 (Ind. Ct. App. 1996).

Claimants often stumble by failing to accurately define the "task," the completion of which starts the clock on filing their mechanic's liens. In one case, a contractor filed a mechanic's lien more than 60 days after the last working on the project, but within 60 days of

removing its equipment. The court held that removing one's equipment is not work under the contract. *Id.* at 9–10. Mechanic's liens appropriately may be based upon work that was actually called for under the contract or under a continuing employment relationship performed with the intention of completing the job. However, the deadline will not be extended through the performance of an act incidental to the contract that is not done with the intention of completing the job. *Abbey Villas Develop. v. Site Contractors, Inc.*, 716 N.E.2d 91 (Ind. Ct. App. 1999).

2. Failure to Initiate Lien Foreclosure Litigation on Time

Once you have properly recorded a mechanic's lien, you must perfect the lien by filing a lawsuit to foreclose the lien within one year of recordation. Ind. Code § 32–28–3–6. In *Wachstetter v. County Properties, LLC*, 832 N.E.2d 574 (Ind. Ct. App. 2005), the court rejected a contractor's argument that its motion to intervene in a bank's mortgage foreclosure action regarding the property satisfied the one-year deadline. The court stressed that an actual complaint to foreclose the lien should be filed in order to qualify under the statute.

The one-year time limit also may be shortened if the property owner provides written notice to the claimant demanding that the claimant foreclose the lien within 30 days after receiving this notice. The requirements for such a "30 Day Letter" are almost as rigid as the requirements for filing a lien. A 30 Day Letter should mention a foreclosure action, the relevant mechanic's lien statute and the statutory 30 day period in order to be considered to have provided the statutorily required notice. *Wind Dance Farm, Inc. v. Hughes Supply, Inc.*, 792 N.E.2d 79, 84 (Ind. Ct. App. 2003). Even though a court ultimately may find that an owner's letter did not provide the requisite notice, upon receiving any communication asking, or demanding, that a contractor drop or enforce a lien, a lien claimant is well-advised to file its foreclosure lawsuit within 30 days.

3. Overstating the Amount of the Lien

When recording a mechanic's lien, a contractor should be careful not to overstate the lien amount. An intentional or negligent overstatement of the lien amount can invalidate the entire lien. *Abbey Villas Dev. Corp. v. Site Contractors, Inc.*, 716 N.E.2d 91, 101 (Ind. Ct. App. 1999). While an honest mistake may not necessarily void a lien, contractors should be diligent in accurately calculating the amount of a lien. Liens that appear to overstate the amount due will likely hamper efforts to enforce the lien, potentially even invalidating it.

4. Failure to Properly Identify Property to Which Lien Attaches

Properly identifying the property being lien frequently proves more difficult than expected. Securing proper identification may require a title company's services and can take several business days. A mechanic's lien must include both the legal description of the property and the street and number (if any) where the improvements subject to the lien are located. Ind. Code § 32-28-3-3(c)(4). For example, in one case, the court found a mechanic's lien invalid and overturned a foreclosure action because the lien included the wrong legal description of the property at issue. *Froberg v. Northern Indiana Constr., Inc.*, 416 N.E.2d 451, 454 (Ind. Ct. App. 1981). Some courts have enforced mechanic's liens so long as the property description is sufficient to identify the land to which the lien attaches. However, it is sound business practice to confirm the accurate legal description of the property. Because proper identification may require the services of a title company and may take several days to confirm, prompt action is critical if your 60 or 90-day deadline to record is quickly approaching.

5. Failure to Properly Identify the Owner of the Real Property

In addition to properly identifying the property, a lien must list the correct legal name of the property owner. The Mechanic's Lien Statute requires a mechanic's lien notice to list the property owner's name and latest address as shown in the county's property

tax records. Ind. Code § 32-28-3-3(c)(3). Some courts have strictly interpreted this requirement, requiring the owner's name to be exactly correct. In one case, a contractor filed a notice of lien against a company named "Transco," when in fact the property owner was "Transco Railcar." *Logansport Equip. Rental, Inc. v. Transco, Inc.*, 755 N.E.2d 1135 (Ind. Ct. App. 2001). Even though both companies shared the same ownership, the court invalidated the lien, stating that although "[h]ypertechnicalities should not be used to frustrate the remedial purpose of mechanic's liens, ... we find that listing the wrong owner on the notice is not a hypertechncality." *Id.* at 1137. Additionally, a contractor's reliance upon information from a county official regarding the identification of the correct property owner may not excuse the error even if the information was wrong. In *Capital Drywall Supply, Inc. v. Jai Jagdish, Inc.*, 934 N.E.2d 1193 (Ind. Ct. App. 2010), the court ruled that a mechanic's lien was invalid where the lien claimant identified the wrong owner, even though the improper identification was based upon incorrect information received from the County Auditor.

6. Failure to Give Proper Pre-Lien Notices to Owner

Generally, on commercial and most industrial projects, a subcontractor is under no duty to provide preliminary notice to the property owners. However, the Mechanic's Lien Statute imposes additional requirements for liens on residential property. Before lienning certain residential property, a subcontractor or materialman must notify the owner, in writing, within 30 days of first providing labor or materials to an existing residence, or within 60 days of providing labor or materials for new residential construction. In the case of new residential construction, the statute requires the written notice to be filed with the county recorder's office within 60 days as well. Ind. Code § 32-28-3-1(h)-(i). Indiana courts have found mechanic's liens were improper when residential subcontractors failed to provide the required pre-lien notice. To protect your rights when providing labor and/or materials on a residential project, be certain to provide project owners the required notice.

7. Wrong Party to Assert Claim

Often, the distinction between the contractor as an individual and the contractor as a corporation blurs. Only the actual party to the contract has the right to enforce a mechanic's lien. In one case, a contractor entered into a contract with a homeowner, signing the contract as an individual rather than as a corporate representative. *Mullis v. Brennan*, 716 N.E.2d 58 (Ind. Ct. App. 1999). When it came time to record a lien, the corporation and not the individual recorded it. The court ruled against the contractor, noting that the statute's requirements relating to the persons entitled to the lien are strictly construed. *Id.* at 63. Take care when signing contracts, and carefully review your contracts before filing your liens. If signing as a corporate representative, make sure to show that distinction in the signature block. The person or entity pursuing the lien must exactly match the legal party to the contract.

8. Obtaining Active Owner Consent

Mechanic's liens may be ruled improper where the actual landowner did not actively consent to the improvements upon which the mechanic's lien was based. Contractors and subcontractors who perform work for entities other than a landowner of real estate (such as strip mall lessees) must remain mindful of this constraint on their potential lien rights. In *R.T.B.H., Inc. v. Simon Property Group*, 849 N.E.2d 764 (Ind. Ct. App. 2006), a mechanic's lien was invalid where the work was performed by a contractor who had no interaction with the property owner during construction. The court ruled against the contractor despite the fact that the property owner initially reviewed and approved the construction plans and was aware of the actual construction and the lien claimant's involvement in it. On such projects, Indiana contractors should be prepared to establish not only the owner's active participation in decisions related to construction, but also the extent to which the owner receives a direct benefit from the improvements constructed by the lien claimant.

Conclusion

Although this article is not an exhaustive look at all the potential pitfalls awaiting mechanic's lien claimants, careful attention to these issues may help the contractor avoid common errors. When facing the deadline to file a mechanic's lien, contractors should understand that the entire process will take several days. It is the best practice for the claimant not to wait until the last minute to prepare and file the mechanic's lien.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.