



Dream Home or Nightmare

When General Contractors Fail to Pay Subcontractors

By Cass C. Butler

All too frequently, building one's dream home can become a nightmare when general contractors and homeowners butt heads.

A general contractor is responsible for managing a broad range of subcontractors, such as plumbers, electricians, roofers and painters, all of whom have their own scheduling needs with other projects. She must ensure that the painter does not paint before the sheet rock is installed, and the sheet rock must be installed after, not before, the plumber does his work. All of this is further complicated by fluctuating material costs, shortages and unexpected changes in design.



who furnished labor and materials under his direction, but instead keeps the money paid by the owner, separate claims or liens may pop up against the new home asserted by each of the unpaid subcontractors and suppliers. This frequently involves subcontractors and material suppliers unknown to the owner.

Mechanics’ Lien Laws

The purpose of mechanics’ lien laws is to protect those who perform the labor and furnish the materials that enter into the construction of a building or other improvement. Contractors (as well as subcontractors and suppliers), who are not paid, may file a mechanics’ lien against the property itself. If the lien is filed or recorded with the county recorder where the project resides within 90 days after the last labor, service, material or equipment is furnished, the contractor (subcontractor or material supplier), may proceed directly against the property to collect on the debt owed.

Much like a bank that forecloses on a loan in default by selling the house, the contractor may file within one year in Utah and six months in Idaho a foreclosure action against the property to force its sell to satisfy the outstanding obligation. As many homeowners have learned, a mechanics’ lien is a powerful tool for contractors, allowing them to seek payment for unpaid monies directly from the value of an asset they helped create, the new home.

The Residential Lien Restriction and Lien Recovery Fund Act

Frequently, there are legitimate reasons why contractors do not pay their subcontractors, such as uncompleted or unacceptable work that the general contractor finishes himself. Regardless, the homeowner gets caught in the crossfire. In an attempt to protect homeowners from paying twice (once to the general contractor and again to the unpaid subcontractors/suppliers), the Utah Legislature enacted the Utah Residence Lien Restriction and Lien Recovery Fund Act.

The act does not prevent the filing of a mechanics’ lien, but instead provides the homeowner with a defense against such liens

and a process whereby it must be removed. The unpaid subcontractor or supplier can then seek payment from the fund. In order to qualify under the fund, a homeowner must (1) have a written contract with a licensed contractor; (2) pay the full contract price; and (3) occupy the home as a primary or secondary residence within 180 days of completion of construction. Additional information about the fund can be found at www.dopl.utah.gov/programs/rlrf. At present, Idaho does not have a lien recovery fund.

The Mechanics’ Lien and Payment Amendments

On March 13, 2007, Utah Gov. Jon Huntsman signed into law the Mechanics’ Lien and Payment Amendments. These amendments were designed to let owners make payments to their contractors and material suppliers conditioned upon the contractors and material suppliers waiving their mechanics’ lien rights. The amendments provide standard forms which can be used to release lien rights upon progress payments and final payment. The new law also provides that if the owner will place a phrase known as a restrictive endorsement on the back of a check, a contractor or supplier who endorses and deposits the check will generally waive his mechanics’ lien rights once the check clears the bank.

While the recent amendments do not remove all of the tension between contractors and homeowners, they do help. Prudent contractors and homeowners who avail themselves of these laws will have a better chance for sweet dreams. ■

Cass C. Butler, Esq., is a shareholder with the law firm of Callister Nebeker & McCullough and a member of the Construction Law Section of the Utah State Bar.

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The homeowner, on the other hand, expects to have her dream home come in on budget, on time and with all of the unexpected problems resolved in her favor. Both parties need to know their respective rights and duties under the law.

At the heart of most disputes are mechanics’ lien laws, which state that if the contractor does not get paid, he can file a mechanics’ lien. If the owner is not satisfied with the work, she can withhold payment. Unfortunately, once she does make payment, her problems aren’t necessarily over. If the contractor fails to pay all of the subcontractors and material suppliers