

## Provisions carried out in other states regarding liens

**Notice of Commencement:** File a Notice of Commencement before beginning any home construction or remodeling project. Record the form with the County Clerk in the county where the property being improved is located. Post a certified copy at the job site, too. The Notice notes the property owner's intent to begin improvements, the location of the property, description of the work and the amount of bond (if any). It also identifies the property owner, contractor, surety, lender and other pertinent information.

A property owner who fails to record a Notice of Commencement or incorrect information on the Notice could result in having to pay twice for the same work or materials. Request a list of all subcontractors and suppliers who have a contract with the contractor to provide services or materials to the property.

**Releases of Lien:** Prior to making any payment, the property owner should receive a Release of Lien from every supplier, contractor and subcontractor, which covers the materials used and the work performed on the project. The Release of Lien is a written statement that removes the property from the threat of lien. If the contract requires partial payments be made before the work is completed in full, then get a Partial Release of Lien covering all workers and materials used up to that point in time.

Before final payment, obtain an affidavit from the contractor that specifies all unpaid parties who performed labor or services, or provided materials to the property. Make sure the contractor obtains releases from all of these parties before making final payment.

**Notice of Termination of Notice of Commencement:** At the end of the project and after the contractor is paid in full and obtained all of the necessary Releases of Lien and affidavits as described above are obtained, file a Notice of Termination of Notice of Commencement with the County Clerk in the county where the property being improved is located.

---

Delaware has a law that provides a property owner with a defense from a lien if they make a good faith payment to the contractor. The law also requires the contractor to provide the owner with a certification that the contractor has paid in full for all labor performed and materials furnished or has to provide the owner with a release signed by the contractor and all subcontractor(s), supplier(s) or anyone who might be able to file a lien on the property.

The legislative history of the law stated that the Delaware General Assembly sought to eliminate the harsh result of double liability against residential homeowners when passing this law.

### **Delaware** Code Annotated

Title 25. Property (Refs & Annos)

Part II. Mortgages and Other Liens

Chapter 27. Mechanics' Liens

Subchapter I. General Provisions

#### **§ 2707. Payment of contractor by owner of residence as a defense; certification of payment for labor and materials or release of liens by contractor**

No lien shall be obtained under this chapter upon the lands, structure, or both, of any owner which is used solely as a residence of said owner when the owner has made either full or final payment to the contractor, in good faith, with whom he contracted for the construction, erection, building, improvement, alteration or repair thereof.

Prior to or simultaneous with the receipt of any full or final payment by the contractor, the contractor must provide the owner either:

(1) A notarized, verified written certification that the contractor has paid in full for all labor performed and

materials furnished to the date of such full or final payment in or for such construction, erection, building, improvement, alteration or repair or

(2) A written release of mechanics' liens signed by all persons who would otherwise be entitled to avail themselves of the provisions of this chapter, containing a notarized, verified certification signed by the contractor that all of the persons signing the release constitute all of the persons who have furnished materials and performed labor in and for the construction, erection, building, improvement, alteration and repair to the date of the release and who would be entitled otherwise to file mechanics' liens claims.

Failure of the contractor to provide the owner a written certification or a release of mechanics' liens at such time shall constitute sufficient cause for the immediate suspension, revocation or cancellation of the contractor's occupational and business licenses. If the owner has not made full payment in good faith to such contractor, the lien may be obtained in accordance with this chapter, but it shall be a lien only to the extent of the balance of the payment due such contractor, which balance or portion shall be payable pro rata among the claimants who perfect liens. Payments made to the contractor by the owner after service of process, as provided in § 2715 of this title, shall not be deemed to be "in good faith."

### **Connecticut General Statutes Annotated Title 49. Mortgages and Liens**

#### **Chapter 847. Liens (Refs & Annos)**

#### **§ 49-36. Liens limited; apportionment; payments to original contractor**

(a) No mechanic's lien may attach to any building or its appurtenances, or to the land on which the same stands, or any lot, or any plot of land, in favor of any person, to a greater amount in the whole than the price which the owner agreed to pay for the building and its appurtenances or the development of any such lot, or the development of any such plot of land.

(b) When there are several claimants and the amount of their united claims exceeds that price, the claimants, other than the original contractor, shall be first paid in full, if the amount of that price is sufficient for that purpose; but, if not, it shall be apportioned among the claimants having the liens, other than the original contractor, in proportion to the amount of the debts due them respectively; and the court having jurisdiction thereof, on application of any person interested, may direct the manner in which the claims shall be paid.

(c) **In determining the amount to which any lien or liens may attach upon any land or building, or lot or plot of land, the owner of the land or building or lot or plot of land shall be allowed whatever payments he has made, in good faith, to the original contractor or contractors, before receiving notice of the lien or liens.**

No payments made in advance of the time stipulated in the original contract may be considered as made in good faith, unless notice of intention to make the payment has been given in writing to each person known to have furnished materials or rendered services at least five days before the payment is made.

CT case law language that interprets this statute that may be helpful:

Under this section, only payments made "in good faith," a matter for judicial determination, to the original contractor before owner has received notice of a subcontractor's lien are allowed the owner. *Cianelli v. Levy* (1970)276 A.2d 912, 6 Conn.Cir.Ct. 507. Mechanics' Liens 115(4)

Subcontractors seeking to enforce lien under 1902 Rev., § 4138 (this section), have burden of proving that payments made by owner to contractor were not made in good faith. *Hubbell, Hall & Randall Co. v. Pentecost* (1915) 93 A. 672, 89 Conn. 262. Mechanics' Liens 115(3); Mechanics' Liens 279

Under 1902 Rev., § 4138 (this section), limiting mechanics' liens, a subcontractor is not entitled to a lien, where the contractor has been properly paid the full contract price. *Kelly v. Alling* (1911) 80 A. 782, 84 Conn. 487. Mechanics' Liens 115(4)