

A Construction Law Update

Protecting Your Lien Rights Requires Attention to Detail

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The Washington Court of Appeals has issued a decision that serves as a powerful reminder of the need to adhere strictly to all requirements necessary for perfecting lien rights. In *A.W.R. Construction, Inc. d/b/a Comet Roofing v. Washington Department of Labor & Industries*, the court ruled that a failure to file a mandatory disclosure report barred a contractor from enforcing its lien.

The case involved Comet, a roofing contractor who did work for the owner of an eight-unit apartment building. After a dispute arose regarding Comet's work, the owner refused to pay the roofer. Comet filed a lien on the property but had failed to provide the owner with a disclosure statement regarding the contractor's bonds, retainage rights and liens as required by the state Contractor Registration Act ("CRA"). The owner filed a complaint with the Washington Department of Labor and Industries. An administrative law judge ruled that Comet violated the CRA when it failed to provide the mandatory disclosure and, therefore, was not entitled to file or maintain its lien. A trial judge affirmed the ruling, and the Washington Court of Appeals upheld both decisions.

The failure to provide notice to a customer as required both under the CRA and the lien statute is just one of the numerous technical pitfalls awaiting anyone who files a lien. Others include failure to provide pre-claim notice in a timely manner, failure to record a lien within 90 days of the last provision of services, failure to properly attest the lien, recording a lien in excess of the amount actually owed, and failure to file a foreclosure lawsuit within eight months of lien recording. Failure to follow any one of these requirements can result in a loss of lien rights. Strict construction of statutory lien rights runs from the commencement of services through final payment. As the *Comet* case indicates, a contractor who ignores what seems like technicalities that accompany these statutory rights does so at the cost of losing all rights to maintain and enforce a lien.

In these challenging economic times, heightened awareness of managing accounts receivable and protecting lien rights is essential for all in the construction industry. While the exercise of lien rights can provide both leverage and a means for securing payment, it is important to remember that perfecting lien rights requires strict adherence to the procedures contained in the law.

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