

## Responding to Wisconsin Construction Liens

Construction liens can have a dramatic impact on property owners, causing them to potentially default on their mortgage or other lending terms. These liens can also destroy opportunities to sell a property or secure additional financing.

The rules governing Wisconsin construction lien filings are codified at Wis. Stat. §§ 779.01 to 779.17. A contractor is required to take multiple steps to ensure a construction lien is filed properly. Those steps include, mailing the property owner a notice of intent to file a claim for the lien (the "notice of intent") at least 30 days before the claim is filed, filing the claim for lien (the construction lien) in circuit court within six months of the date the contractor last performed work or furnished materials, as well as serving a copy of the construction lien on the property owner within 30 days after filing the construction lien.

The process for filing construction liens includes many traps for the unwary. As a result, property owners should scrutinize whether a contractor is taking, or has taken, the correct steps to determine if the property owner has a defense. This should be done immediately after the property owner receives the notice of intent (i.e., before the construction lien is ever filed) as the contractor must wait at least 30 days after providing the notice of intent to file the construction lien. Accordingly, at the time the notice of intent is sent, the property owner typically has a window of time to address the dispute.

If the property owner believes the construction lien is improper—whether due to a procedural defect or invalidity of the substantive claim—the property owner should, through counsel, notify the contractor of these problems with the potential construction lien. The contractor that files an improper construction lien (and any individual or entity that files the construction lien on the contractor's behalf) are potentially subject to liability under Wisconsin's slander of title statute. If the parties have a legitimate dispute over the validity of the underlying claim amount, it is unlikely to warrant slander of title damages. However, if the construction lien was filed in the face of clear procedural defects, such as not providing the notice of intent or attempting to file the construction lien after the six month period lapses, the risk that the contractor will be liable for slander of title damages increases dramatically.

If the construction lien has already been filed and is causing problems to the property owner, the property owner has options even if the contractor refuses to

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remove the construction lien. Under Wis. Stat. § 779.08, the property owner can secure a release of the construction lien by performing an undertaking. An undertaking essentially involves replacing the security provided by the property lien with the security provided by a financial surety or guarantor. The undertaking can be completed in multiple ways: the property owner can get a surety bond, another entity with sufficient financial assets can serve as a surety, or the property owner can deposit the necessary funds with the circuit court.

Reinhart has a team of attorneys specializing in construction matters, including both transactional and litigation services. Our team is proficient in both filing and responding to construction liens. For more information, contact [Josh Taggatz](#) or your Reinhart attorney.

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