

Mechanic's Liens

Colorado Revised Statutes, Section 38-22-101

What is a Mechanic's Lien?

A **lien** is a "hold" put on property. If you have worked at a construction job site, or provided materials to a construction job site, you can place a lien on that property for any unpaid wages or for any materials not paid for. (Construction can include remodeling or renovation work, such as painting.)

You can also claim **interest** on the money that is owed to you, in the amount of 12% per year. (You may be able to claim a higher or lower interest rate, if you have an agreement with the construction job site about the amount of interest you can claim.) [38-22-101(5)]

A **Mechanic's Lien** is filed on the property where the construction job site was located, in order to pressure the owner or contractor to help you get your money. It is not the same thing as collecting a debt. When you file a Mechanic's Lien on property, it means that the owner(s) of the property will not be able to sell or refinance the property without paying off the lien or posting a bond. If you are going to file a Mechanic's Lien, you should know that you will have to follow certain procedures carefully, and within the right amount of time, in order to turn your lien into a court judgment which could result in payment of what you are owed. If you don't follow the rules about procedures and deadlines, you risk owing money to the owner of the property.

DO NOT file a Mechanic's Lien if the contractor has a **payment bond**. (To find out if there is a payment bond, check with the Clerk and Recorder's Office, or look for a notice posted at the job site.) If there is a payment bond, you should send a demand for payment to the contractor and the owner(s) of the property within six months of the completion of work at the job site. If you are still not paid, you should file a court action against the bond company. [38-22-127(3) and 38-22-129(1)]

How do I file a Mechanic's Lien?

1. Before you can file your lien, you must notify the owner(s) of the property, and the principal contractor, that you intend to file a lien. To do this, send a letter (Notice of Intent) by registered or certified mail, with a return receipt requested. (You can also have the owner(s) and principal contractor served by the Sheriff or a private process server.) [38-22-109(3)]

2. To figure out who the **owner(s)** of the property are, and the mailing address(es) for the owner(s), you should check with the county tax assessor's office to get the owner(s)' name(s) and address.
3. To figure out who the **principal contractor** is, and the mailing address for the contractor, you should check with the county building department. The information you need will be on the building permit for that property.
4. To figure out the correct **legal description** of the property, you should check with the county Clerk and Recorder.

5. Your letter should say:

"I was employed as a (laborer, carpenter, etc.) at" or
"I provided (describe materials) to"

"the property at (street, city, county and legal description)"
"and worked at the property from (date you started working there) to (last date you worked there)"
or "and provided these materials on (dates when you provided the materials)".

To date, I have earned, but not been paid, (amount of money you are owed). If my claim for (wages/payment for materials) is not paid within ten (10) days, I will file a mechanic's lien on the above-mentioned property. This notice is given pursuant to Colorado Revised Statutes Section 38-22-109(3)."

6. If you don't want to write a letter, you can use a form called "**Statement of Lien with Notice of Intent to File a Lien Statement and Affidavits of Service**". Many office supply stores will have this form. Complete the form using the information you have obtained about the owner(s), the principal contractor, and the legal description of the property. Mail this form to the owner(s) and the principal contractor.
7. You should be sure to have your signature on your letter, or on the Statement of Lien, **notarized**.
8. **Ten days** after you mailed the letter or the form to the owner(s) and the contractor, you can file your lien with the Office of the Clerk and Recorder for the county in which the property is located. You will have to pay a recording fee with the Clerk and Recorder
9. While a letter may be acceptable notice, the Statement of Lien with Notice of Intent to File a Lien Statements and Affidavit of Service is the preferred

form of notice. Failure to include any required information in the notice may invalidate the lien

What are the deadlines for filing a lien?

1. As explained above, you must give a **ten (10) day** notice to the owner(s) of the property and to the principal contractor before you file your lien.
2. You must file your lien within **4 months** of ending your work (or delivering your materials) to the construction job site. [38-22-109(5)] This means you must send out your ten-day notice no later than 10 days before the four-month period has elapsed.
3. A day laborer who only supplies labor to the job site has a **2-month** deadline to file a lien. [38-22-109(4)]
4. Once you've filed your lien, you will have to file a court action to foreclose on the property, within either:
 - **6 months** of filing the lien, or
 - **6 months** of completion of the construction project, whichever is later. [38-22-110]

“Completion of the construction project” usually means the date on which a Certificate of Occupancy (CO) was issued, or the date when all work by anyone was completed.

5. If you file the lien and more than **12 months** go by before the project is finished, you must renew your lien filing within **30 days** of the anniversary of the day you filed your lien. (You don't have to do this if you have already filed a foreclosure action.) You can do this by filing an Affidavit with the Clerk and Recorder's Office saying that the work on the job site has not yet been completed. If you don't do this, your lien becomes “stale” and is no longer enforceable. [38-22-109(8)]

What do I do if my wages are paid after I file the lien?

You must file a form (**Satisfaction of Claim**) with the Clerk and Recorder's Office within ten (10) days. If you don't file this statement, and the lien remains on the property after you've been paid, you may have to pay a penalty of \$10.00 (ten dollars) per day for each day after ten days that the statement is not filed. [38-22-118]

What do I do if my wages are NOT paid after I file the lien?

You will have to file a court action to foreclose on the property. Be sure to file the foreclosure action before your time is up—either six months after you've filed the

lien with the Clerk and Recorder, or six months after completion of the project. If the project continues without completion, be sure to renew your lien within 13 months of its filing. You should talk to an attorney if you need to file a foreclosure. Errors (such as not naming everyone with an interest in the property as a defendant) could result in legal claims being filed against YOU.

In a foreclosure action, you are asking the court to give you a judgment for the amount of money you are owed. If you are not paid after you get the court judgment, then the property can be sold at a Sheriff's sale and you will be paid after the sale. Usually, since the amount you are owed is probably a lot less than the value of the property, the owner will pay you to avoid having the property go to a Sheriff's sale.

If there is a lender who is making payments to the contractor under a construction loan, you can notify the lender of your lien and ask the lender to withhold enough money to pay you, or to hold enough money until you can go to court and get a court decision about how much money is owed to you. The lender will be called a **disburser**. The contractor can tell you who the disburser is, or you can locate the disburser's name and address at the Clerk and Recorder's Office in the county where the property is located. [38-22-126]

You must give them a written notice explaining the work that you did (or the materials that you supplied) and the estimated value of your work or materials. You can also give this notice to the owner of the property or to the principal contractor. [38-22-102(4) through (7)]

What else do I need to know?

1. If you file a lien for more money than you are due, or don't follow the time limits for each step of the process, or some other part of your lien action is done incorrectly, the owner of the property could file a claim against you. This claim is called "**slander of title**". You may have to pay the owner's costs and attorney fees. [38-22-128]
2. If the owner of the single family home (used as a primary residence) has paid the general contractor the full contract amount for the purpose of paying subcontractors and suppliers, the owner will have an "affirmative defense" to the lien. This means that a foreclosure action against the owner will not be successful. [38-22-102(3.5) and 38-22-113(4)]
3. You should have **PROOF** of the amount of money you are owed. Time records, other pay stubs showing the hours you normally worked, and witnesses who saw you at work will help. A copy of the bill for materials will help if you are asking to be paid for materials you provided.
4. If you decide you don't want to file a lien or pursue a foreclosure proceeding, you can file a case in **Small Claims Court, County Court or**

District Court. (To get to the instructions and forms for filing in Small Claims on the [Colorado State Court website](#) click on **Small Claims Court**.) Claims up to \$7,500 can be filed in Small Claims Court. Claims of up to \$15,000 can be filed in County Court. Claims of greater than \$15,000.00 have to be filed in District Court. Small Claims Court has easier rules of procedure than the other courts. If you get a judgment in Small Claims Court, you can garnish bank accounts, wages, or other payments made to the person who owes you money. You can also “attach” property—even property that was not involved in the construction job.

5. Collection agencies will sometimes buy debts. They will pay you a portion of what you are owed, and then try to collect the debt themselves. You will need to have proof of what you are owed.