

# MASSACHUSETTS LAWYERS WEEKLY

## Avoiding, or getting rid of, mechanic's liens on real estate

By: Justin M. Perrotta and Michael Pill August 14, 2014



The mechanic's lien statute, G.L.c. 254, proves the old English maxim that "there's many a slip 'twixt cup and lip."

The court in *NES Rentals v. Maine Drilling & Blasting, Inc.*, 465 Mass. 856, 860-861 (2013), stated the legislation has a threefold purpose, as follows (citations omitted):

"[I]t is the primary purpose of the mechanic's lien statute 'to provide security to contractors, subcontractors, laborers, and

suppliers for the value of their services and goods provided for improving the owner's real estate' through perfection of a mechanic's lien on the owner's real estate";

"At the same time, the statute contains filing and notice requirements to protect the owner and others with an interest in the property.' The mechanic's lien statute is 'designed to ensure that a person searching the land records in a registry of deeds can determine with certainty whether or not title to a particular parcel of land is encumbered by a mechanic's lien.'"

"Additionally, because a perfected lien is an encumbrance on the owner's property, the statute provides for prevention of future liens and dissolution of existing liens by the giving of a bond, see G.L. c. 254, § 12, and § 14, which benefits 'an owner of land (or anyone possessing an interest in that land) by furnishing means to keep his title free from liens' and preventing the sale of the land to satisfy a lien. Thus, the mechanic's lien statute both 'governs the creation, perfection, and dissolution of a mechanic's lien,' and sets forth the procedures for execution and enforcement of a lien dissolution bond."

With respect to item (1) above, construction/design professionals and materials suppliers seeking to impose valid mechanic's liens on real property can review the following sources:

- Joel Lewin and Charles E. Schaub Jr., 57 Mass. Practice: Construction Law, Chapter 11: "Mechanic's Liens"
- Massachusetts Trial Court Law Libraries web page "Massachusetts Law About Mechanics' Liens" at <http://www.lawlib.state.ma.us/subject/about/mechanics.html>
- Bruce E. Falby (ed.), Massachusetts Real Estate Liens, Chapter 3: "The Massachusetts Mechanic's Lien Law" by John W. DiNicola and Edwin L. Hall (2nd ed. 2010).

For item (2) above, the Real Estate Bar Association of Massachusetts has promulgated three title standards (all reproduced in Louis Eno, William Hovey and Michael Pill, 28B Mass. Practice: Real Estate Law with Forms, Chapter 58), each addressing different types of mechanic's liens governed by different sections of G.L.c. 254.

Title Standard No. 62, "Mechanic's Lien for Personal Labor Only," reflects creation by G.L.c. 254, §1 of a lien "for personal labor performed in the erection, alteration, repair or removal of a building or structure upon land or improvement or alteration to real property ... for not more than thirty days' work actually performed for the ninety days next prior to his filing a statement as provided in section eight."

Chapter 254, §8 provides that "[a] lien under section one shall be dissolved unless a like statement, giving the names of the owner of record at the time the work was performed or at the time of filing the statement, is filed or recorded in the appropriate registry of deeds within the ninety days provided in said section." The phrase "like statement" refers to an earlier sentence in G.L.c. 254, §8, requiring "a statement, giving a just and true account of the amount due or to become due him, with all just credits."

Chapter 254, §11 states that “[t]he lien shall be dissolved unless a civil action to enforce it is commenced within ninety days after the filing of the statement required by section eight.” Once an action is filed, G.L.c. 254, §5 requires that “[a]n attested copy of the complaint, which shall contain a brief description of the property sufficient to identify it, and a statement of the amount due, shall be filed in the registry of deeds and recorded as provided in section nine within thirty days of the commencement of the action, or such lien shall be dissolved.”

Title Standard No. 63, “Mechanic’s Lien for Contractor’s Labor or Labor and Materials,” reflects an additional requirement imposed by G.L.c. 254, §2 where there is a written contract to supply labor, materials or both. Section 2 requires that a “notice of said contract” must be “filed or recorded in the registry of deeds for the county or district where such land lies, to secure the payment of all labor, including construction management and general contractor services, and material or rental equipment, appliances, or tools which shall be furnished by virtue of said contract.”

Title Standard No. 63 provides the lien is lost if a notice of contract is not recorded within stated time limits for recording a “notice of substantial completion” (G.L.c. 254, §2A) or a “notice of termination” (G.L.c 254, §2B), or within “90 days after the person last performed or furnished labor or materials.”

Title Standard No. 64, “Mechanic’s Lien for Subcontractor’s Labor or Labor and Materials,” covers essentially the same ground as No. 63, with the additional provision that the lien is lost if “[t]he subcontractor fails to give actual notice to the owner of such filing of a notice of contract; ... .”

None of the REBA Title Standards addresses the lien for design professionals and their subcontractors in G.L.c. 254, §§2C and 2D, added by 2010 Mass. Acts, Chapter 424, §2. One should refer to those statutory sections upon encountering such a lien.

For item (3) set forth above from the NES Rentals case, dissolving a mechanic’s lien can be accomplished several different ways. Chapter 254, §10 provides that “[t]he lien of any person may, so far as his interest is concerned, be dissolved by a notice signed by him, stating that his lien is dissolved, filed in the registry of deeds where the notice of the contract is filed under which contract the lien is claimed.”

Alternatively, the lien can be dissolved unilaterally by recording a bond under G.L.c. 254, §14. A blank form for the bond is set forth at the end of G.L.c. 254, §14. An example of a bond in the statutory form can be found in Louis Eno, William Hovey and Michael Pill, 28A Mass. Practice: Real Estate Law with Forms, §50.45 “Mechanic’s liens — Surety bond under M.G.L.A. c. 254 §14.”

Chapter 254, §14 goes on to require that “[n]otice of the recording shall be given to the claimant by serving on the claimant a copy of the notice of recording together with a copy of the bond by an officer qualified to serve civil process or by delivering same to the claimant.”

The statute protects both the lienholder and the party posting the bond with these words: “The claimant may enforce the bond by a civil action commenced within ninety days after the later of the filing of the statement required by section 8 or receipt of notice of recording of the bond, but such bond shall not create any rights which the claimant would not have had, or impair any defense which the obligors would have had, in an action to enforce a lien.” Id.

If the lien has been dissolved under either G.L.c. 254, §10 or §14, then recording “a complaint to enforce a lien under M.G.L.A. c. 254, 1, 2 or 4” does not render title to the locus defective, but “[i]n the absence on record of either the notice of dissolution or lien bond, one should obtain and record a clerk’s certificate of the dismissal of a timely and duly recorded complaint, or a certificate of judgment under § 15 or an order under § 15A together with a clerk’s certificate showing such judgment or order to be final.” REBA Title Standard No. 73, “Effect of Recorded Complaint to Enforce Mechanic’s Lien which has been Dissolved.”

Chapter 254, §15 states that “[i]f it appears to the court that no person is entitled to a lien, or that every lien has been discharged by payment thereof, judgment shall be entered to the effect that the lien is dissolved, and a certificate to that effect shall be sent forthwith by the clerk to the register of deeds. Such certificate shall be filed and recorded in the manner provided in sections eight and nine.”

Chapter 254, §15A sets forth a summary procedure for obtaining from the Superior Court in the county where the locus is located “an order (i) ruling on the matter involved or (ii) summarily discharging of record the alleged lien or notice as the case may be.”

Such an action may be based on any of the grounds set forth in §15A(a)-(f). The statute requires “a verified complaint accompanied by other written proof of the facts upon which the application is made,” and a hearing may be held on as little as seven days’ notice. *Id.* But there are serious limitations, summarized this way in *Golden v. General Builders Supply, LLC*, 441 Mass. 652, 656-657(2004):

“The types of defects that can result in an order ‘summarily discharging’ the lien under G.L. c. 254, § 15A, are normally amenable to immediate determination on undisputed documents and matters of public record. ... In other words, summary discharge of the lien can only be obtained for defects that will customarily appear of record or be readily ascertainable by reference to undisputed documents — defects in the notice of contract or statement of account, failure to timely record the notice or statement, or a judgment or release that would preclude the lien.”

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