

TEXAS MECHANIC'S LIENS REQUIREMENTS FOR APARTMENT SUPPLIERS

Suppliers of goods and services to apartment complexes in Texas face some of the most complicated mechanic's lien laws found anywhere in the United States. Apartment suppliers must strictly comply with technical, and sometimes complicated, statutory requirements in order to preserve their rights against the owners of the apartment complexes.

In this presentation we will present an overview of the statutory requirements necessary for a supplier to apartment complexes to assert a mechanic's lien against the apartment complex.

In most cases, the management company for the apartment complex orders the goods or services. The management company then waits until the owner approves payment before the supplier's invoices are paid. Many times, the management company will put the supplier's invoices on hold until the complex is generating sufficient profits, or the owner will simply instruct the management company not to pay the supplier for some period of time.

It is important to know that in nearly all cases the management company is acting as the agent of the owner, and as such, it is the owner, and not the management company, which is liable for payment to the supplier. After delivery of the goods and services, the owner may terminate the management company, or sell the apartment complex, or the complex may be foreclosed by the owner's lender, before the supplier's invoices are paid. Given the volatility of the apartment rental market, if a supplier does not timely and properly assert its lien rights, those rights will be lost, and the supplier may find it difficult, if not impossible, to get paid.

Suppliers to apartment complexes are entitled to file liens for unpaid monies for goods and services provided to the apartment complex. The lien arises as of the date of providing the goods or services, but the lien must be perfected in accordance with the mechanic's lien laws. To properly preserve its lien rights, a supplier to the apartment complex must timely file a lien affidavit containing all of the required information with the county clerk of the county in which the real property is located.

The lien affidavit must be filed no later than the 15th day of the 4th month after the indebtedness accrues. In most cases, the indebtedness accrues on the last day of EACH month in which the supplier provided labor, goods or services. This is because each month's orders are generally treated as separate contracts. If there is one contract covering goods or services which are provided over a period of several months, the indebtedness accrues on the last day of the last month in which goods or services were provided under the contract.

Let's turn to an example:

A management company orders ten dishwashers to be delivered to an apartment complex in January, to be installed by the complex's maintenance personnel. The management company orders another ten dishwashers in February. The management company does not pay for either delivery by the invoice due dates. As the separate orders are treated as separate contracts, the supplier is required to file a lien affidavit for the amount due for the ten dishwashers delivered in January by no later than May 15th, being the 15th day of the fourth month after January. The supplier must also file a lien affidavit for the amount due for the ten dishwashers delivered in February by no later than June 15th, again, being the 15th day of the fourth month after the month of delivery. In this case, the supplier should file one lien affidavit, by May 15th, to cover both the January and February deliveries, as it is both proper and advisable to file early, rather than late, if there is any concern of non-payment.

If the management company had ordered all twenty dishwashers at one time, but only ten of the dishwashers were delivered in January, and the other ten were delivered in February, then the deadline to file the lien affidavit for all of the dishwashers would be June 15th, being the 15th day of the fourth month after February, as all twenty dishwashers were ordered under one contract.

Previously we stated that the lien affidavit must be filed in the correct form. There is very little room for error here. If the lien affidavit does not contain all of the required information, it will be considered defective and unenforceable, and could lead to a claim by the owner against the supplier. For a supplier to apartment complex, the lien affidavit must:

- Be signed either by the supplier claiming the lien or the supplier's agent, and must contain
- A sworn statement of claim, including the amount due to the supplier
- The name and address of the actual owner of the apartment complex
- A general description of the goods and services provided
- The months in which the goods or services were provided
- A description, legally sufficient for identification, of the real property subject of the lien
- The supplier's mailing and physical addresses
- The dates on which invoices or demands for payment were sent to the owner or its agent, the management company

A copy of the lien affidavit must be sent to the owner by certified mail no later than the 5th day after the lien affidavit is filed with the county clerk.

It should be noted that one of the most difficult requirements in the lien process is locating the name and address of the actual owner of the apartment complex. This is because the county appraisal district records do not always reflect the actual address of the complex, and in many cases the records are not updated following a sale of the complex for a period of months, or even years.

Complying with the statutory notice and filing requirements will help to ensure payment of the amounts due to a supplier to apartment complexes. However, if the supplier is still not paid, there will be other issues to consider, including the deadline for filing a lawsuit, the question of whether goods supplied are legally considered to be removable, the effect of a lender's foreclosure of the apartment complex, and the effect of an owner's filing of bankruptcy, among others.

Pagel, Davis & Hill represents numerous suppliers of goods and services to apartment complexes, including companies providing appliances, mini-blinds, lighting, make-ready items, maintenance products, refinishing services, and landscaping services. We understand the apartment supply business, and we thoroughly understand the prerequisites which must be followed in order to properly perfect mechanic's liens. We also routinely handle litigation against owners of apartment complexes for our apartment supplier clients.

How does PDH charge for its lien and collection services for apartment suppliers? PDH utilizes two means for charging clients for this work—fixed fees for specific tasks undertaken or contingency fees. The list of fixed fees for Apartment Suppliers, Construction Suppliers, and Commercial Suppliers can be obtained by simply contacting us.