



If you have any questions regarding the matters discussed in this article, please contact the following attorney

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## **MECHANIC'S AND MATERIALMANS' LIENS**

Persons or companies which furnish labor or materials for a construction project who have not been paid have remedies under Hawaii law. The most common remedy is a mechanic's or materialman's lien. The benefit of such a lien is that it is similar to a mortgage, and provides the holder of the lien with a security interest in the property which received the benefit of the labor or materials.

### **Who is Entitled to Apply for a Lien?**

Hawaii law provides that any person who furnishes labor or materials for the improvement of real property can apply for a mechanics' or materialmans' lien. This includes individuals, companies, general contractors, subcontractors, material suppliers, architects, engineers and laborers.

### **How Can I Obtain A Lien?**

There are strict procedural requirements which must be followed in order to obtain a lien. Hawaii's Mechanic's and Materialmans' Lien statute (Hawaii Revised Statutes, Chapter 507, Part II) sets forth the specific information which must be included in the lien application. For instance, the lien application must be accompanied by a written notice of lien, which includes the facts upon which the lien is based.

A lien application must be filed with the Circuit Court where the property is located. Upon the filing of the lien application, the Circuit Court will assign a return hearing date. At the return hearing, the owner of the property (or any other interested party) may appear, and the Court will determine if an interested party contests the attachment of the lien. If there appears to be a contest, the Court will schedule a further hearing to determine whether probable cause exists to allow the lien to attach. At the further hearing, the parties will be allowed to offer testimony and evidence on this issue.



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If the Court determines that probable cause exists to allow the lien to attach, the Court will enter an order directing the attachment of a lien. The order can then be recorded in the Bureau of Conveyances of the State of Hawaii (and the Land Court, if applicable) to establish a lien on the property.

#### **Are There Any Deadlines for Applying for a Lien?**

The lien application must be filed within 45 days after the date of the completion of the improvements against which it is filed. The date of completion is defined as the date when the owner or general contractor for the improvement completes the publication of a notice that the improvement has been completed or has been abandoned and an affidavit of the publication, together with a copy of the notice, has been filed in the office of the clerk of the Circuit Court where the property is situated. It is critical that the claimant know when the date of completion occurs to ensure that the lien application is filed within the required time period.

#### **What Can I Do Once I Have a Lien?**

Once a claimant has a lien, the claimant may take steps to foreclose the lien. This will allow the property to be sold and the proceeds distributed to those holding valid liens on the property in the order of their respective priority. A separate action is filed to begin this process. Like a judicial mortgage foreclosure, the lien holder must file a complaint to foreclose the lien. In this proceeding, the lien holder may request that a commissioner be appointed to sell the property and distribute the proceeds from the sale in accordance with applicable law.

#### **What Should I Do If I Believe I May Be Entitled to a Lien or Have Questions?**

There are numerous procedures that must be strictly followed in order to obtain a valid mechanic's and materialman's lien on property. If you believe you may be entitled to such a lien or have any questions, please contact us.