

MEMO

To: Agribusiness Clients

From: Brian Rickert & Mike Blaser

Subj: Major Changes to Iowa's Mechanic's Lien Laws
Date: February 13, 2013

MAJOR CHANGES TO IOWA'S MECHANIC'S LIEN LAWS – KNOW YOUR RIGHTS

If you were not aware, in 2012, the Iowa legislature made major changes to Iowa's Mechanic's Lien laws. These changes added new definitions, new notice requirements, and fundamentally changed the way that liens are filed in Iowa. This memo examines those changes and how they impact those in the Agricultural industry. It is imperative that you understand these new rules, as you can lose your lien rights if you do not comply.

As a general proposition, a Mechanic's Lien provides a method where a contractor can recover the value of the goods and services it provided to a property. A lien is a statutory remedy and you must follow the statutes exactly in order to recover. Lien laws vary by state. In Iowa, those laws are found in Iowa Code Chapter 572.

In 2012, Governor Branstad signed House File 675 and House File 2465 into law, which dramatically changed Iowa Code Chapter 572. These new rules became effective and apply to material furnished or labor performed after January 1, 2013, so these new rules are already in effect. **The new rules generally apply to residential construction, which was defined as "...construction on single-family or two-family dwellings occupied or used, or intended to be occupied or used, primarily for residential purposes, and includes real property pursuant to chapter 499B."** This memo will not analyze the impact of the rules on residential construction due to the limited number of Agribusinesses that perform Ag related "residential" work. If you have questions regarding any residential property you are working on, please contact the undersigned and we can try to answer your questions, as there are a significant number of changes relating to residential properties. Instead, this memo will address how the changes impact non-residential Ag projects.

The biggest change is that the new rules created a centralized on-line database that is managed by Secretary of State's Office. This centralized database must be used for all Mechanic's Liens, including those filed by Ag construction companies. The database can be found at: www.sos.iowa.gov/mnlr. The database is officially called the "Mechanics' Notice and Lien Registry", and the new rules are written around using this database. You will need internet access to use the database.

Under the old law, a party would file its Mechanic's Lien with the Clerk of Court in the county in which the property was located. This required 99 separate county Clerks to know and understand the rules. Making it more difficult, sometimes these Clerks would have their own local customs and practices that differed between counties. Under the new laws, the entire system and filing process is changed. Liens are no longer filed with the county Clerks. Instead, all liens are "posted" electronically to the database. Since this is an electronic, on-line database, the word "file" no longer applies to Mechanic's Liens, and the word "post" is used recognizing the electronic nature of the action. The database creates a centralized location for all filings, and all parties must utilize the database to preserve their lien rights. Further, the Secretary of State's Office was given the power to administer this new database, removing the burden from the 99 county Clerks' offices. The Secretary of State has set up its own internal rules governing the operation and use of the database. In short, under the new system, you "file" in one location and have one party who oversees the process. The time period for posting a lien remains the same - 90 days from the date the last of the work was provided.

In order to use the database, each party must set up an account with the SOS' office. This simple process is done on-line, and all you need is: (a) an e-mail address, (b) your name, (c) business name, (d) mailing address, (e) telephone number, and (f) security password that you choose. This account can be set up in a matter of minutes and is necessary as the Secretary of State charges fees and bills your account for items that are posted. Further, the database remembers your account information and automatically loads it into its fill-in-the-blank forms making it easier and quicker to post items.

Once an account is set up, posting a Mechanic's Lien is relatively simple process. Like the old rule, a lien claimant must post a statement of account to the database. The statement of account must be "verified" (i.e., admitted as truthful by the filer) and include the following information: (a) the date when such material was first furnished or labor first performed, and the date on which the last of the material was furnished or the last of the labor was performed; (b) the legal description of the property to be charged with the lien, (c) the name and last-known mailing address of the owner of the property, (d) the address of the property or a description of the location of the property if the property cannot be reasonably identified by an address, and (e) the tax parcel identification number. In addition, a lien on non-residential Ag property must also include: (f) the name and mailing address of the owner, (g) the name, address and telephone number of the general contractor or owner-builder, (h) the county in which the building, land or improvement to be charged with the lien is situated, (i) the e-mail address of the person posting or submitting the Mechanic's Lien or the e-mail address of another individual or entity designated to receive electronic correspondence on behalf of the person posting the lien. The above information is simply typed or inserted into the database using drop-down, fill-in-the blank boxes. Any lien is limited to the county in which the building, land or improvement to be charged with the lien is situated, and the county identified on the database at the time of posting shall be the only county in which the building, land or improvement may be charged with a Mechanic's Lien.

Once a lien is posted, the database automatically makes note of the following: (a) the name of the person who posted the lien, (b) the date and hour of posting, (c) the amount thereof, (d) the name of the person against whom the lien is posted, (e) the legal description of the property to be charged, (f) the tax parcel identification number of the property to be charged, and (g) the address of the property or a description of the location of the property if the property cannot be reasonably identified by an address. Priority of liens is determined by the date and time of the posting of the lien. Once posted, the lien is immediately available for viewing by the public. The database is searchable, and access to the public is free. Finally, when posted, the SOS mails a copy of the lien to the Owner's address. This notice includes the website address of the database and a toll-free telephone number of the SOS' office.

Under the old rules, and as a condition to having lien rights, a second-tier subcontractor or supplier¹ had to provide a one-time notice to the principal contractor that contained the name, mailing address and telephone number of the person furnishing labor or materials and the name of the subcontractor to whom the labor or materials were furnished. This notice had to be supplied within thirty (30) days of first furnishing labor or materials to the project in order to later assert lien rights. Under the new rules, this notice requirement remains the same. This notice is still provided to the principal contractor by the second tier sub or supplier (normally by mail), but is not posted to the database.

These new rules are already in place and became effective on January 1, 2013. As stated, it is important that you understand these new laws as you can lose your lien rights if you fail to comply. If you have any questions, please contact the undersigned. In addition, feel free to forward this memo on to anyone else that you think would benefit from reading it.

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¹ A second-tier sub or supplier is a person furnishing labor or materials to a subcontractor. See Iowa Code § 572.33.