

# Home Repair and Construction Liens

When a homeowner does not pay a prime contractor, subcontractor, or anyone who provided labor or materials for home repairs, those companies or people can file a lien on the property by following specific steps under Wisconsin law.

Definition: Generally, a “prime contractor” is the one who entered into an agreement with the owner to perform repairs/improvements. They may hire other companies or people, called subcontractors, to do some of the work or provide supplies. The prime contractor is responsible for paying the subcontractors from the funds they get from the owner. If a subcontractor is not paid by the “prime contractor” they can also file a lien on the home.

Definition: A lien is a claim for payment that attaches to property and affects the ownership rights of the property

A good source of information about homeowners’ rights regarding home repairs/improvements is at the Wisconsin Dept. of Agriculture, Trade and Consumer Protection (DATCP)’s website: <https://datcp.wi.gov/Pages/Publications/HI-ConsumerTips136.aspx>

## Notice of Lien Rights Required

To be able to place a lien on the owner’s home, a prime contractor must give the homeowner a notice informing the homeowner of the contractor’s right to file a lien. The notice must include specific language warning the owner that anyone providing labor, materials, or plans for the construction work may have lien rights if they are not paid. The notice should be given to the homeowner at the same time as the written contract for the work. If there is no written contract, the notice should be given within ten days of starting the work.

Note: Home improvement contracts must be in writing if the homeowner is required to pay anything before the project is finished or if the seller or contractor asked for the work through face-to-face meetings, mail, or telephone marketing.

Subcontractors or suppliers who provide labor, materials, or plans for the project should give their notice of lien rights to the owner within 60 days of beginning work on the project. The homeowner should give copies of the notices to any mortgage lender who is financing the project to make sure the subcontractors get paid.

If a prime contractor doesn't give the required notice along with the written contract or within ten days of starting work, they cannot get a lien on the property unless they have paid all subcontractors, and none of them gave a notice. A subcontractor's lien rights only start after they give the lien notice. If they give the notice late, they still have some lien rights, but they are limited.

## **Lien Waivers**

At or before the time when the owner pays the prime contractor for home repairs or improvements, the prime contractor should give the homeowner a notice of the owner's right to request lien waivers from them and all subcontractors as payments are made. The prime contractor should provide the lien waivers on request when payment is made. The waivers prevent them from filing a construction lien. If the project is being financed by a bank or other lending source, they will normally request lien waivers as they pay the contractor.

## **Procedure for Filing Lien**

Starting with the last date the "lien claimant" (company or person who provided services or materials) worked on the project, they have six months to file their lien for unpaid services and materials at the county clerk of courts' office where the house is located. Wis. Stat. sec. 779.06. The lien claimant must serve the owner with a notice of intent to file a lien 30 days before actually filing the lien at the

courthouse.

30 days after the notice of intent to file a lien is served on the homeowner, the lien claimant may file their lien with a copy of the notices of lien rights and intent to file the lien at the clerk of courts' office. A copy of the lien filing must also be sent to the owner. The lien is "docketed" in the court records in the same way as a court judgment, and can be found on a title search or by checking Wisconsin Circuit Court Access lien records for a "CL" case. <https://wcca.wicourts.gov/lien.html>

## **Satisfying of Collecting a Construction Lien**

A lien claimant can "satisfy" and release a construction lien if the homeowner pays their lien claim, similar to satisfying a court judgment. However, if the homeowner and lien claimant do not reach an agreement, the homeowner can post a "bond" or "undertaking" for 125% of the lien amount with the court clerk to remove the lien. If the lien claimant does not object to the "undertaking" within ten days and get the court to decide if the amount posted is enough, the lien is removed from the owner's property. Unless the lien claimant files a court case within two years of the lien filing, the bond will be returned to the owner.

The lien claimant has two years from filing the construction lien in court to start a court case to collect the lien, either from the owner or from the bond the owner posted with the clerk of courts. If the lien claimant gets a judgment, they get any funds posted with the clerk of court or can collect their judgment from the owner.

The lien claimant can also file a foreclosure case against the owner using the construction lien, although any mortgages, tax or judgment liens filed before the construction lien will be paid first.

Disputes about the amount owed or work done should be brought up before a lien is filed (See Right to Cure Law); once a lien is filed only a slander of title case in court or payment will resolve it, unless the contractor fails to take collection action for two years.

# Theft by Contractor

If a prime contractor collects payments from the owner, but doesn't pay their subcontractors/suppliers, they are liable for the amounts they received but didn't pay to their subcontractors, and criminal penalties may apply. The prime contractor must take payments with the responsibility to pay their subcontractors and suppliers and may be sued for conversion or criminally prosecuted and ordered to pay restitution to the homeowner. Complaints can be filed with the Wisconsin Dept. of Agriculture Trade and Consumer Protection for investigation and possible referral to the Wisconsin Dept. of Justice for prosecution.

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