



Minnesota
STATE COLLEGES
& UNIVERSITIES

Carpentry Program Real Estate Mechanics Liens and Lien Waivers

Applicability

Campuses that construct carpentry houses on their own purchased lots (on spec) or a house on blocks (on campus) should obtain lien waivers from every person or firm that has provided labor, skill, materials or machinery on the property (land and building).

Note: When the campus is a contractor for an owner that hires the carpentry program to construct a home on the owner's property, the campus should be providing the statutory lien notice in its construction contract consistent with in Minn. Stat. §514.011.

Requirements

A mechanics lien may be filed against a carpentry house project if bills are not paid to a contractor or subcontractor who has worked on a house or provided materials or machinery. Publicly-owned real property is often exempt from mechanic's lien statutes, although it is not certain whether this exemption applies to campus-owned carpentry houses. Therefore, we recommend obtaining lien waivers any time a person or firm has worked on a carpentry program house. It is good practice and consistent with what would otherwise be required in private industry.

This advice would extend to local lumber yards where construction materials are purchased. Any work order or invoice with a lumber yard should be reviewed to determine whether there is a pre-lien notice in the document, and a lien waiver should be obtained as materials are paid.

A lien waiver is a written statement signed by a subcontractor giving up the subcontractor's right to file a lien against an owner's property. A sample lien waiver follows this document.

Contractor Requirements

Before a contractor or subcontractor can file a mechanic's lien, the following requirements must be met:

1. **Contractor Must Be Licensed By the State.** A contractor who is supposed to be licensed, but isn't, cannot file a mechanics lien, even if all other provisions of the contract have been met. Minn. Stat. §326B.845.

Current as of: July 1, 2009

This document was produced by the Office of the Chancellor, and was derived from Minnesota law. Portions were used from the Minnesota Attorney General's Office website regarding residential construction practices. See (<http://www.ag.state.mn.us/Consumer/Housing/CitGuide/Default.asp>)

2. Contractor Must Give Campus Notice. In most cases, a contractor must give the campus written notice of an intent to file a lien if the contractor is not paid. This notice is required whenever subcontractors or material suppliers are employed to provide labor, skill or materials for the improvement, and is very specific and must be word for word from statute. If subcontractors are used, the notice is prescribed by law and must be included in a written contract, or, if there is no written contract, must be delivered to you separately within 10 days after the work is agreed upon. The notice must explain that subcontractors and suppliers may also have a lien on the property if they are not paid, even though they don't have a contract directly with the campus. The notice must state that Minnesota law (Minn. Stat. §514.011, Subd. 1 - contractor, Subd. 2 - subcontractor) allows the campus to either:

- pay any subcontractor directly and deduct that amount from the contract price; or,
- withhold from the contractor for 120 days after all work is completed as much of the contract price as is necessary to pay those subcontractors directly unless the contractor has given you lien waivers signed by the subcontractors.

If the contractor's notice is not given properly, the contractor does not have the right to a lien against the property.

3. Subcontractors Must Give Notice

As mentioned above, subcontractors must also give the campus a specific notice in order to protect their right to file a lien if they are not paid by the contractor. Minn. Stat. §514.011, Subd. 2. The notice must give the name and address of the subcontractor, the name of the contractor who hired the subcontractor, and the type of service or material provided and its estimated value. The subcontractor's notice must be given to you within 45 days of the time the subcontractor first furnishes labor or materials or it is not enforceable.

The notice required from both the general contractor and the subcontractors must be delivered personally or by certified mail to the responsible campus contact.

4. You Only Have to Pay Once

If the campus obtains a valid lien waiver from the subcontractor, or if the campus pays a contractor in full before receiving the notice from the subcontractor, the campus cannot be forced to pay for the services or material a second time if the contractor fails to pay the subcontractor.

5. Process to limit mechanics lien claims

To further protect from having mechanics liens filed against carpentry houses:

- Have the contractor list in the contract the names of all anticipated subcontractors and material suppliers.
- Keep track of any subcontractor notices you may receive before your final payment, since some subcontractors may not be listed in the contract.
- Before making final payment, be certain you receive lien waivers signed by each of the subcontractors.

Current as of: July 1, 2009

This document was produced by the Office of the Chancellor, and was derived from Minnesota law. Portions were used from the Minnesota Attorney General's Office website regarding residential construction practices. See (<http://www.ag.state.mn.us/Consumer/Housing/CitGuide/Default.asp>)

6. Apportioning Payment

Minnesota law gives the campus, as a property owner, two ways to reduce the risk that a subcontractor will file a mechanics lien against a carpentry house property. First, if the campus has not yet paid the general contractor in full when it receives the subcontractor's notice, the campus has the right to deduct the price of the subcontractor's goods or services from the amount owed to the general contractor. The campus can then pay that amount directly to the subcontractor. If the campus pays the subcontractor directly, be sure to get a lien waiver from the subcontractor.

Second, for 120 days after all work is completed, the campus would have the right to withhold from the contractor as much of the contract price as is necessary to pay subcontractors unless the contractor has given you lien waivers signed by the subcontractors.

When and Where Liens Are Filed

If a lien is filed against a carpentry house property (in the form of a lien statement), it must be filed with the county recorder and a copy delivered to the campus, the property owner, either personally or by certified mail, within 120 days after the last material or labor is furnished for the job. The Office of the Chancellor should be notified immediately in the event of a lien being filed against a carpentry project.

Summary:

1. Applies to carpentry houses where we are the owners
2. Applies whenever we use a contractor or subcontractors for any aspect of construction, including labor, materials or machinery
3. Obtain lien waivers from all contractors and subcontractors where the campus is the owner:
 - a. Residential lot and construct a house on it, or
 - b. When we construct a house on blocks.
4. **Check for the Pre-Lien Notice in any contract with a material supplier, subcontractor or other.**
5. Track all contracts and payments.

For further information, please contact:

Office of the Chancellor
Real Estate Services
30 E. 7th Street, Suite 350
St. Paul MN 55101
Phone: 651-296-3852
Gregory.ewig@so.mnscu.edu

Current as of: July 1, 2009

This document was produced by the Office of the Chancellor, and was derived from Minnesota law. Portions were used from the Minnesota Attorney General's Office website regarding residential construction practices. See (<http://www.ag.state.mn.us/Consumer/Housing/CitGuide/Default.asp>)

RECEIPT AND WAIVER OF MECHANIC'S LIEN RIGHTS

Date: _____

The undersigned hereby acknowledges receipt of the sum of
\$ _____.

CHECK ONLY ONE

1. _____ as partial payment for labor, skill and material furnished
2. _____ as payment for all labor, skill and material furnished or to be furnished (except the sum of \$ _____ retainage or holdback)
3. _____ as full and final payment for all labor, skill and material furnished or to be furnished

to the following described real property: (legal description, street address, or project name)

and for value received hereby waives all rights acquired by the undersigned to file or record mechanic's lien against said real property for labor, skill or material furnished to said real property (only for the amount paid if Box 1 is checked, and except for retainage shown if Box 2 is checked). The undersigned affirms that all material furnished by the undersigned has been paid for, and all subcontractors employed by the undersigned have been paid in full, EXCEPT:

By _____

(Title)

(Address)

NOTE: If this instrument is executed by a corporation, it must be signed by an officer, and if executed by a partnership, it must be signed by a partner.