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### **Avoiding Mechanics' Liens – A Checklist for Owners**

Owners of construction projects, and their lenders, are frequently anxious about the prospect of mechanics' liens being filed against their property. Whether filed during the course of construction or afterwards, these actions can be distressing for owners, especially if all the money allocated to the project has already been paid out. Mechanics' lien laws vary from state to state. In some states, contractors and subcontractors must overcome procedural hurdles to file a lien, a process that can act as a safeguard for owners. Regardless of state-specific lien laws, the following checklist will provide a few simple steps that owners can take to protect their projects from mechanics' liens:

- Be vigilant in scrutinizing all pay applications and supporting documentation, and maintain a regular physical presence at the project site. Does the project on the ground look like it has reached the stage of completion that the contractor has claimed in the pay application? Can you see evidence on the site of all the subcontractors for whom payment is sought in the pay application?
- Require the general contractor to obtain a payment bond. While the existence of a payment bond on a project does not automatically prevent subcontractors from filing liens in many states, it does act as a deterrent. That's because it gives unpaid subcontractors a source from which to claim payment, other than the filing of a lien on the owner's property.
- Every time you make a payment, make sure you get lien waivers, from everyone who could potentially claim a lien on the property. The promise of a final lien waiver from the general contractor at the end of the project is all well and good. But it is not especially helpful when a project runs into difficulties halfway through construction, and it turns out that none of the payments made to the general contractor so far have been used to pay subcontractors working on the project.
- Consider reserving a right in your contract with the general contractor to make payment by joint check. This can be a useful tool if you suspect that the contractor is not using monies paid in order to pay subcontractors entitled to payment.

For more advice on how to avoid mechanics' liens, or other aspects of construction law and contracting, contact your Thompson Coburn attorney or any of the construction law attorneys listed below:

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