

MECHANIC'S LIEN: DON'T FORGET THE PRE-LIEN NOTICE

If you ever sell or furnish on credit any material, labor or machinery for the original construction or remodeling of a single or double family dwelling, you must provide a pre-lien notice. The failure to do so will result in any subsequent mechanic's lien being null and void.

The pre-lien notice requirement applies when the following conditions are met:

- The property is a single or double family dwelling;
- The property is currently owner occupied or for the intended occupancy of the owner; and
- You have contracted with someone other than the owner.

In these circumstances, you must provide the owner notification of your lien rights within a short time after you commenced work or delivery of materials. These rules are intended to protect homeowners who construct or remodel homes and who are not knowledgeable of the rights of workers and suppliers to assert mechanic's liens. These provisions require subcontractors and suppliers who do not contract directly with the owner to notify the owner they are working on the home.

There are two different time limits for the pre-lien notice, depending on whether the work is for original construction or for remodeling work. If the home is undergoing remodeling, alteration or an addition, you must, within 30 days after the first delivery or work on the project, provide the owner with written notification of your lien rights. When you perform work or supply materials in connection with the construction of a new home, you must, within 60 days after the date of the first delivery or work, provide the owner written notice of your lien rights and you must file a copy of the notice with the county recorder's office within the 60 day period.

It must be remembered that a pre-lien notice is not a mechanic's lien. Compliance with the pre-lien notice provisions only enables you to preserve your rights to file a mechanic's lien. Thus, you still must otherwise comply with all requirements of a mechanic's lien and timely file the lien.

This article was written by Jeffery W. Henning, a Partner with the law firm of Rudolph, Fine, Porter & Johnson, LLP in Evansville, Indiana. For additional information, you may contact Jeff at (812) 422-9444 or e-mail: jwh@rfpj.com. His practice areas include Commercial and Business Litigation, Trade Secrets Law and Construction Law.

This article is intended solely as an information source and its contents should not be construed as legal advice. Readers should not act upon the information presented without professional counsel