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## Mechanics' Liens, Breaches of Contract, and Bond Claims

Often, these three topics are discussed together. This is for good reason. All three—mechanics' liens, breach of contract lawsuits, and bond claims—are legal options to recover payment for work provided on a construction project.

Each legal right is different, however. A mechanics' lien is a statutory remedy that allows laborers and materialmen to place a lien against the project. Importantly, the lien follows different procedures than the other remedies. For example, the mechanics' lien must be pursued immediately. In Pennsylvania, the lien must be filed within 6 months of the last date of work. Also, if not in direct contract with the owner, notice must be given in advance of filing the lien. Maryland follows similar timing requirements. But in some states, for example, Florida, notice of potential lien rights must be provided to the owner within a short time period of *starting work on the project*. Also, liens can only be filed in the county where the labor or materials were provided to the project. Liens are pursued against *the property and the owner*.

Breaches of contract, on the other hand, can be pursued with more latitude. A breach of contract is not always filed in the county (or state) where the project is located. Unlike a lien claim, the owner may not be a necessary party. Additionally, the statute of limitations (deadline) for filing the claim is longer than a mechanics' lien. In Pennsylvania, the standard statute of limitations for breaches of contract is four years. But, in other states, the statute of limitations could be longer, or shorter, (e.g. Maryland is three years). Other causes of action also fall within the umbrella of contract disputes—such as breaches of warranty, or indemnification, and each of these issues has unique wrinkles, as well.

Bond claims are contract disputes, too, but they often have specific statutory laws imposing procedural and substantive requirements. If it is a public project, a statute likely governs the interpretation of the bond. But if it is a private project, the common law will likely govern the dispute. Similar to breaches of contract, there might be clauses in the bond that govern the timing of filing and the extent of remedies available. Thus, it is always best to obtain a copy of any payment bonds at the same time as entering the contract. It is rare to pursue a bond claim and a mechanics' lien at the same time, due to statutory laws that often prevent the dual remedies.

When seeking payment for work, it is important to consider the full range of options. Sometimes a bond claim along with a breach of contract suit is best. Other times, a mechanics' lien is the advisable remedy. Still, in some cases, it is advisable to pursue multiple remedies at the same time. In all instances, it is wise to seek legal counsel.

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### What's Happening Now . . .

## \$132.9 billion

- Total construction for the first two months of 2015 (not seasonally adjusted).
- This represents a 2% increase in construction spending, in comparison to the first two months of 2014.
- The first two months of the year are a small sample size, but it appears that construction spending continues to slowly, steadily progress.

Sources: U.S. Census Bureau News Release:  
February 2015 Construction at \$967.2 Billion  
Annual Rate (Apr. 1, 2015).