

## PUBLIC IMPROVEMENT LIENS

**This document is prepared for informational purposes only and is not intended to be a legal guide or a substitute for legal advice. The Chapter 779 citations to the state statutes on this page are to the 2007-08 edition of the Wisconsin Statutes, updated through 2009 Wisconsin Act 100.**

*(Press "Ctrl" and left click your mouse to follow the links provided below.)*

## LIEN CLAIMS

**Any person providing services or materials directly to a prime contractor performing work for the Department of Administration ("Department") shall have a lien on amounts the Department owes to the prime contractor.**

Those providing services or materials directly to a prime contractor for work on a Department project are entitled to a lien on project funds. This includes any person who performs, furnishes, procures, manages, supervises or administers any labor, services, materials, plans or specifications used or consumed in making the public improvement. [Wis. Stat. §§ 779.15\(1\)](#) . Lien rights are available only to first-tier subcontractors, suppliers and service providers - those who are working directly for the prime contractor. Second tier subcontractors, suppliers and service providers - like a supplier to a subcontractor - do not have lien rights on Department projects. Lien claims are limited to funds not yet paid to the prime contractor. A project does not have to be complete in order to file a lien.

### **1. Filing a Claim**

**To perfect the lien, the person must file it with the Department.**

The person must serve the notice of lien upon the Department of Administration at:

Wisconsin Department of Administration  
Division of State Facilities  
Attention: Tammy Olson  
101 East Wilson Street, 7<sup>th</sup> floor  
P.O. Box 7866  
Madison, WI 53707-7866

***The notice of lien must be served upon the Department only by registered or certified mail to be accepted.*** [Wis. Stat. §§ 779.01\(2\)\(e\)](#) . The claim must be served concurrently upon the prime contractor and may be served upon the prime contractor by methods other than just registered or certified mail. [Wis. Stat. §§ 779.01\(2\)\(e\); 779.15\(2\)](#) . A person is encouraged to use the State Bar form for a Claim for Public Improvement Lien. [Claim for Public Improvement Lien](#) .

## **2. Payment of the Claim**

**The Department pays the amount claimed from the monies due unless the prime contractor disputes the claim.**

After receiving notice, the Department withholds a sufficient amount to pay the claim. If the prime contractor admits the claim is owed or does not dispute the claim within 30 days, the Department pays the amount claimed to the extent amounts are or will become due to the prime contractor. [Wis. Stat. §§ 779.15\(1\) and \(3\)](#) .

A prime contractor may dispute the claim by serving notice of the dispute upon the Department and the lien claimant within 30 days after service of the notice of lien. [Wis. Stat. §§ 779.15\(3\)](#) . ***Service of the notice of the dispute upon the Department must be by certified or registered mail.*** [Wis. Stat. §§ 779.01\(2\)\(e\); 779.15\(3\)](#) . Service of the notice of the dispute upon the lien claimant may be accomplished by methods other than just certified or registered mail. [Wis. Stat. §§ 779.01\(2\)\(e\); 779.15\(3\)](#) .

If the prime contractor disputes the claim, the right to the lien and the monies in question must be determined by a legal action brought by the claimant or prime contractor. If such an action is not brought within three (3) months from the time the notice of lien was served on the Department and notice of action was subsequently filed with the Department, the lien rights are barred Section 779.15(3). The prime contractor is encouraged to use the form for a [Prime Contractor Dispute of Claim for a Public Improvement Lien](#) .

## **3. Demand for Payment**

**A claimant may demand payment of an undisputed claim.**

A claimant may file a public demand for payment from the Department when the prime contractor has not disputed the claim within 30 days. [Wis. Stat. §§ 779.15\(1\)](#) . The demand, along with a copy of the Claim for Public Improvement Lien, as well as proof that the claim was served upon the prime contractor, must be sent to the Department at:

Wisconsin Department of Administration  
Division of State Facilities  
Attention: Tammy Olson  
101 East Wilson Street, 7<sup>th</sup> floor  
P.O. Box 7866  
Madison, WI 53707-7866

Claimants are encouraged to use the form [Public Demand for Payment](#) .

#### **4. Department Determination**

**If the amount of claims filed is more than the monies due the prime contractor, the Department shall distribute the money proportionally.**

When the total amount of claims exceed the sum due the prime contractor and the prime contractor has not disputed the amounts of claims filed, the Department shall determine on a proportional basis who is entitled to the money and shall notify the prime contractor and claimants in writing [Wis. Stat. §§ 779.15\(4\)\(a\)](#) .

Unless the prime contractor or a claimant commences an action within 20 days of the date of the determination, the money shall be paid out in accordance with the Department's determination.

If an action is commenced, all claimants shall be made parties and the action shall be commenced within 3 months after acceptance of work by the Department.

The Department shall make payment to the parties within 10 days after a copy of certified judgment is filed with the Department at:

Wisconsin Department of Administration  
Division of State Facilities  
Attention: Tammy Olson  
101 East Wilson Street, 7<sup>th</sup> floor  
P.O. Box 7866  
Madison, WI 53707-7866

[Wis. Stat. §§ 779.15\(4\)\(a\)](#) .

#### **5. Additional Remedies**

**A person with a claim against a prime contractor has other potential remedies including filing an action against the prime contractor's bond, attaching a civil judgment to project funds, or pursuing theft by contractor.**

***Bond actions.*** Prime contractors must provide a payment and performance bond for Department projects. Any party in interest having a direct contractual relationship with the prime contractor on a Department project may maintain a court action for damages against both the prime contractor and the surety that provided the prime contractor's bond [Wis. Stat. §§ 779.14\(1\)\(b\); 779.14\(2\)](#) .

Bond rights are available only to first-tier subcontractors, suppliers and service providers - those who are working directly for the prime contractor. Second tier subcontractors, suppliers and service providers - like a supplier to a subcontractor - do not have a right to file an action against the bond [Wis. Stat. §§ 779.14\(1\)\(b\); 779.14\(2\)](#) . The right to file an action against the bond expires one year after completion of all work under the prime contract. [Claimants are encouraged to use the State Bar form for this](#) . The right does not expire after completion of work under any one subcontract. The project does not need to be complete to make a bond claim.

***Judgment attachment.*** The owner of a civil judgment against the prime contractor may attach the debt to funds due a prime contractor by filing a certified copy of the judgment with the Department in the manner provided by statute [Wis. Stat. §§ 779.155](#) . The attachment only applies to monies in excess of unpaid lienable expenses and claims [Wis. Stat. §§ 779.155](#) .

***Theft by contractor.*** Use of monies by the prime or subcontractor for any other purpose than payment of claims on the Department project, before such claims have been satisfied, constitutes theft by contractor [Wis. Stat. §§ 779.16; 943.20](#) .

### **Questions**

If you have procedural questions, you may contact Tammy Olson at [Tammy.olson@wisconsin.gov](mailto:Tammy.olson@wisconsin.gov) or (608) 264-9560.