



3200 Cherry Creek South Drive, Suite 650, Denver, Colorado 80209
Phone (main): (303) 777-1411

COLORADO CONSTRUCTION PAYMENT REMEDIES: TIMEFRAMES AND DEADLINES

MECHANIC'S LIENS, PAYMENT BONDS, AND OTHER REQUIRED NOTICE TO RECOVER PAYMENT FOR WORK ON STATE AND FEDERAL CONSTRUCTION JOBS

REED F. MORRIS
PARTNER/ATTORNEY
MALLON LONNQUIST MORRIS & WATROUS, PLLC
rmorris@mlmw-law.com
(303) 927-0011 (DIRECT)

APRIL 6, 2016

Construction contractors in Colorado know the general legal devices they may employ to secure or motivate prompt payment. Contractors also know there are strict deadlines that should be checked, double checked, and calendared in every case where payment for work is in the slightest doubt.

Here we provide a general overview of the necessary deadlines and timeframes for the main construction payment remedies on private and public projects in Colorado. This is intended to be a general overview¹ only and does not cover specific requirements or the nature and content required for each notice or filing type.

Timeframes for Colorado Mechanic's Liens on Private Projects:

- Notice of Intent to File a Lien Statement (to property owner and upper tier contractor):
 - Providing notice to the contractor/owner of the job site is needed before a lien can be filed -- must be provided eleven (11) days before the lien can be recorded. Section §38-22-109(3), C.R.S. (2015) (at least 10 days).

¹ Deadlines and timeframes presented herein may have changed by the time you read this.



Record Lien Statement with the county Clerk and Recorder's Office:

- Ten (10) days after mailing the notice to the contractor/owner, a lien statement can be filed. Section §38-22-109(3), C.R.S. (2015).
- There are deadlines within which the lien statement needs to be filed, so calendaring and serving the prior notice (above) before these deadlines is critical.
 - If you are a laborer—who *only* supplies labor and not materials—the lien statement needs to be filed within two months after completion* of the improvement. Section §38-22-109(4), C.R.S. (2015).
 - All others, including general contractors, subcontractors, and suppliers, need to file their lien statement within four months after the last day on which the labor is performed* or the material furnished* by the person filing the lien. Section §38-22-109(5), C.R.S. (2015).
 - If the lien statement is being recorded against a one or two family dwelling, then the lien statement should be filed no later than two months after the improvement is completed. Section §38-22-125, C.R.S. (2015).

Notice to Extend Time to Record Mechanic's Lien: If you need more time to file the lien statement, one may file a notice of extension with the office of the county clerk and recorder where the job site was located.

- This notice of extension must be filed within the time limit allowed for filing the lien statement itself. Section §38-22-109(10) , C.R.S. (2015).
 - For laborers, no later than two months after improvement is completed. Section §38-22-109(4), C.R.S. (2015).
 - For all others, no later than four months after the last day on which the labor is performed or materials furnished by that claimant. Section §38-22-109(5), C.R.S. (2015).

Deadline to File a Court Action (Foreclosure) on the Recorded Mechanic's Lien:

- Once you have filed the lien, you then have six months within which to file a court action to foreclose on the property.
 - This six-month time period is measured from the date the lien was filed or the construction project was completed, whichever date is later. Section §38-22-110, C.R.S. (2015).



State and Local Construction Projects:

Notice of Non-Payment Prior to Settlement Date: An unpaid contractor on a state or local government project must give notice to the governmental entity with whom the contractor contracted for the project. Notice may be given up until the time of final settlement. Section §38-26-107(1) , C.R.S. (2015).

- The “final settlement” is the last day for all parties on the project to get paid. If the construction project was for more than \$150,000, the governmental body is required to publish the final settlement date at least twice in a newspaper of general circulation in any country where the work was contracted for no later than ten days before the final settlement is made. Section §38-26-107(1) , C.R.S. (2015).
 - Once the state or local government receives the notice, the government will withhold from the contractor the amount owed to the unpaid lower tier subcontractor or supplier. Section §38-26-107(2), C.R.S. (2015).
 - The government will only hold these funds for 90 days after the final settlement date unless an action is filed within that time to enforce the unpaid claim. Section §38-26-107(2) , C.R.S. (2015).
 - This 90-day period starts after the initial work* on the construction project was completed, not after subsequent repairs or after machinery is removed from the job site.

Payment Bond Claims on State or Local Projects:

- If a contractor must bring a lawsuit on a construction payment bond claim on a local or state project, the suit must be filed no later than six months after the improvement is completed. Terms of the bond and the “Little Miller Act” must be reviewed for important notice provisions. Section §38-26-105, C.R.S. (2015).

Federal Construction Projects:

Payment Bond Claims on Federal Projects:

- Suit must be filed on a federal construction payment bond claim no later than one year after the labor is performed or the last materials were supplied. 40 U.S.C. §3133(b)(4) (Miller Act²).

² http://www.gsa.gov/portal/mediaId/224015/fileName/miller_brochure.action



- Second-tier subcontractors may bring a court action only if the party provides the prime contractor written notice within 90 days of last performing labor or furnishing materials. 40 U.S.C. §3133(b)(2) (Miller Act).

ABOUT THE AUTHOR:

Reed F. Morris is a Denver-based attorney who regularly represents owners, contractors and sureties in payment and performance related construction litigation including private and public jobs, bond claims, mechanic's liens and related disputes. He is a partner at MLMW and represents parties to construction disputes in state and federal courts and all alternative dispute venues including mediations and arbitrations (AAA). Reed can be reached for questions at rmorris@mlmw-law.com or by phone at (303) 927-0011 (direct).



For more information about our law firm's [construction practice](#) and to obtain other resources for construction industry professionals, please visit our website at www.mlmw-law.com

###