

NEWS & INSIGHTS

Mechanics' liens and the bankrupt owner

INSIGHTSARTICLE

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When the owner on a construction project files bankruptcy, it is almost certain that someone down the line has not been paid for their work. One of the biggest protections afforded by the U.S. Bankruptcy Code is the automatic stay, which halts all efforts to collect debts from the debtor. Thus, if a contractor, subcontractor, or supplier has not been paid, the automatic stay typically halts the filing of a lawsuit against the owner. But does the automatic stay prevent the filing of mechanics' liens?

Fortunately, thanks to Pennsylvania's unique mechanics' lien law, the right to lien the property still exists despite an owner filing bankruptcy. Although the code is federal law, there are several instances in which the code's application

rests on an interpretation of state law. This is one of those instances.

How a mechanic's lien can help you

Unlike the lien laws of several other states, the Pennsylvania statute specifically declares that the right to a mechanics' lien "relates back" to the date labor and materials were first furnished to the project. The filing of the mechanics' lien is an action to perfect that right, which first arose when the work commenced. Thus, if the work commenced prior to the owner's filing bankruptcy, the mechanics' lien can be filed even after the bankruptcy. Because of this, a contractor or subcontractor in Pennsylvania can still pursue payment by filing a mechanics' lien without violating the automatic stay protections.

When an owner goes bankrupt, all entities down the chain are at risk of losing a significant amount of money. For some companies, the loss is too great, and they find themselves facing bankruptcy. The ability to lien an owner who has filed for bankruptcy can be critical, because when unable to collect on the lien, there may be few assets in the bankrupt estate, and those few assets are likely to be divided among several creditors.

Don't waste time

Unfortunately, the number of bankruptcy filings – especially in construction – is likely to increase over the next year. While Pennsylvania has favorable lien laws as it relates to bankruptcy, be mindful that Pennsylvania also has strict timing and filing requirements to record a mechanics' lien. For those projects that are slow to pay or have other indicators of potential insolvency, it is critical to keep accurate records of the date that labor and materials were first and last furnished, and best practice is to consult with legal counsel early to ensure all requirements for filing the lien are satisfied.

Saxton & Stump's construction law attorneys, [Ron Pollock](#), [Matt Chabal](#) and [Mike Traxler](#) are available to assist companies in navigating projects where insolvency or bankruptcy is a concern.

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