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# Comments: Employees as Subcontractors: Maryland's Interpretation of Its Mechanics' Liens Statute

Anee P. Raulerson  
*University of Baltimore School of Law*

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## EMPLOYEES AS SUBCONTRACTORS: MARYLAND'S INTERPRETATION OF ITS MECHANICS' LIENS STATUTE

### I. INTRODUCTION

A sprinkler-fitter puts in a lengthy and arduous forty-hour week. He has spent long, tedious hours installing a fire sprinkler system with his co-workers. At the end of the week, he gets his reward for dealing with the rigorous demands of his job—a paycheck.

When the fitter goes to the bank to cash his paycheck, he finds that there are insufficient funds in his employer's account to cover his check. The fitter has no money to pay for his mortgage, car payment, or any of his other bills. He attempts to collect the money from his employer, but is ultimately unsuccessful.

The fitter, along with his co-workers, who experienced the same problem, seek legal advice and decide to place a mechanics' lien<sup>1</sup> on the property that they have worked so diligently to improve. A mechanics' lien is a way for contractors, subcontractors, materialmen, and laborers to secure the cost of the labor and materials that they have exhausted while enhancing a piece of property.<sup>2</sup> When they file the lien, the fitters discover that their employer has contractually waived the company's right to place a lien against the property. It is now in the court's discretion to determine whether the fitters are eligible for relief via a mechanics' lien, or whether their employer waived their rights.

In *Judd Fire Protection, Inc. v. Davidson*, Maryland addressed the issue of whether employees of a sub-subcontractor could bring suit against a subcontractor under Maryland's Mechanics' Lien statute when the sub-subcontractor had waived its right to a mechanics' lien.<sup>3</sup> The

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1. A mechanics' lien is:

A statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property, such as a building, an automobile, or the like. — Also termed artisan's lien; chattel lien (for personal property); construction lien (for labor); garageman's lien (for repaired vehicles); laborer's lien (for labor); materialman's lien (for materials).

BLACK'S LAW DICTIONARY 935 (7th ed. 1999) (emphasis omitted).

2. See S. BLOOM, A TREATISE ON THE LAW OF MECHANICS' LIENS AND BUILDING CONTRACTS § 6 (1910).

3. 138 Md. App. 654, 656-57, 773 A.2d 573, 575 (2001). A subcontractor is "[o]ne who is awarded a portion of an existing contract by a contractor, esp. a general contractor." BLACK'S LAW DICTIONARY 1155 (7th ed. 2000). A sub-subcontractor is one who is hired by a subcontractor to do work. *Judd Fire Prot., Inc.*, 138 Md. App. at 656-57, 773 A.2d at 575. The employees in *Judd Fire Protection, Inc.* worked for the sub-subcontractors. *Id.* For the purposes of this comment, sub-subcontractors and subcontractors are used in-

Court of Special Appeals of Maryland held that employees of a subcontractor could be considered subcontractors themselves, and any waiver of mechanics' liens made by the subcontractor would not apply to its employees.<sup>4</sup>

This comment will discuss several aspects surrounding the *Judd Fire Protection, Inc.* decision. Part II.A. discusses the purpose behind the mechanics' lien statute. Part II.B. addresses the procedures for claiming a mechanics' lien. Part II.C. addresses the rights that subcontractor employees have to obtain mechanics' liens. Part II.D. discusses, in detail, the court's decision in *Judd Fire Protection, Inc.* Part III.A. analyzes the court of special appeals' decision, which held that employees of the subcontractor had standing as subcontractors and, therefore, could file for a mechanics' lien. Part III.B. compares the *Judd Fire Protection, Inc.* decision with similar cases in other jurisdictions. Part III.C. examines the *Judd Fire Protection, Inc.* decision in light of the legislative intent underlying Maryland's mechanics' lien statute. Finally, Part IV concludes that the Court of Special Appeals of Maryland was correct in the *Judd Fire Protection, Inc.* holding, which allowed employees to gain subcontractor status for purposes of obtaining a mechanics' lien.

## II. THE EXISTENCE AND FUNCTIONS OF MECHANICS' LIENS

### A. *The Purpose Behind Mechanics' Liens*

Mechanics' liens were disregarded at common law.<sup>5</sup> The view was that once a laborer or materialman gave his labor or materials to another, he then relinquished ownership of these things.<sup>6</sup> In 1791, Maryland passed the first mechanics' lien law in the United States.<sup>7</sup> The law's purpose was to assure workers payment for their labor and to promote the speedy construction of Washington, D.C.<sup>8</sup> Throughout the late-eighteenth to early-nineteenth centuries other states began to adopt statutory law to establish mechanics' liens.<sup>9</sup> Presently, all juris-

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terchangeably as the court did not distinguish between the two. *Id.* at 660-70, 773 A.2d at 576-83.

4. *Id.* at 665, 773 A.2d at 580.

5. Samuel L. Phillips, *A Treatise on the Law of Mechanics' Liens on Real and Personal Property* § 1 (Boston et al., 2d ed. 1883).

6. *See id.*

7. JUSTIN SWEET, *LEGAL ASPECTS OF ARCHITECTURE, ENGINEERING AND THE CONSTRUCTION PROCESS* 641 (West Publishing Co. 5th ed. 1994) (1970). Currently Maryland's mechanics' lien statute consists of one subtitle of the Real Property section of the Maryland Annotated Code, which is appended in its entirety. MD. CODE ANN., REAL PROP. §§ 9-101 to 9-114 (2003).

8. *See SWEET, supra* note 7, at 641.

9. *See PHILLIPS, supra* note 5, § 7.

dictions in the United States have some type of mechanics' lien statute.<sup>10</sup>

The purposes of mechanics' liens statutes are "to provide security of payment for the suppliers of labor and materials on construction projects and to facilitate credit in the construction industry,"<sup>11</sup> as well as to protect against unjust enrichment.<sup>12</sup> A mechanics' lien is a statutory right to a claim against property given to a laborer or materialman who improves a property regardless of any contractual privity the laborer may have with the owner or contractor.<sup>13</sup> Liens enhance a laborer's position with an owner or contractor when attempting to obtain payment for services rendered or materials supplied because the lien encumbers the owner's property, making it difficult to sell or borrow against.<sup>14</sup> The property may then be sold to satisfy the lien, giving the injured laborer or materialman his relief.<sup>15</sup>

### B. *The Procedures for Claiming a Mechanics' Lien*

To claim a lien against a property after nonpayment, a laborer must file documents with the state's land registry office<sup>16</sup> or, as is the case in Maryland, with the clerk of the appropriate county's circuit court.<sup>17</sup> Many states, including Maryland, require that the laborer provide the owner with a Notice of Intent regarding the mechanics' lien.<sup>18</sup> Some states' mechanics' lien statutes have a time limitation for filing a petition for a lien claim and Notice of Intent to the owner.<sup>19</sup> If the laborer does not file these documents within the requisite time, the laborer can lose his claim to a mechanics' lien,<sup>20</sup> but he may still have a breach of contract claim against the one who hired him—typically

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10. See BRIAN M. SAMUELS, *CONSTRUCTION LAW* 99 (Ed Francis ed., Prentice Hall 1996).

11. *Id.*

12. See SWEET, *supra* note 7, at 639-40. The theory of unjust enrichment is defined as: "The retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected." BLACK'S LAW DICTIONARY 1536 (7th ed. 1999).

13. CONSTRUCTION AND DESIGN LAW § 37.1 (C. Allen Foster et al. eds., 3d ed. 1998). Privity of contract is "[t]he relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so." BLACK'S LAW DICTIONARY 1217 (7th ed. 1999).

14. See SAMUELS, *supra* note 10, at 100.

15. See *id.*

16. *Id.* at 101.

17. MD. CODE ANN., REAL PROP. § 9-105(a) (2003).

18. See *id.* § 9-104(a); SAMUELS, *supra* note 10, at 101.

19. SAMUELS, *supra* note 10, at 101. In Maryland, a laborer has 120 days from finishing the work to give written Notice of Intent to claim a lien. MD. CODE ANN., REAL PROP. § 9-104(a). Maryland also requires that a petition for a claim must be filed within 180 days after the work has been finished in the circuit court in the county where the land is located. *Id.* § 9-105(a).

20. SAMUELS, *supra* note 10, at 101.

the general contractor.<sup>21</sup> The laborer may also lose his claim if he or she does not begin legal proceedings within the statute's established time frame.<sup>22</sup>

Once legal action is initiated, the laborer must show that he performed his duties under the contract and that payment was denied to him.<sup>23</sup> If the court finds that a lien should attach to the property, the laborer then becomes a creditor of the owner.<sup>24</sup> The laborer can collect his money in three ways: (1) directly from the owner; (2) wait for the land to be sold and collect his money in line with the other creditors to the land (which may mean that he will get very little, if any, compensation); or (3) on rare occasion, the laborer may petition the court to sell the land to pay for his share of work.<sup>25</sup> The route for collecting the money simply depends on whether the owner has set up any security on the property.<sup>26</sup>

### C. *The Right of Subcontractor Employees to a Mechanics' Lien*

Owners and general contractors usually deal with subcontractors on a company level; however, the employees of subcontractors may have access to the mechanics' lien statute to claim a lien against the project property even though they do not deal directly with the owner or general contractor.<sup>27</sup> In *National Electrical Industry Fund v. Bethlehem Steel Corp.*,<sup>28</sup> the electrical workers union fund filed a mechanics' lien against the project property on behalf of its union members.<sup>29</sup> Although the court of appeals rejected the union's contention that its collective bargaining agreement with the employer gave the union

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21. *Id.* at 100. The lien has more assurance of payment than a breach of contract claim because the general contractor may become insolvent and therefore unable to pay the judgment. *See id.* Because a court may always order the sale of the property to satisfy the lien, a valid lien ensures payment. *See id.*
  22. *See id.* at 102; SWEET, *supra* note 7, at 642. Maryland requires that a pleading be filed with the petition for a lien to the court, which the court will review. MD. CODE ANN., REAL PROP. § 9-106(a).
  23. *See* SAMUELS, *supra* note 10, at 102; SWEET, *supra* note 7, at 642. In Maryland, if the petition and pleading of a laborer are found sufficient for the court to attach a lien, then the owner has 15 days to show why the lien should not be attached. MD. CODE ANN., REAL PROP. § 9-106(a). The owner only needs to deny the validity of the lien, making the laborer prove its validity. *F. Scott Jay & Co., Inc. v. Vargo*, 112 Md. App. 354, 361, 685 A.2d 799, 803 (1996) (citing *Cont'l Steel Corp. v. Sugarman*, 266 Md. 541, 295 A.2d 493 (1972)).
  24. *See* SAMUELS, *supra* note 10, at 102.
  25. *See id.* at 102; SWEET, *supra* note 7, at 642. Maryland allows the laborer to enforce a mechanics' lien on a property one year from the time the petition for a lien was filed. MD. CODE ANN., REAL PROP. § 9-109.
  26. *See* SAMUELS, *supra* note 10, at 102; SWEET, *supra* note 7, at 642.
  27. *See Judd Fire Prot., Inc.*, 138 Md. App. at 660, 773 A.2d at 577.
  28. 296 Md. 541, 463 A.2d 858 (1983).
  29. *Id.* at 544, 463 A.2d at 859.

standing to file for a mechanics' lien,<sup>30</sup> the court did determine that each employee had an individual contract with the employer.<sup>31</sup> The individual contracts gave each electrical worker subcontractor status, and it gave them the right to claim a mechanics' lien against the property.<sup>32</sup>

As demonstrated in the Nebraska case *Omaha Construction Industry Pension Plan v. Children's Hospital*, even when there are no individual contracts, employees of a subcontractor may still have the right to claim a mechanics' lien on the project property.<sup>33</sup> In *Omaha*, union employees of a subcontractor attempted to assert a construction lien (construction-industry mechanics' lien) against the owner's property for labor rendered on the property.<sup>34</sup> Nebraska based its Construction Lien Act on the Uniform Simplification of Land Transfers Act ("Uniform Act"), which "allows any person, no matter how far removed from the contracting owner, to file a lien for services or materials furnished pursuant to a real estate improvement contract."<sup>35</sup> Although Nebraska does not follow the Uniform Act verbatim, its Construction Lien Act, like the Uniform Act, does not mention any prohibition of subcontractor employees filing a mechanics' lien.<sup>36</sup>

The Nebraska statute does provide that "[a] person who furnishes services or materials pursuant to a real estate improvement contract has a construction lien, only to the extent provided in sections 52-125 to 52-159, to secure the payment of his or her contract price."<sup>37</sup> The Court of Appeals of Nebraska determined that there was no difference between the relationship of subcontractor employees to a property owner and of a supplier to a property owner.<sup>38</sup> The court ultimately held that subcontractor employees had the right to obtain a mechanics' lien.<sup>39</sup>

Other states do not follow the "Nebraska Rule" on mechanics' liens. For example, *Bender v. Beverly Anne, Inc.* examined a subcontractor's employees' rights to a mechanics' lien under North Dakota law.<sup>40</sup> Bender was a subcontractor employee who was not paid for his labor.<sup>41</sup> In order to collect his money, Bender filed a mechanics' lien against the project property.<sup>42</sup> The subcontractor, Basic Concrete,

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30. *Id.* at 545, 463 A.2d at 860.

31. *Id.* at 546, 463 A.2d at 860.

32. *Id.* at 547-48, 463 A.2d at 861.

33. 642 N.W.2d 849 (Neb. Ct. App. 2002).

34. *Id.* at 852.

35. *Id.*

36. *See id.*

37. NEB. REV. STAT. § 52-131 (1998).

38. *Omaha Constr. Indus. Pension Plan*, 642 N.W.2d at 853.

39. *Id.* at 853, 855.

40. 651 N.W.2d 642 (N.D. 2002).

41. *Id.*

42. *Id.* at 644.

Inc., had already released its rights to a mechanics' lien before Bender filed his claim.<sup>43</sup>

North Dakota's mechanics' lien statute provides that any person who contributes labor and is under contract with the owner, agent, trustee, contractor, or *subcontractor* has a right to a lien.<sup>44</sup> The Supreme Court of North Dakota affirmed the trial court's decision that Bender did not have a claim under the statute.<sup>45</sup> The trial court reasoned that Bender was an employee because he was in privity with the subcontractor and not an actual subcontractor under the statute.<sup>46</sup>

Bender argued that there are two systems of mechanics' liens statutes, the Pennsylvania system and the New York system.<sup>47</sup> Bender contended that North Dakota followed the Pennsylvania system, which reasoned that "a laborer's right to a lien does not depend on the existence of a debt due from the owner to the contractor."<sup>48</sup> The court disagreed with Bender's contention<sup>49</sup> and looked instead to the New York system, under which "a laborer's lien depends on an amount remaining due to the contractor . . . ."<sup>50</sup>

The Supreme Court of North Dakota examined the North Dakota Century Code section 35-27-02, which states: "If the owner or agent has paid the full price or value of the contribution, no lien is allowed."<sup>51</sup> Once Basic Concrete dismissed its claim against Beverly Anne, Inc., it settled any outstanding payments, and the court held that any mechanics' lien filed after that point would be void, including Bender's.<sup>52</sup>

*D. The Instant Case: Judd Fire Protection, Inc. v. Davidson*

*Judd Fire Protection, Inc.* presented the Court of Special Appeals of Maryland with a case in which a subcontractor's employees filed a claim for a mechanics' lien.<sup>53</sup> Unlike *National Electrical Industry Fund v. Bethlehem Steel Corp.*, the employees did not have individual employment contracts with the subcontractor.<sup>54</sup> Without individual employment contracts, the court of special appeals examined the possibility

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43. *Id.*

44. N.D. CENT. CODE § 35-27-02 (1987).

45. *Bender*, 651 N.W.2d at 646.

46. *Id.* at 644-45.

47. *Id.* at 646.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* (citing N.D. CENT. CODE § 35-27-02 (1987)).

52. *Id.*

53. 138 Md. App. 654, 658, 773 A.2d 573, 576 (2001).

54. *Id.* at 662, 773 A.2d at 578; *see also Nat'l Elec. Indus. Fund*, 296 Md. 541, 546, 463 A.2d 858, 860 (1983).

of subcontractor employees being viewed as subcontractors themselves, as Nebraska and North Dakota would do a year later.<sup>55</sup>

This examination of mechanics' liens stemmed from an acceleration of a contract between the general contractor, Whiting-Turner, Inc., and its subcontractor, Judd Fire Protection, Inc., for the installation of a fire sprinkler system.<sup>56</sup> Judd hired SDR Fire Protection as a subcontractor because it could not complete the contract work within the project's accelerated time schedule.<sup>57</sup> After a percentage of the work was completed, SDR's employees walked off of the project site because SDR had insufficient funds in its account to cover their paychecks.<sup>58</sup>

Although SDR failed to complete the project, Judd paid it for the completed work and SDR signed a Lien Release.<sup>59</sup> SDR's Lien Release stated that materialmen could not claim a lien against the property or Judd, but similar releases were never obtained from the employees themselves.<sup>60</sup> Many of SDR's employees attempted to collect their wages by filing suits against SDR.<sup>61</sup> Although they were successful in obtaining judgments, the employees were unable to collect from SDR.<sup>62</sup>

As a result, ten employees filed a petition for a mechanics' lien against the property.<sup>63</sup> Judd, on behalf of the owner and general contractor, filed an answer to the employees' petition.<sup>64</sup> The trial court found in favor of the employees and held that they were "entitled to recover the reasonable value of the services rendered in each instance by each employee considered separately."<sup>65</sup>

Judd appealed the decision to the Court of Special Appeals of Maryland.<sup>66</sup> Judd's main contention was that the employees did not have standing to bring the case because they personally were not subcontractors.<sup>67</sup> The court looked to the mechanics' lien statute and found that it allows "a creditor for labor or materials to proceed in rem

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55. *Judd Fire Prot., Inc.*, 138 Md. App. at 662-63, 773 A.2d at 578; *see also* *Omaha Constr. Indus. Pension Plan v. Children's Hosp.*, 642 N.W.2d 849, 855 (Neb. Ct. App. 2002); *Bender*, 651 N.W.2d at 646 (dismissing *Bender's* complaint and ordering the mechanics' lien stricken).

56. *Judd Fire Prot., Inc.*, 138 Md. App. at 656-57, 773 A.2d at 574-75.

57. *Id.* at 657, 773 A.2d at 575.

58. *Id.* at 658, 773 A.2d at 575.

59. *Id.*

60. *Id.* at 658, 773 A.2d at 576.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 659, 773 A.2d at 576.

65. *Id.*

66. *Id.* at 656, 773 A.2d at 574-75.

67. *Id.* at 660-61, 773 A.2d at 577 (explaining that Judd alleged that the ten employees did not satisfy the statutory definition of standing).



against improved property even though he could show no privity of contract with the owner, nor personal liability of the owner to him."<sup>68</sup>

The court determined that although there were no formal agreements between the employees and SDR, there were still written, oral, and implied contracts to perform work at the project site.<sup>69</sup> These agreements provided that the employees would supply the labor for the project and, in turn, SDR would pay them for their work.<sup>70</sup> The court noted that "[a] subcontractor is defined as 'a person who has a contract with anyone except the owner or his agent.'"<sup>71</sup> Based on the statute, the court concluded that the employees were subcontractors and could file for a mechanics' lien.<sup>72</sup>

*Judd Fire Protection, Inc.* was further complicated because Judd paid SDR for its services.<sup>73</sup> SDR then signed a Lien Release, but never paid its employees.<sup>74</sup> The court looked to state policy and recognized that mechanics' lien law is normally construed "in the most liberal and comprehensive manner in favor of mechanics and materialmen."<sup>75</sup> Even though the court acknowledged that Judd would pay twice the amount, once to SDR and once to SDR's employees, it held that the employees were not parties to the lien release and they were entitled to bring a claim for a mechanics' lien.<sup>76</sup>

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68. *Id.* at 660, 773 A.2d at 577 (quoting *Wolf Org. v. Oles*, 119 Md. App. 357, 366-67, 705 A.2d 40 (1998) (citations omitted)).

69. *Id.* at 663, 773 A.2d at 578. There are two types of implied contracts, an implied-in-fact contract and an implied-in-law contract (also known as a quasi-contract). BLACK'S LAW DICTIONARY 322 (7th ed. 1999). In *Judd Fire Protection, Inc.*, an implied-in-law contract exists, that is:

An obligation imposed by law because of the conduct of the parties, or some special relationship between them, or because one of them would otherwise be unjustly enriched. An implied-in-law contract is not actually a contract, but instead a remedy that allows the plaintiff to recover a benefit conferred on the defendant.

*Id.* This is different from an express contract, which is "[a] contract whose terms the parties have explicitly set out." *Id.* at 321.

70. *Judd Fire Prot., Inc.*, 138 Md. App. at 663, 773 A.2d at 578.

71. *Id.* at 662, 773 A.2d at 578 (quoting MD. CODE ANN., REAL PROP. § 9-101(g) (1996)).

72. *Id.*

73. *Id.* at 663, 773 A.2d at 578.

74. *Id.*

75. *Id.* at 664, 773 A.2d at 579 (quoting *Winkler Constr. Co. v. Jerome*, 355 Md. 231, 246, 734 A.2d 212, 221 (1999) (citations omitted)).

76. *Id.* at 665, 773 A.2d at 579.

### III. MARYLAND'S INTERPRETATION OF ITS MECHANICS' LIEN STATUTE

#### A. *The Court of Special Appeals of Maryland Correctly Held that the Subcontractor Employees were Subcontractors Under the Maryland Mechanics' Lien Statute*

In *Judd Fire Protection, Inc.*, the court of special appeals looked to cases such as *National Electrical Industry Fund* to determine whether subcontractor employees should be considered subcontractors themselves.<sup>77</sup> In *National Electrical Industry Fund*, the Court of Appeals of Maryland determined that the Maryland mechanics' lien statute gave employees the right to claim mechanics' liens when individual employment agreements were formed between them and the subcontractor.<sup>78</sup> The court in *Judd Fire Protection, Inc.*, applying the holding in *National Electrical Industry Fund*, held that an implied employment agreement between a subcontractor and employee may exist simply by an agreement to improve the property.<sup>79</sup>

Similar cases have arisen in other jurisdictions requiring the courts to determine whether or not an employment agreement made contractors' or subcontractors' employees similar to subcontractors themselves under their state's statutes. In *Amick v. C&T Development Co.*, a contractor failed to pay its employees, resulting in the employees filing a mechanics' lien against the project owner's property.<sup>80</sup> The Supreme Court of Appeals of West Virginia determined that "an employee shall have the same lien and other rights and remedies for the enforcement of his claim of liquidated damages as he would have been entitled to had he actually rendered service therefore in the manner as last employed."<sup>81</sup> The court applied West Virginia's mechanics' lien laws to this case by analyzing West Virginia Code section 38-2-6, which provides that employees of contractors and subcontractors have the right to a lien.<sup>82</sup> State law, therefore, supported the

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77. See *id.* at 661-62, 773 A.2d at 577-78.

78. See *Nat'l Elec. Indus. Fund v. Bethlehem Steel Corp.*, 296 Md. 541, 552, 463 A.2d 858, 863 (1983).

79. See *Judd Fire Prot., Inc.*, 138 Md. App. at 662-63, 773 A.2d at 578.

80. 416 S.E.2d 73, 74 (W. Va. 1992).

81. *Id.* at 76 (citing *Farley v. Zapata Coal Corp.*, 281 S.E.2d 238, 242 (W. Va. 1981)).

82. *Id.* See also W. VA. CODE § 38-2-6 (1997). This section of the West Virginia Code specifically states:

Every workman, artisan, mechanic, laborer or other person who performs any work or labor or provides any service under the employment of any general contractor or of any subcontractor in the erection, construction, repair or removal of any building or other structure, or improvement appurtenant thereto, or who alters or improves the real property whereon the same stands, or to which it may have been removed, necessary to the completion of such general contract, shall have such a lien for his or her compensation as is mentioned in section one of this article.

court's holding that a contractor's employees could claim a mechanics' lien against the improved property.<sup>83</sup>

In *Rutenberg-Sarasota, Ltd. v. Eisner*, the District Court of Appeal of Florida also addressed the issue of a subcontractor's employee having a right to a lien.<sup>84</sup> The court determined that privity between a laborer and owner was not needed to claim a lien.<sup>85</sup> In applying Florida's mechanics' lien statute, the court determined that a proper contract to improve property must be present before a lien can be claimed.<sup>86</sup> The *Rutenberg-Sarasota, Ltd.* court held that a proper contract can exist between a subcontractor and a laborer.<sup>87</sup> The court found that a proper contract did exist in this case and the laborers were entitled to claim a mechanics' lien under Florida law.<sup>88</sup>

In *Stepuncik v. Michalek*, the Appellate Court of Illinois also determined that an employee of a contractor or subcontractor was entitled to a lien.<sup>89</sup> In *Stepuncik*, the general contractor failed to pay a carpenter employee and the carpenter filed a lien against the project property.<sup>90</sup> The *Stepuncik* court had to determine whether an employee of a contractor was entitled to file for a lien.<sup>91</sup> The court concluded that the employee was considered a subcontractor for the purpose of bringing a lien because there was no statutory exclusion stating otherwise.<sup>92</sup>

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*Id.*

83. *Amick*, 416 S.E.2d at 76.

84. 509 So.2d 398, 399 (Fla. Dist. Ct. App. 1987).

85. *Id.* at 400.

86. *Id.*

87. *Id.*

88. *Id.* The Florida mechanics' lien law defines a "contract" as "an agreement for improving real property, written or unwritten, express or implied, and includes extras or change orders." FLA. STAT. ANN. § 713.01(6) (West 2000). A laborer is "any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others." *Id.* § 713.01(15). "Laborer" is included under Florida's definition of lienor. *Id.* § 713.01(17).

89. 384 N.E.2d 526, 527 (Ill. App. 1978).

90. *Id.* at 526.

91. *Id.*

92. *Id.* at 527. Illinois' mechanics' lien statutes defines someone who can claim a lien as:

Any person who shall by any contract or contracts, express or implied, or partly expressed or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or to manage a structure thereon . . . furnish or perform labor or services as superintendent, time keeper, mechanic, laborer or otherwise, in the building, altering, repairing or ornamenting of the same . . . is known under this Act as a contractor, and has a lien upon the whole of such lot of tract of land.

770 ILL. COMP. STAT. ANN. 60/1-1 (West 2001).

Some jurisdictions, such as the District of Columbia, have yet to determine whether a subcontractor employee would be entitled to bring a claim for a mechanics' lien. Under D.C.'s mechanics' lien statute, those allowed to bring a claim for a lien are those who are "directly employed" by the original contractor.<sup>93</sup> Although D.C. allows subcontractors to bring lien claims, it does not allow subcontractors of subcontractors to bring such claims.<sup>94</sup> It is undecided whether D.C. would allow an employee of a subcontractor to bring a claim for a lien. It seems unlikely, however, that D.C. would extend its mechanics' lien statute to that of a sub-subcontractor's employees, as was done in *Judd Fire Protection, Inc.*,<sup>95</sup> when it will not even extend the statute to the sub-subcontractor.<sup>96</sup>

Although some jurisdictions would prefer not to extend the lien privilege too far from the original contract,<sup>97</sup> most jurisdictions believe that laborers for contractors and subcontractors should be provided with some means of "security of payment" for work performed, regardless of how far removed they are from the original contract.<sup>98</sup> Maryland's mechanics' lien statute is not as obvious as West Virginia's with respect to defining who may claim a mechanics' lien,<sup>99</sup> but it is similar to Nebraska's and Florida's statutes.<sup>100</sup> Section 9-101(g) of Maryland's Real Property Code defines a subcontractor as "a person who has a contract with anyone except the owner or his agent,"<sup>101</sup> whereas Nebraska's entitles someone who "furnishes services" for the improvement of property to a construction lien.<sup>102</sup> Although Florida's mechanics' lien statute's language is a bit narrower than Maryland's and Nebraska's,<sup>103</sup> the Florida courts apply the same broad interpretation.<sup>104</sup> *Judd Fire Protection, Inc.*, therefore, followed the majority of jurisdictions in allowing the employees the right to bring the lien.<sup>105</sup>

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93. D.C. CODE ANN. § 40-303.01 (2001).

94. *Battista v. Horton, Meyers, & Raymond*, 128 F.2d 29, 31 (D.C. Cir. 1942).

95. See generally *Judd Fire Prot., Inc.*, 138 Md. App. 654, 773 A.2d 573 (2001).

96. See *supra* note 92.

97. See *supra* notes 90-91.

98. See *Rutenberg-Sarasota, Ltd. v. Eisner*, 509 So.2d 398, 399 (Fla. Dist. Ct. App. 1987); *Stepuncik v. Michalek*, 384 N.E.2d 526, 526 (Ill. App. Ct. 1978); *Omaha Constr. Indus. Pension Plan v. Children's Hosp.*, 642 N.W.2d 849, 852 (Neb. Ct. App. 2002); *Amick v. C&T Dev. Co.*, 416 S.E.2d 73 (W. Va. 1992); SAMUELS, *supra* note 10, at 99.

99. Compare *infra* Appendix with *supra* note 82.

100. Compare *infra* Appendix with *supra* notes 37 & 88.

101. MD. CODE ANN., REAL PROP. § 9-101(g) (2003).

102. NEB. REV. STAT. § 52.131(1) (1998).

103. FLA. STAT. ANN. § 713.01(17) (West 2000). See also *supra* notes 102; *infra* Appendix.

104. See generally *Florida Fruit Co. v. Shakelford*, 198 So. 841, 842 (Fla. 1940); see also *Rutenberg-Sarasota, Ltd. v. Eisner*, 509 So.2d 398, 399 (Fla. Dist. Ct. App. 1987).

105. See 138 Md. App. 654, 773 A.2d 573.

*Judd Fire Protection, Inc.* also moved away from the archaic disposition that "there must be an express contract entered into before the commencement of the work, and not a claim arising from an implied contract in order to give the workman a lien."<sup>106</sup> Additionally, the Court of Appeals of Maryland recognized that some form of a contract must exist between the laborer and the subcontractor.<sup>107</sup>

The Maryland mechanics' lien statute expands on the written agreement in *National Electrical Industry Fund* by defining a contract as "an agreement of any kind or nature, express or implied, for doing work or furnishing material, or both, for or about a building as may give rise to a lien."<sup>108</sup> Maryland's statute is consistent with other jurisdictions, such as Iowa, that have decided that an implied contract was sufficient for an employee to bring a lien claim.<sup>109</sup> The theory that "the [mechanics' lien] statute becomes as much a part of every contract of employment coming within its purview as if its provisions were written into the contract between the parties" is often followed in other jurisdictions.<sup>110</sup> This theory was followed in *Judd Fire Protection, Inc.*, where the Court of Special Appeals of Maryland correctly held that the sub-subcontractor's employees had as valid a right to a lien claim as the subcontractors themselves.<sup>111</sup>

*B. Maryland's Interpretation of the Effect of a Third Party's Lien Release is Comparable to that of Other Jurisdictions*

Although the court in *Judd Fire Protection, Inc.* established that the employees were subcontractors within the definition provided under the Maryland mechanics' lien statute, owners still have several options to protect themselves from potential liens against their property.<sup>112</sup> Some states give owners the opportunity to establish what is known as a "no lien" contract.<sup>113</sup> A "no lien" contract is essentially a waiver of a contractor's right to put a lien on the owner's property that the general contractor then passes on in his contracts with subcontractors, laborers, and materialmen.<sup>114</sup> Some states, including Maryland, do

106. PHILLIPS, *supra* note 5, § 120.

107. *Judd Fire Prot., Inc.*, 138 Md. App. at 663, 773 A.2d at 578 (following Nat'l Elec. Indus. Fund v. Bethlehem Steel Corp., 296 Md. 541, 547-48, 463 A.2d 848, 861 (1983)).

108. MD. CODE ANN., REAL PROP. § 9-101(c) (2003).

109. Roger W. Stone, *Mechanic's Liens in Iowa - Revisited*, 49 DRAKE L. REV. 1, 5 (2000) (citing IOWA CODE § 572.2 (1999)); Clemens Graf Droste Zu Vischering v. Kading, 368 N.W.2d 702, 708 (Iowa 1985); Giese Constr. Co. v. Randa, 524 N.W.2d 427, 430 (Iowa Ct. App. 1994).

110. Florida Fruit Co. v. Shackelford, 198 So. 842, 842 (Fla. 1940).

111. See 138 Md. App. at 663, 773 A.2d 578.

112. See *id.* at 665-66, 773 A.2d at 580.

113. See generally CONSTRUCTION AND DESIGN LAW, *supra* note 13, § 37.6a.; JUSTIN SWEET, SWEET ON CONSTRUCTION LAW 385 (A.B.A. 1997).

114. See generally CONSTRUCTION AND DESIGN LAW, *supra* note 13; SWEET, *supra* note 113, at 385.

not allow lien waivers in contracts between subcontractors and general contractors.<sup>115</sup> An owner or general contractor may also attempt to get lien waivers when progress payments are made or when the final payment is received,<sup>116</sup> as occurred in *Judd Fire Protection, Inc.*<sup>117</sup>

In *Judd Fire Protection, Inc.*, SDR, the subcontractor, released its right to a lien,<sup>118</sup> which put the court of special appeals in a position to decide whether this lien release applied to the subcontractor's employees as well.<sup>119</sup> One theory used in the determination was that subcontractors should have the same rights afforded to general contractors.<sup>120</sup> Thus, if a general contractor waived its rights to a lien in the original contract with the owner, then the subcontractor would be bound to follow such provisions.<sup>121</sup>

The theory that a subcontractor's lien rights can be waived through the provisions of the original contract between contractor and owner has since been replaced; a general "contractor and owner cannot deprive the material man of his lien by introducing a stipulation into the building contract, by which the [general] contractor agrees to indemnify the owner against any lien by persons furnishing materials to be used in the construction of the building."<sup>122</sup> The same argument can be made for laborers in that "the contract between the contractors and owner, by which the [laborers] were not to have a lien, was a contract that third persons should not have the benefit of a statute made expressly for them, and therefore void as to third persons . . . ."<sup>123</sup> *Judd Fire Protection, Inc.* exemplifies this in stating that because the employees were not parties to the lien release, SDR's release did not deprive them of their rights.<sup>124</sup>

Because SDR's employees were considered subcontractors under the provisions of the Maryland mechanics' lien statute, lien releases should have been collected from each of them to preclude the employees from bringing a lien.<sup>125</sup> The court was correct in holding that

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115. See CAL. BUS. & PROF. CODE § 7034(b) (West 1995); CONN. GEN. STAT. ANN. § 49-33 (West 1994); DEL. CODE ANN. tit. 25, § 2706 (1989); MD. CODE ANN., REAL PROP. § 9-113 (2003); N.Y. LIEN LAW § 34 (McKinney 1993); N.C. GEN. STAT. § 44A-12(f) (2002).

116. See CONSTRUCTION AND DESIGN LAW, *supra* note 13, § 37.6a.

117. See 138 Md. App. at 658, 773 A.2d at 575.

118. See *id.*

119. See *id.* at 665, 773 A.2d at 580.

120. See *Bowen v. Aubrey*, 22 Cal. 566, 570-71 (1863).

121. See *id.* at 571.

122. *Whittier v. Wilbur*, 48 Cal. 175, 177-78 (1874).

123. *Id.* at 176-77. Simple reference to the terms of the original contract between the owner and general contractor, where there is a waiver of mechanics' liens, in the contractor-subcontractor contract is not enough to apply the lien waiver to the subcontractor. See *Robinson v. Herrell Constr. Co.*, 7 Va. Cir. 308 (1986) (citing *VNB Mortgage Corp. v. Lone Star Indus., Inc.*, 209 S.E.2d 909, 913-14 (1974)).

124. See 138 Md. App. at 665, 773 A.2d at 579-80.

125. See generally MD. CODE ANN., REAL PROP. § 9-113 (2003).

the employees lien rights were not waived,<sup>126</sup> and is consistent with the idea that “[i]t is not competent for the contractor, by any term of his contract, or otherwise, to waive, affect, or impair the liens of other persons, whether with or without notice, except by their written consent.”<sup>127</sup>

C. *Maryland's Choice to Follow the Pennsylvania System of Mechanics' Liens Properly Serves the Legislative Purpose Behind Mechanics' Liens Statutes*

Two standard approaches towards mechanics' liens statutes have arisen over the years. These two approaches, discussed earlier in Part II.C., are the Pennsylvania system and the New York system.<sup>128</sup> Each system has its advantages and disadvantages in resolving claims of mechanics' liens, and each state has a different agenda for the system they have chosen.

The New York system limits the amount of money that a laborer can collect from an owner to the amount the owner has not yet paid the contractor.<sup>129</sup> Under this system, the liens that are brought are derivative in nature.<sup>130</sup> Discussing the New York system, the court in *Jitney-Jungle Stores of America, Inc. v. United States* explained as follows:

The materialmen or laborers under such a statute are entitled to a lien only when the contractor is entitled to one, and there is something due or to become due to the principal contractor from the owner. Parties giving this notice have no contractual rights other than those possessed by the person or company through which they claim, making them more or less subrogation rights.<sup>131</sup>

The problem with this system is that if the owner pays the contractor and, in turn, the contractor does not pay the subcontractor, the subcontractor is limited in what he can recover. This is especially true if the contractor becomes insolvent, in which case the subcontractor may not receive payment at all.<sup>132</sup> The advantage to the New York system is that owners do not have to fear double payment.<sup>133</sup>

Some states have modified the New York system. Virginia limits the amount that the subcontractor can collect from the owner to that

126. See 138 Md. App. at 665, 773 A.2d at 579-80.

127. BLOOM, *supra* note 2, § 65, at 71 (citing *Whittier*, 48 Cal. at 177-78; *Shaver v. Murdock*, 36 Cal. 293, 298 (1862)).

128. SWEET, *supra* note 7, at 641.

129. See N.Y. LIEN LAW § 4(1) (McKinney 1993); *Bender v. Beverly Anne, Inc.*, 651 N.W.2d 642, 646 (N.D. 2002); SWEET, *supra* note 7, at 641.

130. See *Masten Lumber & Supply Co. v. Brown*, 405 A.2d 101, 103-04 (Del. 1979).

131. No. J75-333(N), 1977 WL 1271, at \*3 (S.D. Miss. Oct. 11, 1977).

132. See generally *id.*; *Bender*, 651 N.W.2d at 646; *Judd Fire Prot., Inc.*, 138 Md. App. at 660, 773 A.2d at 577.

133. See *supra* note 129 and accompanying text.

which is still due to the general contractor.<sup>134</sup> The Virginia statute differs from New York's, in that, under the Virginia statute, the subcontractor's claim to a lien is independent of the general contractor and not subrogated to the general contractor's rights.<sup>135</sup>

Virginia's mechanics' lien statute also takes on one of the characteristics of the Pennsylvania system, in that, the subcontractor's claim to a mechanics' lien is independent of the general contractor.<sup>136</sup> Under the Pennsylvania system, a contract between an owner and a contractor is like an agency, because the owner is aware that the general contractor will be obtaining subcontractors to do some of the work provided for in the contract.<sup>137</sup> According to this theory, the subcontractors are considered to have direct liens against the owner's property.<sup>138</sup>

Under the Pennsylvania system, the subcontractor is not limited to the amount of money he can collect from the owner, regardless of what the owner has already paid the general contractor.<sup>139</sup> The problem with these types of mechanics' liens statutes is the possibility of owners paying twice for the same improvements to their property.<sup>140</sup> The advantage over the New York system, however, is that those who have performed their duties of improving the owner's property will receive full payment for their labors, regardless of the general contractor's actions.<sup>141</sup>

Although traditionally a Pennsylvania system state with respect to commercial properties, Delaware has modified its approach to mechanics' liens in situations involving residential properties.<sup>142</sup> Here, Delaware follows the New York system, in which the lien is limited by the amount still due to the contractor.<sup>143</sup> As a result, the law protects unknowing homeowners from the threat of having their property sold to pay off a lien, while still giving laborers their justified payment when dealing with commercial owners whose personal properties are not at stake.<sup>144</sup>

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134. See VA. CODE ANN. § 43-7 (Michie 2002); *Robinson v. Herrell Constr. Co.*, 7 Va. Cir. 308, 310-12 (1986).

135. Compare *Jitney-Jungle*, 1977 WL 1271, at \*3, with *Robinson*, 7 Va. Cir. at 312.

136. Compare *State v. Tabasso Homes, Inc.*, 28 A.2d 248, 253 (Del. 1942), with *Robinson*, 7 Va. Cir. at 309 (citing *VNB Mortgage Corp. v. Lone Star Indus., Inc.*, 209 S.E.2d 909, 913 (1974)).

137. *Tabasso Homes, Inc.*, 28 A.2d at 253.

138. *Id.*

139. SWEET, *supra* note 7, at 641.

140. See SWEET, *supra* note 7, at 643.

141. See generally *Tabasso Homes, Inc.*, 28 A.2d at 252-53.

142. See *Masten Lumber & Supply Co. v. Brown*, 405 A.2d 101, 103-04 (Del. 1979); see also *Tabasso Homes, Inc.*, 28 A.2d at 253.

143. See DEL. CODE ANN. tit. 25, § 2707 (1989); *Masten Lumber & Supply*, 405 A.2d at 104.

144. See DEL. CODE ANN. tit. 25, § 2707; *Masten Lumber & Supply*, 405 A.2d at 104.



Maryland has chosen to exclusively use the Pennsylvania system when dealing with mechanics' liens.<sup>145</sup> In so doing, Maryland secures laborers' rights to payment for the work they have completed, possibly at the expense of the owner who would receive the benefit of their work.<sup>146</sup> This was exactly the case in *Judd Fire Protection, Inc.*<sup>147</sup>

Judd paid SDR for the services it had rendered up until the point of the labor problems with SDR's employees, but SDR never passed that money on to its employees.<sup>148</sup> SDR's employees simply wanted the money they were owed, and when they were unsuccessful in recovering their money from SDR, they asserted their statutory rights and placed a lien on the project property.<sup>149</sup>

The court in *Judd Fire Protection, Inc.* simply did what the Maryland statute provided for when it granted a lien to the employees.<sup>150</sup> Judd knew there were labor problems within SDR and, knowing the industry, Judd should have made sure the employees received their money.<sup>151</sup>

Many have argued that double payment is unjust to the owners and, in cases such as *Judd Fire Protection, Inc.*, it should not be the responsibility of the owner to monitor the actions of subcontractors.<sup>152</sup> However, as stated by the court, "[a]lthough the result may seem harsh, it comports with the remedial purposes of the statute and is not so draconian as to raise issues of fundamental unfairness."<sup>153</sup> The court appropriately decided to grant the mechanics' lien to the employees within the boundaries of Maryland's statute.<sup>154</sup> Although a statute like Delaware's may better serve the public in terms of dealing with differences in residential and commercial properties,<sup>155</sup> Maryland's statute follows its objective of protecting those who actually improve the owner's property.<sup>156</sup>

#### IV. CONCLUSION

Protecting laborers from nonpayment for work performed has been an objective of the Maryland legislature since the eighteenth century.<sup>157</sup> Although mechanics' lien statutes have problems,<sup>158</sup> they are

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145. See MD. CODE ANN., REAL PROP. § 9-102 (2003).

146. See SAMUELS, *supra* note 10, at 99-100; SWEET, *supra* note 7, at 640.

147. 138 Md. App. 654, 658, 773 A.2d 573, 575-76 (2001).

148. *Id.*

149. *Id.*

150. See MD. CODE ANN., REAL PROP. § 9-102; *Judd Fire Prot., Inc.*, 138 Md. App. at 665, 773 A.2d at 580.

151. See *Judd Fire Prot., Inc.*, 138 Md. App. at 658, 665-66, 773 A.2d at 575-76, 580.

152. See generally SWEET, *supra* note 7, at 643.

153. *Judd Fire Prot., Inc.*, 138 Md. App. at 665, 773 A.2d at 580.

154. See generally MD. CODE ANN., REAL PROP. § 9-102; *Judd Fire Prot., Inc.*, 138 Md. App. at 665, 773 A.2d at 580.

155. See DEL. CODE ANN. tit. 25, § 2707 (1989).

156. See *Judd Fire Prot., Inc.*, 138 Md. App. at 660, 773 A.2d at 577.

157. See *supra* notes 6-7 and accompanying text.

intended to ensure that owners do not benefit at the expense of laborers and materialmen.<sup>159</sup>

The Court of Appeals of Maryland in *Judd Fire Protection, Inc.* protects those who have worked hard to do their jobs regardless of titles, privity with others, contracts of third parties, and payments given but not received.<sup>160</sup> Certain people may consider the court's interpretation of Maryland's mechanics' liens statute in *Judd Fire Protection, Inc.* unfair to owners. This one-sided view, however, ignores the purpose of this statute—providing just compensation for the laborers and materialmen who have arduously performed their duties.<sup>161</sup>

*Anee P. Raulerson*

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158. *See supra* Part III.C.

159. *See supra* note 10 and accompanying text.

160. *See supra* Part III.A-C.

161. *See supra* Part III.A-C.

## APPENDIX

*Subtitle 1. Mechanics' Liens***§ 9-101. Definitions.**

(a) *In general.* – In this subtitle the following words have the meanings indicated.

(b) *Building.* – “Building” includes any unit of a nonresidential building that is leased or separately sold as a unit.

(c) *Contract.* – “Contract” means an agreement of any kind or nature, express or implied, for doing work or furnishing material, or both, for or about a building as may give rise to a lien under this subtitle.

(d) *Contractor.* – “Contractor” means a person who has a contract with an owner.

(e) *Land.* – “Land” means the land to which a lien extends under this subtitle or the land within the boundaries established by proceedings in accordance with the Maryland Rules. “Land” includes the improvements to the land.

(f) *Owner.* – “Owner” means the owner of the land except that, when the contractor executes the contract with a tenant for life or for years, “owner” means the tenant.

(g) *Subcontractor.* – “Subcontractor” means a person who has a contract with anyone except the owner or his agent.

**§ 9-102. Property subject to lien.**

(a) *Buildings.* – Every building erected and every building repaired, rebuilt, or improved to the extent of 15 percent of its value is subject to establishment of a lien in accordance with this subtitle for the payment of all debts, without regard to the amount, contracted for work done for or about the building and for materials furnished for or about the building, including the drilling and installation of wells to supply water, the construction or installation of any swimming pool or fencing, the sodding, seeding or planting in or about the premises of any shrubs, trees, plants, flowers or nursery products, the grading, filling, landscaping, and paving of the premises, and the leasing of equipment, with or without an operator, for use for or about the building or premises.

(b) *Waterlines, sewers, drains and streets in development.* – If the owner of land or the owner’s agent contracts for the installation of waterlines, sanitary sewers, storm drains, or streets to service all lots in a development of the owner’s land, each lot and its improvements, if any, are subject, on a basis pro rata to the number of lots being developed, to the establishment of a lien as provided in subsection (a) of this section for all debts for work and material in connection with the installation.

(c) *Machines, wharves, and bridges.* – Any machine, wharf, or bridge erected, constructed, or repaired within the State may be subjected to a lien in the same manner as a building is subjected to a lien in accordance with this subtitle.

(d) *Exemptions.* – However, a building or the land on which the building is erected may not be subjected to a lien under this subtitle if, prior to the establishment of a lien in accordance with this subtitle, legal title has been granted to a bona fide purchaser for value.

(e) *Filing of petition constitutes notice to purchaser.* – The filing of a petition under § 9-105 shall constitute notice to a purchaser of the possibility of a lien being perfected under this subtitle.

### § 9-103. Extent of lien.

(a) *In general.* – A lien established in accordance with this subtitle shall extend to the land covered by the building and to as much other land, immediately adjacent and belonging in like manner to the owner of the building, as may be necessary for the ordinary and useful purposes of the building. The quantity and boundaries of the land may be designated as provided in this section.

(b) *Designation of boundaries.* – An owner of any land who desires to erect any building or to contract with any person for its erection may define, in writing, the boundaries of the land appurtenant to the building before the commencement of construction, and then file the boundaries for record with the clerk of the circuit court for the county. The designation of boundaries shall be binding on all persons. If the boundaries are not designated before the commencement of a building, the owner of the land or any person having a lien or encumbrance on the land by mortgage, judgment, or otherwise entitled to establish a lien in accordance with this subtitle may apply, by written petition, to the circuit court for the county to designate the boundaries.

(c) *Unfinished building; repaired or rebuilt building.* – (1) If a building is commenced and not finished, a lien established in accordance with this subtitle shall attach to the extent of the work done or material furnished.

(2) If a building is erected, or repaired, rebuilt or improved to the extent of 25 percent of its value, by a tenant for life or years or by a person employed by the tenant, any lien established in accordance with this subtitle applies only to the extent of the tenant's interest.

### § 9-104. Notice to owner by subcontractor.

(a) *Notice required to entitle subcontractor to lien.* – (1) A subcontractor doing work or furnishing materials or both for or about a building other than a single family dwelling being erected on the owner's land for his own residence is not entitled to a lien under this subtitle

unless, within 120 days after doing the work or furnishing the materials, the subcontractor gives written notice of an intention to claim a lien substantially in the form specified in subsection (b) of this section.

(2) A subcontractor doing work or furnishing materials or both for or about a single family dwelling being erected on the owner's land for his own residence is not entitled to a lien under this subtitle unless, within 120 days after doing work or furnishing materials for or about that single family dwelling, the subcontractor gives written notice of an intention to claim a lien in accordance with subsection (a)(1) of this section and the owner has not made full payment to the contractor prior to receiving the notice.

(b) *Form of notice.* – The form of notice is sufficient for the purposes of this subtitle if it contains the information required . . .

(c) *Notice by mail or personal delivery.* – The notice is effective if given by registered or certified mail, return receipt requested, or personally delivered to the owner by the claimant or his agent.

(d) *More than one owner.* – If there is more than one owner, the subcontractor may comply with this section by giving the notice to any of the owners.

(e) *Notice by posting.* – If notice cannot be given on account of absence or other causes, the subcontractor, or his agent, in the presence of a competent witness and within 120 days, may place the notice on the door or other front part of the building. Notice by posting according to this subsection is sufficient in all cases where the owner of the property has died and his successors in title do not appear on the public records of the county.

(f) *Payments by owner to contractor after notice; limitation on lien against certain single family dwellings.* – (1) On receipt of notice given under this section, the owner may withhold, from sums due the contractor, the amount the owner ascertains to be due the subcontractor giving the notice.

(2) If the subcontractor giving notice establishes a lien in accordance with this subtitle, the contractor shall receive only the difference between the amount due him and that due the subcontractor giving the notice.

(3) Notwithstanding any other provision of this section to the contrary, the lien of the subcontractor against a single family dwelling being erected on the land of the owner for his own residence shall not exceed the amount by which the owner is indebted under the contract at the time the notice is given.

#### § 9-105. Filing of claims.

(a) *In general.* – In order to establish a lien under this subtitle, a person entitled to a lien shall file proceedings in the circuit court for

the county where the land or any part of the land is located within 180 days after the work has been finished or the materials furnished. The proceedings shall be commenced by filing with the clerk, the following:

(1) A petition to establish the mechanic's lien, which shall set forth at least the following:

(i) The name and address of the petitioner;

(ii) The name and address of the owner;

(iii) The nature or kind of work done or the kind and amount of materials furnished, the time when the work was done or the materials furnished, the name of the person for whom the work was done or to whom the materials were furnished and the amount or sum claimed to be due, less any credit recognized by the petitioner;

(iv) A description of the land, including a statement whether part of the land is located in another county, and a description adequate to identify the building; and

(v) If the petitioner is a subcontractor, facts showing that the notice required under § 9-104 of this subtitle was properly mailed or served upon the owner, or, if so authorized, posted on the building. If the lien is sought to be established against two or more buildings on separate lots or parcels of land owned by the same person, the lien will be postponed to other mechanics' liens unless the petitioner designates the amount he claims is due him on each building;

(2) An affidavit by the petitioner or some person on his behalf, setting forth facts upon which the petitioner claims he is entitled to the lien in the amount specified; and

(3) Either original or sworn, certified or photostatic copies of material papers or parts thereof, if any, which constitute the basis of the lien claim, unless the absence thereof is explained in the affidavit.

(b) *Docketing; process; pleadings.* – The clerk shall docket the proceedings as an action in equity, and all process shall issue out of and all pleadings shall be filed in the one action.

#### **§ 9-106. Procedure following filing of claim.**

(a) *Review of pleadings and documents filed; order to show cause; opposing affidavit; answer showing cause.* – (1) When a petition to establish a mechanic's lien is filed, the court shall review the pleadings and documents on file and may require the petitioner to supplement or explain any of the matters therein set forth. If the court determine that the lien should attach, it shall pass an order that direct the owner to show cause within 15 days from the date of service on the owner of a copy of the order, together copies of the pleadings and documents on file, why a lien upon the land or building and for the amount

described in the petition should not attach. Additionally, the order shall inform the owner that:

(i) He may appear at the time stated in the order present evidence in his behalf or may file a counteraffidavit at or before that time; and

(ii) If he fails to appear and present evidence or file a counteraffidavit, the facts in the affidavit supporting the petitioner's claim shall be deemed admitted and a lien may attach to the land or buildings described in the petition.

(2) If the owner desires to controvert any statement of fact contained in the affidavit supporting the petitioner's claim, he must file an affidavit in support of his answer showing cause. The failure to file such opposing affidavit shall constitute an admission for the purposes of the proceedings of all statements of fact in the affidavit supporting the petitioner's claim, but shall not constitute an admission that such petition or affidavit in support thereof is legally sufficient

(3) An answer showing cause why a lien should not be established in the amount claimed shall be set down for hearing at the earliest possible time.

(b) *Final order; interlocutory order.* – (1) If the pleadings, affidavits and admissions on file, and the evidence, if any, show that there is no genuine dispute as to any material fact and that the lien should attach as a matter of law, then a final order shall be entered establishing the lien for want of any cause shown to the contrary. Further, if it appears that there is no genuine dispute as to any portion of the lien claim, then the validity of that portion shall be established and the action shall proceed only on the disputed amount of the lien claim.

(2) If the pleadings, affidavits and admissions on file and the evidence, if any, show that there is no genuine dispute as to any material fact and that the petitioner failed to establish his right to a lien as a matter of law, then a final order shall be entered denying the lien for cause shown.

(3) If the court determines from the pleadings, affidavits and admissions on file, and the evidence, if any, that the lien should not attach, or should not attach in the amount claimed, as a matter of law, by any final order, but that there is probable cause to believe the petitioner is entitled to a lien, the court shall enter an interlocutory order which:

(i) Establishes the lien;

(ii) Describes the boundaries of the land and the buildings to which the lien attaches;

(iii) States the amount of the claim for which probable cause is found;

(iv) Specifies the amount of a bond that the owner may file to have the land and building released from the lien;

(v) May require the claimant to file a bond in an amount that the court believes sufficient for damages, including reasonable attorney's fees; and

(vi) Assigns a date for the trial of all the matters at issue in the action, which shall be within a period of six months. The owner or any other person interested in the property, however, may, at any time, move to have the lien established by the interlocutory order modified or dissolved.

(c) *Bond.* – The amount of and the surety on any bond shall be determined and approved pursuant to the Maryland Rules except as set forth in this subtitle. The petitioner, or any other person interested in the property, however, if not satisfied with the sufficiency of a surety or with the amount of any bond given, may, at any time before entry of a final decree, apply to the court for an order requiring an additional bond, and upon notice to the other parties involved, the court may order the giving of such additional bond as it may deem proper. In lieu of filing bond, any party may deposit money in an amount equal to the amount of the bond which would otherwise be required, pursuant to the Maryland Rules.

(d) *Trial on matters at issue.* – Until a final order is entered either establishing or denying the lien, the action shall proceed to trial on all matters at issue, as in the case of any other proceedings in equity.

#### **§ 9-107. Attachment of lien to land in another county.**

(a) *Filing of documents with clerk.* – If any part of the land is located within another county and the petitioner desires that the lien attach to the land in that county, the petitioner shall file a certified copy of the docket entries, of the court order, and of any required bond with the clerk of the circuit court for that county.

(b) *Time of attachment.* – A lien attaches to the land or building in a county as of the time the documents required to be filed under subsection (a) . . . are filed with the clerk of the circuit court of that county.

#### **§ 9-108. Sale under foreclosure or execution of land against which lien established.**

If all or any part of the land or buildings against which a mechanic's lien has been established pursuant to this subtitle shall be sold under foreclosure or a judgment, execution or any other court order, all liens and encumbrances on such property shall be satisfied in accordance with their priority, subject to the limitation in the next sentence of this section. If the proceeds of the sale are insufficient to satisfy all liens established pursuant to this subtitle, then all proceeds



available to satisfy each such lien shall be stated by the court auditor as one fund, and the amount to be disbursed to satisfy each lien established pursuant to this subtitle shall bear the same proportion to that fund as the amount of such lien bears to the total amount secured by all such liens, without regard to priority among such liens.

**§ 9-109. Expiration of right to enforce lien.**

The right to enforce any lien established under this subtitle expires at the end of one year from the day on which the petition to establish the lien was first filed. During this time the claimant may file a petition in the lien proceedings to enforce the lien or execute on any bond given to obtain a release of the land and building from the lien. If such petition is filed within the one-year period, the right to a lien or the lien, or any bond given to obtain a release of lien, shall remain in full force and effect until the conclusion of the enforcement proceedings and thereafter only in accordance with the decree entered in the case.

**§ 9-110. No waiver by giving credit or taking security.**

No person having the right to establish a mechanics' lien waives the right by granting a credit, or receiving a note or other security, unless it is received as payment or the lien right is expressly waived.

**§ 9-111. Right to institute personal action.**

Nothing in this subtitle affects the right of any person, to whom any debt is due for work done or material furnished, to maintain any personal action against the owner of the building or any other person liable for the debt.

**§ 9-112. Subtitle a remedial law; amendment to proceedings.**

This law is remedial and shall be so construed to give effect to its purpose. Any amendment shall be made in the proceedings, commencing with the claim or lien to be filed and extending to all subsequent proceedings, as may be necessary and proper. However, the amount of the claim or lien filed may not be enlarged by amendment.

**§ 9-113. Prohibited provisions in executory contracts.**

(a) *In general.* – An executory contract between a contractor and any subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement may not waive or require the subcontractor to waive the right to:

- (1) Claim a mechanics' lien; or
- (2) Sue on a contractor's bond.

(b) *Provisions conditioning payment to subcontractor on payment of contractor.* – A provision in an executory contract between a contractor and a subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement and that conditions payment to the subcontractor on receipt by the contractor of payment from the owner or any other third party may not abrogate or waive the right of the subcontractor to:

- (1) Claim a mechanics' lien; or
- (2) Sue on a contractor's bond.

(c) *Void provisions.* – Any provision of a contract made in violation of this section is void as against the public policy of this State.

**§ 9-114. Releases from material suppliers and subcontractors.**

(a) *Signed release of lien.* – At the time of settlement or payment in full between a contractor and an owner, the contractor shall give to the owner a signed release of lien from each material supplier and subcontractor who provided work or materials under the contract.

(b) *Effect of signed release.* – An owner is not subject to a lien and is not otherwise liable for any work or materials included in the release under subsection (a) of this section.