

Construction Liens on Leased Commercial Premises

Article By:

Paul W. Norris

In general, a contractor or supplier is entitled to file a lien against a commercial property if they have performed work or provided materials pursuant to a written contract with the owner. These lien claims must be filed within 90 days of the last date of providing materials or services for the project.

On the other hand, if a contractor or supplier is providing materials or services for a tenant of a commercial property, the rules are different. The differences as to what the lien may attach to are discussed in detail below.

If the tenant of the property entered into a contract for the improvement of the property and the owner directly authorized the improvement in writing, the lien may attach to the real property. The proper way to ensure that a lien may attach to the real property is to have the owner of the property sign off on and approve any contract for the improvement of the real property.

As a contractor or supplier, it is suggested that you obtain the owner's authorization which would thereby allow you to assert a lien claim against the property itself in the event of non-payment. This can become a very powerful tool on collecting an unpaid balance, as an action to foreclose upon the lien could be brought. This would place a great deal of pressure on the tenant to pay the outstanding balance.

Conversely, if the owner of the property does not sign off on or agree to the improvement to the real property, a lien claim would only attach to the lease hold interest of the tenant. Under these circumstances, the lien claim would not attach to the real property itself, but instead, solely to the lease hold interest held by the tenant.

The question then becomes what would be the value of the lease hold interest.

Depending upon the use of the property by the tenant, the lease hold interest could be quite valuable, or it may be close to worthless. Obviously, if the tenant is fully invested in the property the lien claim may carry substantial value, as it may force the tenant to satisfy the claim. Then again, if the lease hold interest is solely an office or two within a commercial property the lien claim may not possess significant value.

The above provides a general overview as to a lien claim on a commercial property which is occupied by a tenant. It is suggested, as a contractor or supplier, that you have the owner sign off for

improvements. This gives you greater leverage when attempting to collect on a lien claim, and also, could force the sale of the property to satisfy same.

COPYRIGHT © 2025, STARK & STARK

National Law Review, Volume VII, Number 318

Source URL: <https://natlawreview.com/article/construction-liens-leased-commercial-premises>