

Mechanic's Liens and Bankruptcy: Can You Still File a Mechanic's Lien after a Bankruptcy has Been Filed?

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The answer is yes, if your state mechanic's lien laws provide that the lien "relates back" to a time before the bankruptcy case was filed. However, if you are in a state where your mechanic's lien does not relate back, the automatic stay prevents you from filing your mechanic's lien and may void your mechanic's lien if filed within 90 days of the bankruptcy filing. This important distinction among statutes has to do with when the lien arises. While all states have mechanic's lien laws, they differ in the manner in which a creditor creates, perfects and/or enforces the lien.

For example, a recent Third Circuit case, *Linear Electric Co.*, 16-1477 (3rd Cir. March 30, 2017) confirmed that state law determines whether post-filing mechanic's liens are voidable and that a bankruptcy court can enter final orders voiding those liens. In that case, the Court ruled that the post-filing mechanic's lien violated the automatic stay.

In the case decided by the Third Circuit, the court looked to New Jersey state law to determine if the stay had been violated. The Circuit found that New Jersey mechanic's liens were effective as of filing, and no relation back applied, so the liens were post-petition liens and violated the stay.

The Circuit noted that if a post-petition lien related back to a time before the bankruptcy petition was filed, it would fall within an exception to the automatic stay and, therefore, would not be in violation of the automatic stay. Finally, the Third Circuit also noted that if the mechanic's liens are not against property of the bankruptcy estate, they are not subject to the automatic stay and may be filed.

While most state statutes provided that a mechanic's lien "relates back" to the time the labor is first performed or the materials are first supplied, other state statutes do not.

Thus, whether or not the post-petition filing of a mechanic's lien violates the automatic stay, depends on the state law and whether or not the lien relates back to a date at least 90 days before the bankruptcy.

In other states, the liens of all claimants are similarly preferred to the date of the earliest unsatisfied lien of any of them. If an earlier unsatisfied lien is paid in full or otherwise discharged, the commencement date for all claimants shall be the date of the next earliest unsatisfied lien. In states such as Missouri, filing a mechanic's lien is irrelevant for the purpose of determining first-in-time priority between competing encumbrances on real property; the "first spade rule" gives the mechanic's lien relation-back priority to the date when work commenced so long as the lien arises on the land and is filed properly. And under Illinois law, a mechanic's lien relates back to the date of the contract when the inchoate lien arose.

The bottom line is that laws regarding mechanic's liens and bankruptcy can vary greatly from state to state and that in far too many cases, creditors needlessly go unpaid because of their unfamiliarity with these laws. Contacting your attorney is a best practice when it comes to making decisions about filing mechanic's liens when a party is in bankruptcy.

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