

Lien Law Change in Idaho

NOVEMBER 2022

On July 1, 2022, the Idaho Legislature's amendments to I.C. 45-507 came into effect. This statute regulates the steps and requirements to sustain a valid mechanics and materialmen lien. There were three changes to the statute: (1) clarification as to who may personally serve a notice of lien; (2) additional contents that must be included in a lien claim; and (3) authorization for attorney fees.

Prior to the amendments, any person could, on behalf of the entity (contractor) seeking to establish a lien, personally serve the owner of the property with a claim of lien. Now, for personal service to be considered effective, the owner or reputed owner must be personally served by an officer "authorized by law" to serve process. Essentially, a process server needs to be employed for personal service. A contractor may still serve an owner via certified mail

The second change relates to required disclosures. Now, in order to have a valid lien, a contractor must attach a copy of the required disclosures and acknowledgement of receipt of said disclosures with the claim of lien. If the claim does not contain the required documents, it will be considered invalid. This is an important change, because even if the contractor provides all required documents to the owner if there is no copy of the documents attached to the claim of lien the contractor will lose their lien rights – assuming the deficiency is not corrected prior to the statute of limitations running.

The most notable change to the statute is the potential to recoup attorney's fees, by either party. The statute allows an award of attorney's fees and costs to the prevailing party in any court proceeding regarding a lien filed pursuant to this section. This can be seen as beneficial and detrimental to contractors. While placing a lien on a property is a relatively simple process, doing so while ensuring all requirements have been met can be difficult, especially if a contractor files the lien without help from counsel. Should a lien be deemed invalid, the contractor will no longer have a lien and will likely be instructed to pay the homeowner's attorney's fees and costs.