

§3255. Liens preserved and enforced by action

1. Enforcement by action. The liens mentioned in sections 3251 to 3254 may be preserved and enforced by action against the debtor and owner of the property affected and all other parties interested therein, filed with the Superior Court or District Court clerk in the county or division where the house, building or appurtenances, wharf, pier or building thereon on which a lien is claimed is situated within 120 days after the last of the labor or services are performed or labor, materials or services are so furnished, except as provided in section 3256. If the labor, materials or services were not performed or furnished by a contract with the owner of the property affected, the claimant may not serve the complaint and summons, as provided in the Maine Rules of Civil Procedure, on the owner until 30 days after the date of filing of the complaint and any deadline for filing a return of service on the owner provided in the Maine Rules of Civil Procedure is tolled for 30 days.

[PL 2005, c. 287, §2 (AMD).]

2. Bona fide purchaser. Any person who is a bona fide purchaser for value of a house, building or appurtenances, a public building erected or owned by any city, town, county, school district or other municipal corporation, or a wharf or pier or any building thereon, including the ground adjacent to and upon which any such objects are constructed, takes title free of the lien described in this chapter unless, before the bona fide purchaser takes title to the premises on which such lien attaches:

A. The person performing or furnishing that labor, materials or services either has filed the notice required by section 3253 or has filed a notice in the office of the register of deeds in the county or registry district in which these premises are located setting forth a description of the property sufficiently accurate to identify it; the names of the owners; that the claimant is going to perform or furnish, is performing or furnishing or has performed or furnished labor, materials or services; and that the claimant may claim a lien therefor; and [PL 2005, c. 311, §1 (NEW).]

B. If an action to enforce the lien has been commenced in accordance with this section, notice has been provided in accordance with section 3261. [PL 2005, c. 311, §1 (NEW).]

If the claimant is a real estate licensee, the claimant shall also send notice by certified mail, return receipt requested, or provide actual written notice as described in this subsection to the bona fide purchaser before the purchaser takes title to the premises on which the claimant's lien attaches. If notice is not provided, the purchaser takes title free of this lien. If notice provided by this subsection is filed, the lien claimant must also comply with the notice requirements of section 3253 and institute the legal action required by subsection 1 to the extent that this compliance is required in order to preserve the claimant's lien claim. The notice provided by this subsection is only effective relative to a bona fide purchaser for value for the period of 120 days from the date of recording thereof provided that this notice may again be recorded any number of times, but further notices are also only effective relative to a bona fide purchaser for value for the period of 120 days each from the date of their respective recordings.

[PL 2005, c. 311, §1 (RPR).]

3. Notice to owner. If the labor, materials or services were not performed or furnished by a contract with the owner of the property affected, the lien described in this chapter may only be enforced against the property affected to the extent of the balance due to the person with whom the owner has directly contracted to perform or furnish the labor, materials and services on which that lien claim is based. The defense established by this subsection shall only be available with respect to sums paid by the owner to the person with whom the owner has directly contracted where payment was made prior to commencement of an action to enforce such lien by the person performing or furnishing labor, materials or services without a contract with the owner or a written notice from the person performing or furnishing labor, materials or services without a contract with the owner which sets forth a description of the property sufficiently accurate to identify it; the names of the owners; that the person giving notice is going to perform or furnish, is performing or furnishing or has performed or furnished

labor, materials or services; that the person giving notice may claim a lien therefor and which shall contain the following warning at the top of the notice:

Under Maine law, your failure to assure that
(name of the claimant giving notice) is paid before further payment by you to
..... (name of contractor) may result in your paying
twice.

In no case shall the total amount due from the owner to those performing or furnishing labor, materials or services without a contract with the owner exceed the balance due from the owner to the person with whom he has directly contracted at the time of service of process on the owner in a lien action or receipt of the written notice described above, whichever occurs first.

If the owner does not reside in the place where the property is located, but has a known agent therein, notice may be given to the agent or to the owner at the place where he resides. If the notice provided by this subsection is given, the lien claimant must also comply with the notice requirements of section 3253 and commence the legal action required by subsection 1 to the extent that this compliance is required in order to preserve his lien claim.

This subsection shall not apply where labor, materials or services are performed or furnished to the premises for a business, commercial or industrial purpose unless the owner resides on the premises affected.

[PL 1975, c. 734 (NEW).]

SECTION HISTORY

PL 1973, c. 310 (AMD). PL 1975, c. 91, §2 (AMD). PL 1975, c. 734 (RPR). PL 1981, c. 585, §2 (AMD). PL 1993, c. 137, §2 (AMD). PL 2005, c. 287, §2 (AMD). PL 2005, c. 311, §1 (AMD).

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