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The background of the slide is a detailed architectural floor plan of a residential building. The plan is rendered in a light blue/gray color and is overlaid with a semi-transparent red geometric pattern consisting of various triangles and polygons. The floor plan includes labels for different rooms: 'KITCHEN' (10'-0" wide), 'LOBBY' (6'-3" wide), 'HALL', 'BED 3' (8'-6" wide), and 'GARAGE' (18'-0" wide). Dimensions are marked throughout the plan, such as 19'-6", 10'-1", 3'-6", and 2'-0".

Colorado Mechanics' Liens: What You Need to Know

Presented by Kate Strauss and Lindsay Rose
Colorado Roofing Association— 08/26/25

Galvanize Law



ABOUT GALVANIZE LAW

Galvanize Law Group, LLC is a progressive law firm focused on serving the needs of the construction industry. We are passionate counselors and advocates who enjoy learning about our clients and offering them real solutions as they build their companies and navigate both simple and complex legal issues.

We are proud to announce the next step in our evolution: **Effective October 1, 2025, the entire team of attorneys at Galvanize Law will be joining Fennemore**, one of the fastest-growing Am Law 200 firms in the country. Fennemore offers an expanded platform that allows us to deliver deeper bench strength, broader service offerings, and access to attorneys with experience across construction, real estate, litigation, M&A, water, environmental law, and more. Fennemore's expertise and commitment to progressive practice position us to serve clients with more precision, more insight, and more integrated support.

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PRESENTERS



KATE STRAUSS

Founding Member

Email: kstrauss@galvanize.law
Phone: 303.704.4585



LINDSAY ROSE

Partner

Email: lrose@galvanize.law
Phone: 303.792.8906

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Agenda

Colorado Mechanics' Liens



- How mechanics' liens work
- Key deadlines & pitfalls to avoid
- *Wadsworth* and its potential impact



Basics

Colorado General Mechanics' Lien Statute (C.R.S. § 38-22-101 *et seq.*)

What is a mechanics' lien?

- A security interest real property for the benefit of those who furnish or supply **labor, machinery, tools, equipment, or materials** in the construction, alteration, improvement, additional to, or repair of the property
- Privately-owned projects

Who can file a lien?

- “Every person” who furnishes or supplies laborers, machinery, tools, equipment, labor, or services



Basics

Why does it matter?

- Allows the lien claimant to force a sale of the property
- Priority!
 - Lien priority relates back to the time of commencement of work under the contract between the owner and the first contractor or upon the structure or improvement (*i.e.*, design/planning phase)
 - Priority over subsequent liens against the property OR earlier unrecorded liens absent actual notice
 - Exception: Prior recorded deed of trust to secure a construction loan to the extent the proceeds were “used for construction purposes”



Deadlines

Statement of Mechanics' Lien

- Within **four (4) months from your last date of substantive work**
- Punch list, warranty, or “trivial or irrelevant work” does NOT count
- Day or piece laborers must record within **two (2) months** after **completion of the project**

Notice of Intent

- At least **ten (10) days** prior to recording Statement of Mechanics' Lien

STRICT ADHERENCE IS REQUIRED!!



Deadlines

Foreclosure Lawsuit

- Within **six (6) months** after last work or labor is performed, last laborers or materials are furnished, or completion of the project

Notice of Extension

- Must file within the applicable lien period (e.g., 4 months of last work)
- Extends the time to record the Statement of Mechanics' Lien to **earlier of four (4) months after completion of the structure or improvement or six (6) months after the notice is filed**



Step 1— Notice of Intent

Logistics

- Serve by personal service OR certified mail, return receipt requested
- Property owner/reputed owner AND principal/prime contractor or agent

Contents

- Statement of Mechanics' Lien to be recorded
- Affidavits of Service/Mailing to show compliance with 10-day notice requirement



Step 2— Statement of Mechanics' Lien

Logistics

- File with county clerk and recorder where the property is located

Contents

- Who, what, where, and for whom the work was performed
- Value of unpaid work – do NOT overstate!
 - Do include amounts actually “due or owing”
 - Do not include uncompleted work, late fees or attorneys’ fees
 - Use caution regarding change work, back charges, delay damages and disputed amounts

Contract Considerations



Step 3— Foreclosure of Mechanics' Lien

Logistics

- District court where property is located
- Necessary parties

Considerations

- Cost v. likelihood of recovery
- No recovery of attorneys' fees absent contract provision or claim that allows for fees



Release of Lien/Lien Waivers

Full/Partial Release of Lien

Conditional v. Unconditional Lien Waivers

- Waiver: intentional or voluntary relinquishment of a known right
- Must be clear and unambiguous
- Use a conditional waiver prior to receiving payment
- Use an unconditional waiver for received payments or upon final payment



Public Projects

Colorado Contractor's Bonds and Lien on Funds Statute (C.R.S. § 38-26-101 *et seq.*)

Scope

- Contracts for construction or repair of any public building or public works

Remedies

- Bond action within **six (6) months** after substantial completion of the work
- Verified Statement of Claim



Pitfalls to Avoid

Common Errors:

- Missing lien deadlines
 - Recommend starting the lien process within **60-90 days** after last date of substantive work
 - Consider a notice of extension as a matter of practice
- Using an incorrect “last date of substantive work”
- Overstating the lien amount
- Failing to send Notice of Intent to ALL property owners of record
- Having an improper/incomplete legal description
- Having insufficient documentation to support lien amount
- Including work not yet completed or amounts not due or owing
 - Check your contract!



Wadsworth Case

Ralph L. Wadsworth Construction Company, LLC v. Regional Rail Partners et al.

558 P.3d 641 (Colo. Ct. App. Aug. 1, 2024)

General Background

A Colorado Public Works Act case, interpreting rights under a verified statement of claim. Ralph L. Wadsworth Construction Company was subcontractor to Regional Rail Partners on the North Metro Rail Line RTD project. Wadsworth included delay impacts (additional labor and equipment charges) plus retainage in its verified claim.

Trial & Appellate Court's Rulings

Trial Court: Awarded Wadsworth \$5.7M damages for breach of contract and denied Regional Rail counterclaims EXCEPT found in favor of Regional Rail on liquidated damages and back charges against Wadsworth.

Court of Appeals: Granted Regional Rail's appeal argument: that the verified statement of claim should NOT have included delay and other damages – finding that a subcontractor costs incurred due to project delays do not qualify as labor, materials or equipment furnished on the project and that only undisputed liquidated amounts are properly included in a verified statement of claim. Since verified claim was excessive, Court of Appeals ruled that “shall forfeit all rights to the amount claimed” means that not only rights under Public Works Act but also contract and other legal rights are forfeited.



Wadsworth Cont'd

Issues on Appeal

1. Whether a claimant who files an excessive verified statement of claim under the Colorado Public Works Act ... forfeits both its statutory remedies and all other available legal remedies or, as with an excessive lien claimant under the General Mechanics' Lien Act, forfeits its statutory remedies only.
2. Whether a verified statement of claim under the Colorado Public Works Act may lawfully include disputed amounts, such as additional costs incurred by a subcontractor due to project delays and disruptions, or whether such claims are limited to undisputed, liquidated amounts.



Wadsworth Cont'd

Potential Impacts

ASAC Amicus brief: Whether the inclusion of retainage in a contractor's verified statement of claim pursuant to Colorado's Public Works Act renders a claim excessive. While the court did not explicitly cite retainage in its ruling, its broad language bars including these contractually owed amounts. Argument: Retainage represents amounts withheld from contractors and subcontractors which were **earned and due** for labor, materials, and equipment that have *already been performed and incorporated into the construction project* (both public works and private projects)



Wadsworth Cont'd

Potential Impacts

AGC Amicus brief: The impacts of *Wadsworth* will inevitably spill over into the private sector and will also change what has, to date, been considered settled law on mechanics' liens. In fact, AGCC's members report that this is already happening. Private project owners in currently-pending lawsuits have already begun citing *Wadsworth* to seek penalties for purportedly excessive mechanics' liens. Contractors typically have less bargaining power and resources than large project owners and upstream parties, so the statutory lien provisions were meant to help contractors protect themselves and to secure their ability to recover payment. *Wadsworth* undermines this purpose by: prohibiting contractors from liening for amounts in dispute; prohibiting contractors from liening for labor and material costs incurred in delays or disruptions; shifts the balance of power to already-powerful owners and upstream parties.



Questions?



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Learn more:

Visit Galvanize Law at www.galvanize.law

OUR ADDRESS

390 Union Blvd, Ste 200
Lakewood, CO 80228

EMAIL

info@galvanize.law

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- Thank you Kate & Lindsay!
- Please fill out the survey and drop it at the registration desk with your badge when you leave today.
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