

MEMORANDUM

TO: Hall Estill Clients
DATE: November 28, 2011
RE: Oklahoma Law re: Mechanics and Materialmen's Liens

INTRODUCTION

In Oklahoma, mechanics and materialmen's liens are created by statute and may be used to enforce payment for labor and services provided in certain circumstances. This memorandum will provide information on liens which may be placed upon property used in oil and gas projects and mechanic's and materialmen's liens which may be used to enforce payment for labor, services and materials provided by general contractors and subcontractors on construction projects.

OIL AND GAS LIENS - 42 O.S. §§ 144 - 146

The purpose of Oklahoma's Mechanic's and Materialmen's Lien Statute, found at 42 O.S. §§ 141 *et seq.*, governing oil and gas liens and mechanic's and materialmen's liens on construction projects, "is to protect materialmen and laborers, to secure payment of claims, and to give notice to the owners and to third parties of the intent to claim a lien for a definite amount." *Davidson Oil Country Supply Co., Inc. v. Pioneer Oil & Gas Eqpt.*, 1984 OK 65, ¶6, 689 P.2d 1279. Such liens give laborers and materialmen a level of protection enjoyed by no other lien holder because such liens have priority from the date the first labor or materials are furnished. *Fourth Nat'l. Bank of Tulsa v. Appleby*, 1993 OK 53, ¶9, 864 P.2d 827.

With respect to oil and gas activities within the state, Oklahoma law permits a person or company that provides labor or furnishes material to an owner of a leasehold for oil and gas purposes to claim a lien upon the leasehold, pipeline, lease, equipment and proceeds from the sale of oil and gas benefiting the working interest. The purpose of such liens is to protect the provider goods or services from a situation in which the owner of the property or leasehold fails to pay for the goods or services provided.

To obtain the protection intended by the Oklahoma Legislature in creating such liens, a lien on oil and gas property must be properly perfected. The purpose of the perfection requirement is to advise any "potential buyers and third parties, as well as those against whose interests the lien is sought to burden, of the nature and amount of the vendor's claims." *K & H*

Well Service v. TCINA, 2002 OK 62, ¶ 17, 51 P.3d 1219. According to Oklahoma's oil and gas well lien statutes, to be properly perfected, the lien statement (1) must be filed in the county clerk's office for the county in which the land sought to be burdened with the lien is located within one hundred eighty (180) days after the date upon which material, machinery or supplies were last furnished or labor or services last performed, (2) must set forth the amount claimed and, as practicable, the items for which the charges were incurred, (3) must identify the owner(s), contractor(s) and claimant's names, as well as the legal description of the property subject to the lien. 42 O.S. §§ 142, 144, 146. The Oklahoma Supreme Court has held that a lien on oil and gas property is valid when

(1) the labor and materials are furnished pursuant to either an express or implied contract, (2) the content of the oil and gas lien statement substantially conforms to the applicable statutory requirements and is sued upon within the time prescribed by statute, and (3) the lien is filed within the time allowed by law in the county clerk's office for the county where the land sought to be impressed with the lien is located.

K & H Well Service, 2002 OK 62, ¶ 19. Compliance with the requirements of Sections 144 - 146 constitutes constructive notice of the lien "to all purchasers and all those who might attempt to encumbrance the property subsequent to the furnishing of the first item of material or the date of the performance of the first labor or services." 42 O.S. § 144. However, the lien will not be effective as against any purchaser of production until a copy of the lien statement is delivered, via certified mail, to that purchaser. 42 O.S. § 144.1.

A properly perfected lien will attach only to the property specifically described in the lien statement whether it be the entire leasehold interest, the pipeline, oil or gas well, the oil and gas lease, the buildings and appurtenances and/or the proceeds from the sale of the oil and gas. *Stanolind Crude Oil Purchasing Co. v. Busby*, 1939 OK 234, ¶ 23, 90 P.2d 876. Exempt from the lien are "any valid, bona fide reservations of oil or gas payments or overriding royalty interests executed in good faith and payable out of such working interest..." so long as the reservation is properly recorded and notice given prior to the commencement of work on the well. *Zone Oil & Gas Co. v. Dudley & Heath Drilling Co.*, 1970 OK 155, ¶ 14, 474 P.2d 385; 42 O.S. § 144. Additionally, the lien will not attach to or encumbrance the surface rights from which the mineral interest(s) was severed. 1983 OK AG 38, ¶ 5. However, the lien will be preferred over any other liens which may attach to the oil and gas leasehold, pipeline, wells or material and equipment used in the oil and gas project. 42 O.S. § 144.

The enforcement of liens on oil and gas wells is governed by 42 O.S. § 146. Pursuant to Section 146, the lien may be assigned or enforced by bringing a lawsuit in the district court for the county in which the land is situated within one (1) year from the time the lien is filed in the county clerk's office. 42 O.S. §§ 146, 171, 172. Failure to timely file such a foreclosure will render the lien invalid and unenforceable. *See, i.e., K & H Well Service, Inc. v. TCINA, Inc.*, 2002 OK 62, ¶ 19, 51 P.3d 1219. However, pre-lien notice required for general mechanics and materialmen's liens is specifically not required for liens on oil and gas wells. 42 O.S. § 146

(“...Section 142.6 of this title shall not apply to liens created pursuant to Sections 144 and 145 of this title...”).

MECHANIC’S AND MATERIALMEN’S LIENS - 42 O.S. §§ 141 - 154

42 O.S. § 141 provides for a lien on land and improvements upon which one who, under an "oral or written contract," furnishes labor or materials to a property owner,

. . . for the erection, alteration or repair of any [improvements to real property] . . . Compliance with the provisions of this act shall constitute constructive notice of the claimant's lien to all purchasers and encumbrances . . . subsequent to the date of the furnishing of the first [labor or material].

To perfect a mechanic’s or materialmen’s lien, Oklahoma statute requires a person claiming a lien to file in the office of the county clerk of the county in which the land is situated a statement setting forth (1) the amount claimed and “the items thereof as nearly as practicable”, (2) the names of the owner, the contractor, and the claimant, and (3) a legal description of the property subject to the lien, verified by affidavit. 42 O.S. § 142. The lien statement must be filed within four (4) months after the date upon which material or equipment was last furnished or labor last performed under contract. *Id.*

Additionally, a “subcontractor has a lienable claim upon the commencing of work or furnishing of materials pursuant to the subcontract.” *In re Tefertiller*, 1989 OK 60, ¶14, 772 P.2d 396. To perfect the claim, a subcontractor must file a lien statement containing the information listed above with the office of the county clerk in the county in which the property is located “within ninety (90) days after the date upon which material or equipment used on said land was last furnished or labor last performed under such subcontract...” 42 O.S. § 143.

Notice of the lien must be mailed to the owner of the property by certified mail, return receipt requested, within five (5) days of the filing of the lien statement. 42 O.S. § 143.1(A). Such notice must contain the date of filing, and the name and address of the following: (1) the person claiming the lien, (2) the person against whom the claim is made and the owner of the property, (3) a legal description of the property, and (4) the amount claimed. 42 O.S. § 143.1(B). However, if with due diligence the person against whom the claim is made or the owner of the property cannot be found,

the claimant after filing an affidavit setting forth such facts may, within sixty (60) days of the filing of the lien statement, serve a copy of the notice upon the occupant of the property or the occupant of the improvements, as the case may be, in a like manner as is provided for service upon the owner thereof, or, if the same be unoccupied, the claimant may post a copy in a conspicuous place upon the property or any improvements thereon. *Id.*

To ensure property owners have notice of mechanic's or materialmen's liens in time to avoid the filing of such liens, Oklahoma law also requires pre-lien notice be sent to the last known address of the original contractor and the property owner no later than seventy-five (75) days after the last material or labor is supplied, but only if the lien claim exceeds \$10,000.00. 42 O.S. § 142.6. Section 142.6(B)(1) states

Prior to the filing of a lien statement pursuant to Section 143.1 of Title 42 of the Oklahoma statutes, but no later than seventy-five (75) days after the last date of supply of material, services, labor or equipment in which the claimant is entitled to lien rights, the claimant shall send to the last-known address of the original contractor and owner of the property a pre-lien notice pursuant to the provisions of this section.

42 O.S. 2011 §142.6(B)(1)(Amended by Laws 2011, SB 277, c. 23, § 1, eff. November 1, 2011).

This pre-lien notice must be provided to owners of "owner-occupied" property and not just owners of commercial property. Specifically, Section 142.6(B)(1) states that

no lien affecting property then occupied as a dwelling by an owner shall be valid unless the pre-lien notice provided in this section was sent within seventy-five (75) days of the last furnishing of materials, services, labor or equipment by the claimant.

Id. Oklahoma law previously required owners of owner-occupied dwellings to receive notice that lienable services and labor would be provided before the supplies were furnished or the work was performed. However, this provision was recently repealed. As of November 1, 2011, a contractor or subcontractor is only be required to send pre-lien notice before the filing of the lien statement and seventy-five days after the last service or labor was furnished only if the lien claim exceeds \$10,000. 42 O.S. § 142.6.

A mechanic's or materialmen's lien may be assigned or enforced by bringing a lawsuit in the district court for the county in which the property is situated within one (1) year from the time the lien statement is filed in the county clerk's office. 42 O.S. §§ 171, 172. As with oil and gas liens, failure to file a foreclosure action within the statutory timeframe renders the lien invalid and unenforceable. *See, i.e., K & H Well Service, Inc. v. TCINA, Inc.*, 2002 OK 62, ¶ 19, 51 P.3d 1219.

CONCLUSION AND SUMMARY

Whether you are seeking protection for labor and materials provided in a construction or oil and gas project, the filing of a sufficiently detailed lien statement in the county clerk's office of the county in which the property is located within the statutory time frame will act as a lien on the property described in the lien statement in favor of the vendor or contractor/subcontractor. The lien will also be superior to any other lien which may be placed on the property or oil and gas leasehold. The claimant will have one year in which to file suit against the owner in the

district court in which the oil and gas property is located to recover the fees due for the labor or material provided. The lien becomes invalid if such action is not taken within the year following the filing of the lien statement.

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