

Attached is information about filing a lien against a Prime Contractor. You can also find this information on our website

<http://www.coloradodot.info/library/forms/fhwa-other-forms/lienaffidavit.pdf/view>

<http://www.coloradodot.info/business/equal-opportunity/dbe/documents-assets/PromptPayBrochure.pdf>

Please send notarized affidavit to CDOT by fax, mail or E-mail

Fax:

Attn: Eric Basco  
303-757-9573

Mail:

Colorado Department of Transportation  
Attn: Eric Basco  
Project Accounting & Reporting Section  
4201 East Arkansas Ave. #212 Denver, CO 80222

E-mail:

[cdot\\_lien\\_related@state.co.us](mailto:cdot_lien_related@state.co.us)

Thanks ☺

**Eric Basco**  
HQ, Department of Transportation, DAF  
CPE Projects Accountant  
Office: [\(303\) 757-9571](tel:3037579571)  
Fax: [\(303\) 757-9573](tel:3037579573)  
[eric.basco@state.co.us](mailto:eric.basco@state.co.us)

**Colorado Department of Transportation**  
**Project Accounting & Reporting Section**  
4201 East Arkansas Ave. #212 Denver, CO 80222



## **Contractor Liens**

CDOT contracts with a prime contractor and the prime contractor sometimes utilizes sub-contractors and/or suppliers. As work is completed, CDOT will continue to process contractor pay estimates and make payments to the prime contractor. This contractor then uses this money to fulfill its obligations and is required to pay all subcontractors and suppliers. If the contractor fails to do so, the Colorado Prompt Payment Act may be enforced. *(This Act is also referred to as the Prompt Payment Law <http://www.coloradodot.info/business/equal-opportunity/dba/documents-assets/PromptPayBrochure.pdf>)* This law requires the prime contractor to pay all subcontractors within seven calendar days of receipt of payment from CDOT. Pay Estimates can be viewed by the 5 digit project number on CDOT's website. <http://www.coloradodot.info/business/payestimates>

Any unpaid amounts and/or disputes regarding payments between parties involved in CDOT contracts may cause the filing of a verified statement. This is usually referred to as a lien affidavit. A lien affidavit contains information regarding the parties in dispute and the amount due. This affidavit is a legal document and must be notarized. Lien affidavits may be filed at any time, up to and including the day of advertised final settlement for the work contracted to be done. CDOT establishes a final settlement date and is required to advertise this date for at least ten days in at least two public newspapers of general circulation published in the counties wherein such work was performed. One month's worth of listings are viewable on CDOT's website. <http://www.coloradodot.info/business/bidding/transportation-news-weekly-newsletter>

When a lien affidavit is filed prior to the final settlement date, CDOT is required to withhold the lien amount from the prime contractor. Depending on the funds available, the field engineer will add a negative line item which will deduct the lien amount from the current pay estimate.

Funds must be withheld from the prime contractor until CDOT receives a release of lien. If a full release is submitted, the funds are returned to the prime contractor on the next pay estimate. If a partial release is submitted, then the funds are released accordingly. If the project nears completion and the project is advertised for final settlement, then a 90 day countdown begins.

## **Lis Pendens**

CDOT will withhold funds for ninety days after the advertised final settlement date. During this time, the party that filed the lien must present a notice of the filing of a lawsuit or a notice of lis pendens in order for the funds to be withheld longer than the ninety day timeframe. If ninety days pass and no lis pendens is submitted, CDOT will release the lien, generate a final estimate and the final payment will be made to the prime contractor. If a lis pendens is submitted, CDOT will delay project closure until a final court decision directs the disbursement. If a resolution is not reached, CDOT will place the funds in an escrow account and hold them indefinitely.

The following page displays the actual lien affidavit that is utilized by contractors, subcontractors, suppliers and laborers:

STATE OF COLORADO }  
AND COUNTY OF \_\_\_\_\_ )

Ss. A F F I D A V I T

The undersigned, being first duly sworn, deposes and states:

1. That the undersigned has furnished the materials and/or services itemized on the attachment hereof to \_\_\_\_\_ for use on Colorado Department of Transportation Project No. \_\_\_\_\_, which project, is located at or near \_\_\_\_\_  
(Prime Contractor)

2. That the said \_\_\_\_\_ has not paid for the said materials and/or services rendered and that there is due and payable to the undersigned the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

3. That the materials and/or services being claimed on this affidavit were supplied directly to the prime contractor or his/her immediate subcontractor on the above-mentioned Colorado Department of Transportation project as provided for in Chapter 38. Article 26. Section 107. Colorado Revised Statutes. 2000.

4. That the undersigned hereby makes claim for such amount as provided for in Chapter 38. Article 26. Section 107. Colorado Revised Statutes. 2000.

"I certify that by signing this affidavit that I (or the company I represent) is owed money by the contractor or subcontractor, or that I (we) performed work on the project."

\_\_\_\_\_  
(Company name)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 20\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

*C.R.S. 38-26-107*

## COLORADO REVISED STATUTES

\* This document reflects changes current through all laws passed at the Second Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2014) and changes approved by the electorate at the November 2014 election \*

TITLE 38. PROPERTY - REAL AND PERSONAL  
LIENS

## ARTICLE 26. CONTRACTOR'S BONDS AND LIEN ON FUNDS

## C.R.S. 38-26-107 (2014)

## 38-26-107. Supplier may file statement - notice - withholding funds

(1) Any person, as defined in section 2-4-401 (8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor may, at any time up to and including the time of final settlement for the work contracted to be done, file with the board, officer, person, or other contracting body by whom the contract was awarded a verified statement of the amount due and unpaid on account of the claim. If the amount of the contract awarded to the contractor exceeds one hundred fifty thousand dollars, the board, officer, person, or other contracting body by whom the contract was awarded shall, no later than ten days before the final settlement is made, publish a notice of the final settlement at least twice in a newspaper of general circulation in any county where the work was contracted for or performed or in an electronic medium approved by the executive director of the department of personnel. It is unlawful for any person to divide a public works contract into two or more separate contracts for the sole purpose of evading or attempting to evade the requirements of this subsection (1).

(2) Upon the filing of any such claim, such board, officer, person, or other body awarding the contract shall withhold from all payments to said contractor sufficient funds to insure the payment of said claims until the same have been paid or such claims as filed have been withdrawn, such payment or withdrawal to be evidenced by filing with the person or contracting body by whom the contract was awarded a receipt in full or an order for withdrawal in writing and signed by the person filing such claim or his duly authorized agents or assigns. Such funds shall not be withheld longer than ninety days following the date fixed for final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of *lis pendens* is filed with the person or contracting body by whom the contract was awarded.

(3) At the expiration of the ninety-day period, the person or other body awarding the contract shall pay to the contractor such moneys and funds as are not the subject of suit and *lis pendens* notices and shall retain thereafter, subject to the final outcome thereof, only sufficient funds to insure the payment of judgments that may result from the suit. Failure on the part of a claimant to comply with the provisions of sections 38-26-101, 38-26-106, and this section shall relieve the board, officer, body, or person by whom such contract was awarded from any liability for making payment to the contractor. At any time within ninety days following the date fixed for final settlement as published, any person, copartnership, association of persons, company, or corporation, or its assigns, whose claims have not been paid by any such contractor or subcontractor may commence

an action to recover the same, individually or collectively, against the surety or other qualified financial institution on the bond or other acceptable surety specified and required in section 38-26-106.

**HISTORY:** Source: L. 23: p. 481, § 3.L. 29: p. 525, § 1.CSA: C. 39, § 7.CRS 53: § 86-7-7. C.R.S. 1963: § 86-7-7.L. 85: (1) amended, p. 1202, § 3, effective May 10.L. 2000: (1) amended, p. 213, § 19, effective August 2.L. 2003: (1) amended, p. 1690, § 1, effective September 1.L. 2007: (1) amended, p. 420, § 1, effective August 3.L. 2009: (1) amended, (SB 09-290), ch. 374, p. 2042, § 8, effective August 5; (3) amended, (SB 09-248), ch. 270, p. 1226, § 2, effective August 5.L. 2014: (1) amended, (HB 14-1387), ch. 378, p. 1853, § 66, effective June 6.

Editor's note: Section 72(2) of chapter 378 (HB 14-1387), Session Laws of Colorado 2014, provides that changes to this section by the act apply to contracts entered into on or after June 6, 2014.

Cross references: (1) For publication of legal notices, see part 1 of article 70 of title 24.

(2) For the legislative declaration in HB 14-1387, see section 1 of chapter 378, Session Laws of Colorado 2014.

#### ANNOTATION

Law reviews. For article, "Contractual Rights of Persons Not Parties to the Contract in Colorado", see 3 Rocky Mt. L. Rev. 175 (1931). For article, "Labor and Material Claims on State Public Works Projects", see 24 Colo. Law. 2165 (1995).

Constitutional. Limiting the lien rights created by this section to one in privity of contract with the owner or general contractor acting on behalf of the owner does not violate the equal protection clause of the Colorado Constitution. Such a limitation protects the public entity, its contractor, and the surety on the public works project from unforeseeable claims. *Western Metal v. Acoustical and Const.*, 851 P.2d 875 (Colo. 1993).

Policy. The clear policy underlying Colorado law is that laborers and suppliers of materials in construction projects are to be paid. *First Com. Corp. v. First Nat'l Bancorporation, Inc.*, 572 F. Supp. 1430 (D. Colo. 1983).

This article is designed to protect all persons who supply labor or material for public works projects and is the public works counterpart of the mechanic's lien statute. *Heinrichsdorff v. Raat*, 655 P.2d 860 (Colo. App. 1982).

Section stands in lieu of the mechanic's lien statute, and is designed to protect those who supply labor and materials for public works. *South-Way Constr. Co. v. Adams City Serv.*, 169 Colo. 513, 458 P.2d 250 (1969); *Weld Colo. Bank v. E E Constr., Inc.*, 653 P.2d 758 (Colo. App. 1982). See also *Flaugh v. Empire Clay Prods., Inc.*, 157 Colo. 409, 402 P.2d 932 (1965).

Section applies only to what the public entity must do and to its liability if it fails to comply; it does not provide defense to contractor who is otherwise liable. *White Const. Co., Inc. v. Sauter Const. Co.*, 731 P.2d 784 (Colo. App. 1986).

Effect of section. For purposes of giving effect to this section, the actions of the subcontractors in purchasing materials and labor are imputed to the principal contractor; however, no such relationship can be extended beyond the statutory remedy. *Flaugh v. Empire Clay Prods., Inc.*, 157 Colo. 409, 402 P.2d 932 (1965).

This section provides suppliers to public works projects with a remedy independent of the remedies afforded under § § 38-26-105 and 38-26-106. *Colo. Crane Hauling v. McKee, Inc.*, 761 P.2d 792 (Colo. App. 1988).

Section provides alternate methods of relief, and specifically requires the governmental agency to withhold funds to insure payment of claims by materialmen provided proper and timely notice is given. *South-Way Constr. Co. v. Adams City Serv.*, 169 Colo. 513, 458 P.2d 250 (1969).

Section permits actions against § 38-26-106 sureties. Subsection (3) permits qualified claimants, within 90 days of the date for final settlement of claims, regardless of the date of completion, to file actions against sureties who have posted performance bonds pursuant to section 38-26-106. *Rocky Mt. Ass'n of Credit Mgt. v. Marshall*, 44 Colo. App. 467, 615 P.2d 68 (1980).

Without regard to six-month limitation. This section contains no requirement that the date for final settlement must be within a six-month period subsequent to the completion of the work as is the case under § 38-26-105. The final settlement date, whenever it might occur, is the critical date for purposes of subsection (3). *Rocky Mt. Ass'n of Credit Mgt. v. Marshall*, 44 Colo. App. 467, 615 P.2d 68 (1980).

To the extent that § § 38-26-105 and 38-26-107 (3) are irreconcilable, § 38-26-107 (3), adopted subsequent to § 38-26-105 and containing specific time requirements, must control. *Rocky Mt. Ass'n of Credit Mgt. v. Marshall*, 44 Colo. App. 467, 615 P.2d 68 (1980).

Section provides additional remedy. While the six-month limitations provision of § 38-26-105 is applicable to actions on a performance bond, subsection (3) of this section contains no bonding provisions and establishes a new remedy for suppliers. *Rocky Mt. Ass'n of Credit Mgt. v. Marshall*, 44 Colo. App. 467, 615 P.2d 68 (1980).

Surety company not required party. The surety company which wrote the bond to the contracting agency was not required to be made a party since it had no contingent liability on the materialman's withholding claim because the contracting body had enough withheld funds to pay the claim sued upon. *South-Way Constr. Co. v. Adams City Serv.*, 169 Colo. 513, 458 P.2d 250 (1969).

Claimant may recover only for such work and materials as were specifically necessary for the doing of what the contractor had to do in the construction of the public work. *South-Way Constr. Co. v. Adams City Serv.*, 169 Colo. 513, 458 P.2d 250 (1969).

Provision is permissive. The provision of subsection (3) that persons having claims against contractors may commence an action to recover the same against the surety on the contractor's bond within the specified time is, in this respect, permissive, and not mandatory. *Continental Cas. Co. v. Rio Grande Fuel Co.*, 108 Colo. 472, 119 P.2d 618 (1941).

Filing of claims by laborers and materialmen not mandatory. The filing of claims by laborers and materialmen for services and material furnished is not mandatory, the only penalty for failure to file such claims being to release the body awarding the contract from all liability; also, such failure does not operate to discharge the surety on the bond of the contractor, given to secure performance of the contract, from liability thereunder. *Continental Cas. Co. v. Rio Grande Fuel Co.*, 108 Colo. 472, 119 P.2d 618 (1941).

Failure to meet statutory requirements does not deprive contractor of common-law claims. Failure of a subcontractor or materialman to meet the statutory requirements of this section and § § 38-26-105 and 38-26-106, e.g., time limitations within which a claim must be filed, does not deprive it of its common-law claims against the principal contractor and the principal contractor's surety. *Montezuma Plumbing Heating, Inc. v. Hous. Auth.*, 651 P.2d 426 (Colo. App. 1982).

Protected claimants are those who have a direct relationship with the contractor or one whose acts in purchasing labor and materials are imputed to him. Although subcontractors are not in privity of contract with the owner of the property they are in privity with the general contractor. *Western Metal v. Acoustical and Const.*, 851 P.2d 875 (Colo. 1993).

Applied in *Kaiser Steel Corp. v. Fulton*, 261 F. Supp. 997 (D. Colo. 1966); *General Elec. Co. v. Webco Constr. Co.*, 164 Colo. 232, 433 P.2d 760 (1967); *Lovell Clay Prods. Co. v. Statewide Supply Co.*, 41 Colo. App. 166, 580 P.2d 1278 (1978); *Columbine Valley Constr. Co. v. Bd. of Dirs.*, 626 P.2d 686 (Colo. 1981).