

Assignment of Mechanic's Lien & Bond Claim Rights



Don't get Puzzled by the Assignment of Lien & Bond Claim Rights!



It's true, mechanic's lien and bond claims may be assigned from one party to another. However, whether assignment rights are available will vary by state and circumstance.



What is an Assignment of Rights?



Assignment is the transfer of rights or interest from one party to another.

For example, if a subcontractor has mechanic's lien rights, it may opt to assign its mechanic's lien rights to a third party.



Two Primary Parties: Assignor & Assignee

The assignor is the original "owner" of the rights, or the party that is giving its rights to another.

The assignee is on the receiving end; the rights are given to or assigned to the assignee.

Are Rights Always Assignable?



Not always! For instance, assignability may depend on:

- Whether the labor or material has already been supplied to the project
- Whether the lien has already been perfected
- Whether an assignment of rights was properly executed



What about bond claims!?

"Bonds are often considered private contracts and contracts are typically assignable.

Furthermore, case law demonstrates that rights under the Federal Miller Act are assignable, and states frequently look to the Miller Act statute when interpreting state bond claim laws, indicating there is a likelihood of assignability."

- Jerry Bailey, Executive Sales and Education Services Manager



The Assignment Process

The assignment of mechanic's lien rights is a contractual process that, in most cases, requires a written agreement between the assignor and the assignee.

However, the details surrounding the assignment of lien rights are complex and vary state-to-state; thus, it's important to seek proper legal advice before signing any document.

Let's take a look at some state examples.



In New York, a filed lien can be assigned so long as the assignment is filed in the office where the notice of lien has been filed (see N. Y. LIE Article 2, Chapter 14).



In Kansas, "All claims for liens and rights of action...shall be assignable so as to vest in the assignee all rights and remedies herein given..." (KSA 60-1104)



For lien claims in Wisconsin, rights can be assigned and notice "may be served upon the owner of the property." (WI 779.04)



Florida allows for the assignment of lien rights, but there's a hitch. "A lien or prospective lien, except that of a laborer, may be assigned by the lienor at any time before its discharge. The assignment may be recorded in the clerk's office." (FL 713.19)



Michigan also permits the assigning of lien rights stating "...the assignee shall have the same power to enforce the construction lien..." (MI 570.1125)



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Be aware, the variables affecting assignments of rights are complicated!

Please contact NCS Credit if we, or our nationwide network of attorneys, may be of assistance.

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