



COLORADO
Department of Transportation
Division of Accounting and Finance

Attached is information about filing a lien against a prime contractor.
You can also find this information on our website:

<https://www.codot.gov/library/forms/fhwa-other-forms/lienaffidavit.pdf/view>
<https://www.codot.gov/business/civilrights/compliance/prompt-pay/>

When filling out the affidavit, please be sure to include the prime contractor's name, the project number (5 digits, or a long project number, eg. NHPP 090A-040). This lien affidavit **must** be notarized.

Please send the notarized affidavit to CDOT by email, mail or fax:

E-mail:

cdot_lien_related@state.co.us

Mail:

Colorado Department of Transportation
Attn: Eric Basco
Project Accounting & Reporting Section
2829 W Howard Pl. Denver, CO 80204

Fax:

Attn: Eric Basco
303-757-9573

Thank you,

Eric Basco
Accountant II
Projects and Grants Accounting



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P 303.757.9043 | F 303.757.9573

2829 W. Howard Place, Denver CO 80204

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*

https://www.codot.gov/business/civilrights/contractor-compliance/assets/prompt-payment-bulletin/at_download/file)

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.

<https://www.codot.gov/business/engineeringapplications/project-construction/aashtoware-project-construction-sitemanager-pay-estimates>

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, or in an electronic medium. One month's worth of listings are viewable on CDOT's website. <https://www.codot.gov/business/finalsettlements>

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. AFFIDAVIT

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 _____ (Prime Contractor)

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, 2017.

4. That the undersigned hereby makes claim for such amount as provided for in Chapter 38, Article 26, Section 107, Colorado Revised Statutes, 2017.

"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

COLORADO REVISED STATUTES

*** Current through all laws passed during the 2017 Legislative Session. ***

TITLE 38. PROPERTY - REAL AND PERSONAL
LIENS
ARTICLE 26. CONTRACTOR'S BONDS AND LIEN ON FUNDS

C.R.S. 38-26-107 (2017)

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.