

# CONTRACTOR ALERT

---

Contractor Alert is a joint publication by this Contractor and the Law Offices of Richard M. Sissman, Esquire, located at 1485 Chain Bridge Road, Suite 105, McLean, VA 22101. This newsletter is designed to give general information on the matters covered. Space limitation prevents exhaustive treatment or analysis of this topic. This newsletter is not intended to substitute for advice on specific legal problems. If you are interested in receiving a complimentary issue or to be placed on our mailing list, contact Richard M. Sissman, Esquire. We welcome and appreciate your suggestions for future article topics.

---

PUBLICATION BY RICHARD M. SISSMAN, ESQUIRE

IIXC-FEBRUARY/MARCH 2003

## ***DISTRICT OF COLUMBIA MECHANIC'S LIEN LEASEHOLD INTEREST WHAT IS A SUBCONTRACTOR'S CLAIM?***

◆ If you have ever performed work in the District of Columbia as a subcontractor for work not directly with the owner of the building but with a lessee, your rights are limited under the District of Columbia Mechanic's Lien law.

◆ In a recent situation, a contractor did a build out of a restaurant located in the District of Columbia. The restaurant's owner was a tenant to the hotel which was situated in the District of Columbia. The contractor was acting in the capacity of a general contractor to do a build/renovation of this restaurant. A timely notice of mechanic's lien was filed upon the debtor's restaurant noting both the name of the landlord and the tenant. District of Columbia law clearly states D.C. Code §40-301.01 (2002) *"every building erected and proved, added to or repaired by the owner or his agent...whether for the owner in fee or as a less estate, or lessee for a term of years, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them..."*.

◆ Although D.C. law does not specifically define "owner" or "ownership" but merely refers to the "owner in fee" or as a "lessee estate" the code anticipates that a lien may attach to a variety of land interest including that of a leasehold interest. In the matter of *Lipscomb v. Hough*, 52 App. D.C. 313, 286 f.775 (1923), a builder contractor with a lessee to furnish labor and material to improve the premises. The Court held that the lien would be against the leasehold interest if there was no relationship between the lessor and contractor. The Court in this case found that the lessee was not an agent of the owner and that the contractor possessed no interest upon which a lien could attach except for the leasehold interest.

◆ The question arises as to what is the value of the leasehold interest. Most probably, if you are successful in your lien against the leasehold interest, that would give you a right to obtain possession of

the premises pursuant to the lease. Most landlord's leases with the tenant have a clause whereby if any mechanic's lien is placed upon a property that will immediately trigger a default provision in the body of the lease.

◆ There is a small amount of case law in the District of Columbia indicating that if a contractor can prove that the services provided to the tenant were per the directives of the owner/landlord you may be able to assert a claim against the landlord for a mechanic's lien upon the real estate. That of course would be much more valuable to a contractor to file a mechanic's lien against the real property instead of a leasehold interest. Therefore, it is very important that before starting your job you know who is involved with the build out for a specific leasehold space. It is preferable, if possible, to have the owner have some form of contractual privity with the contractor prior to commencement of the job.

*If you should have any questions on this topic or any other related topic, please contact Mr. Sissman at his website at [www.contractoralert.com](http://www.contractoralert.com) or by phone at (703) 903-9646 or (301) 762-0402.*