

NEWSLETTER

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(English machine translation provided as courtesy)

The construction lien - a small piece of legislation with a big impact

Dear landowners with the dream of a newly built home of their own

Swiss legislation gives the craftsman a legal lien on the land on which he undertakes to work or on which he has worked as security for his claim for work wages. The purpose of this is, of course, to protect the building craftsman who installs his material on a plot of land and thereby creates added value.

The text in the Swiss civil code reads as follows (Art. 837 para. 1 item 3 CC):

The right to the creation of a statutory lien exists: for the claims of craftsmen or contractors who have supplied material and labour or labour alone on a plot of land for buildings or other works, for demolition work, for scaffolding, for securing excavations or the like, on that plot of land, whether they have the landowner, a craftsman or contractor, a tenant, a leaseholder or any other person entitled to the land as debtor.

And further:

If a tenant, leaseholder or other person entitled to the land is the debtor of claims of the workmen or contractors, the claim exists only if the landowner has given his consent to the execution of the work.

The entitled person cannot waive statutory liens under this article in advance.

As you can see, the subject of building tradesmen's liens does not require much space in the Swiss Code. All the more drastic are the consequences that can result for you as a landowner:

If your general contractor does not pay workmen's invoices, you have to step in. Even if you have already transferred the money to the general contractor.

The requirements for registration

Deadlines

The right to lien arises when the work contract is concluded and expires four months after completion of the work. You should pay close attention to this four-month period until registration in the land register. If it is not observed, the claim to the creation of the lien expires.

Creditors

Subcontractors are also considered to be "craftsmen and contractors" in the sense of Art. 837 of the Civil Code.

Here you already see the first problem, because the fact that the landowner did not know about the subcontractor or even excluded the involvement of a subcontractor in the contract with the general contractor does not change the subcontractor's claim to the creation of a lien.

Even the question of whether the landowner has already paid the general contractor is irrelevant here, unless, in addition to a contractual retention of the wages for the work, a performance guarantee by the general contractor has also been agreed or it is contractually stipulated from the outset that the landowner pays the wages for the work directly to the craftsmen.

However, there is no right to a construction lien for:

- Architects and engineers
- Sellers of standardized building components (as long as the components are not specially made for the work in question. If, however, the item was manufactured especially for this construction and therefore cannot be used or can only be used with difficulty, they are also entitled to a deposit).
- Building suppliers (the mere delivery of building materials such as sand, gravel etc. does not constitute direct participation in the construction of a work; exception here too: materials specially produced for the specific construction, e.g. liquid concrete or cut-to-size reinforcing steel).
- Hire of construction machinery

Claim

The claim for which registration of the construction lien is sought must have arisen through delivery of materials and labour or labour alone. The delivery / physical work must relate to the property to be encumbered and must have served the construction of a building or other work.

The various stages of the procedure

The provisional registration

The main purpose of this procedure is to ensure that the four-month period within which the building lien must be registered is observed. For this purpose, only the prima facie evidence of the claim is required. If it is admitted, the judge will usually set a time limit within which the creditor must request definitive registration.

The definitive registration

If the claim of the craftsman (existence and amount) is proven in ordinary court proceedings (civil proceedings), the definitive registration of the building craftsman's lien in the land register takes place. Only then does it become enforceable for the craftsman.

Conclusion

If an order is placed with the contractor directly by the landowner, the building craftsman's lien is certainly a useful protection for the craftsman.

However, if the contractor was not commissioned by the landowner himself, but by a general contractor or even a tenant, the appropriateness from the landowner's point of view is questionable.

It is therefore generally recommended to pay the craftsman directly and not via a general contractor.

If you transfer money to the general contractor, you should first ask him either for proof that he has paid his subcontractors or for a bank or insurance guarantee.

If you are confronted with an imminent registration of the builder's lien in the land register, there are ways to prevent this in certain cases, both before and after a provisional registration.

But unfortunately there is no such thing as absolute certainty - so here too, "prevention is better than cure".

We will be happy to advise you as a landowner to avoid double payment of construction costs if possible.

So that your dream of a newly built home of your own can come true.

Kind regards

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