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## Massachusetts Design Professionals May Soon File a Lien for Unpaid Design-Phase Services

By [Joseph A. Barra](#)

On July 1, 2011, Massachusetts will join the growing ranks of jurisdictions that permit design professionals to file mechanic's liens to secure payment for unpaid design-phase services. Previously, Massachusetts restricted a design professional's ability to lien a project to unpaid construction administration services, provided that certain very specific conditions were met. The new amendment to the Massachusetts Mechanic's Lien Law, MGL c254, broadly expands the types of services for which a design professional may now assert a lien to include "services that are customarily and legally performed by or under the supervision or responsible control of design professionals in the course of their professional practice." The amendment also provides an illustrative list of the types of services that, come July, will be lienable. They include, without limitation, "programming, planning, surveying, site investigation, analysis, assessment, design, preparation of drawings and specifications and construction administrative services."

The amendment also defines the classes of professionals who qualify for lien rights as "an architect, landscape architect, professional engineer, licensed site professional or land surveyor who is licensed or registered in the Commonwealth [and includes] any...legal entity that is authorized under the laws of the Commonwealth to practice...any of the foregoing professions." Construction managers are not specifically mentioned in the amendment by name—presumably because they have no specific independent legal status. Nevertheless, given the breadth of the services covered by the amendment, it would seem that design professionals who are likewise performing programming, planning, analysis, and assessment services as construction managers (whether as agents or as constructors performing preconstruction services) will be able to take advantage of the lien law's new reach.

It is important to emphasize that the new amendment, like the underlying lien law it amends, merely seeks to secure payment and does not provide design professionals with a new theory of recovery. Lienors often mistakenly believe that once they have successfully secured a lien on an owner's interest in real property, they are automatically entitled to payment. Thus the amendment leaves unchanged the lienor's obligation to prove her debt.

With respect to the new amendment's transition into Massachusetts jurisprudence, it seems to care little about when the design professional entered into a contract for professional services. The amendment applies to liens for professional services for which any person has filed or recorded a notice of contract on or after its July 1 effective date. Stay tuned for future notes on the specific steps that design professionals must take in order to secure their lien rights, what materials must be recorded and when.

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