



Minnesota's Mythical Constitutional Lien

By Ryan Dreyer

A person's homestead is the centerpiece of the American dream and the foundation for some of the most revered and protected rights in both civil and criminal law. From privacy issues, protection from warrantless searches, protection from creditors to special tax treatment at local, state and federal levels, the homestead receives unique privileges with one major exception: contractor collection claims.

Like every state, Minnesota has a remedial mechanic's lien statute with unique requirements that, if followed, provide powerful rights to aggrieved contractors. But contractors have another unique right baked right into the Minnesota Constitution:

all property so exempted shall be liable to seizure and sale for any debts incurred to any person for work done or materials furnished in the construction, repair or improvement of the same, and provided further, that such liability to seizure and sale shall also extend to all real property for any debt incurred to any laborer or servant for labor or service performed.

Minn. Const. art. I, § 12

This constitutional provision is permanent protection against any legislative attempt to shield the homestead from a contractor's collection remedy. However, the provision is not a stand-alone cause of action as some courts have implied. For instance, in the oft quoted *ServiceMaster of St. Cloud*

case, the Minnesota Supreme Court partially relied on the *existence* of this "adequate remedy at law" to thwart ServiceMaster's pursuit of equitable relief. *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996). Although the court also relied on ServiceMaster's mechanic's lien remedy, it undeniably identified the constitutional lien as a *remedy*. Perhaps in reliance on this 1996 decision, scores of Minnesota complaints have included stand-alone claims for a constitutional lien. Aggressive practitioners even consider pursuit of the so-called constitutional lien authorization to file a notice of lis pendens on an owner's property at the outset of the litigation.

Despite court decisions and pleadings promoting the so-called constitutional lien, the cause of action simply does not exist. Rather than being a remedy, article 1 section 12 of Minnesota's Constitution merely defines what effect a contractor's judgment lien has on an improved homestead. The debt must be pursued through a recognized in personam cause of action against the homeowner. The resulting judgment can ripen into a lien by filing appropriate affidavits pursuant to Minn. Stat. § 548.09 (or filing a certified copy of the judgment pursuant to Minn. Stat. § 508.63 if the land is registered) but not by operation of the constitution. Indeed the Minnesota Constitution provides neither the remedy nor the lien.



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