

▼ **Mechanic's Liens**

Traditional laborers who perform visible improvements have long benefited from the protection of mechanic's liens, which—when employed properly—provide the laborer with a security interest in the property that their work improves. In the 1970s, the Minnesota Legislature extended mechanic's lien rights to architects, engineers, and similar such contractors who perform “non-visible” improvements such as drafting blueprints, plans, or construction specifications. If a developer fails to pay the contractor for its work, a contractor (even an engineer or architect) with an enforceable mechanic's lien can obtain a court order directing the county sheriff to sell the property and use the sale proceeds to pay the contractor what it is owed for its work.

In these days of failing residential developments, mechanic's liens are often the only reliable method for contractors to recover full payment

for their work. Through a mechanic's lien, moreover, a contractor may recover the interest and attorney fees they incur in prosecuting their claims.

As a “race-notice” state, Minnesota affords priority to the encumbrance with the earliest priority date. To optimize the priority position of its lien for engineering or architectural work, the contractor should record a brief statement of the nature of its contract in the property records. If this statement is recorded before a mortgage, the contractor has a strong argument that its lien has priority over the subsequently recorded mortgage. Failure to record such a statement doesn't preclude claiming priority for the lien, but without such a record one must show that the bank had “actual knowledge” that development was underway at the time it recorded its mortgage—not an easy task for an architect or engineer whose services are not visible.

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▲ **Medical Privacy**

The privacy provisions of a federal law governing health care providers were strengthened last year by a portion of the Obama Administration stimulus package, formally known as the American Recovery & Reinvestment Act of 2009. The measure includes changes to the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §1320D *et seq.*, pertaining to privacy and security requirements. The most significant change involves requirements for notification of breach of privacy and allowance of some private civil actions.



Under the act, health care providers that are covered by the law are required to notify individuals when a breach of privacy occurs. This alters the law which formerly required that covered entities only try to limit the negative effects of a privacy breach. Additionally, if the breach affects more than 500 people, the company must report the incident to the federal authorities and the media within 60 days of the discovery of the breach. The new law also requires

conspicuous posting on a website or notice in print or broadcast for other privacy breaches.

Despite the strengthening of the law, private individuals whose privacy rights have been violated may not pursue civil claims; however, lapses of confidentiality with respect to medical records may be pursued under common law and state statutory provisions, such as the Minnesota Health Records Act, Minn. Stat. §144.229, or the Patient's Bill of Rights, §144.651.

The new measure allows state attorneys general to bring civil suits in federal court to enforce privacy provisions and seek damages on behalf of state residents.

Health care facilities that transgress HIPAA requirements now can be fined up to \$1,000 per individual, a ten-fold increase from previous law, subject to a maximum annual penalty of \$100,000.

Marshall H. Tanick

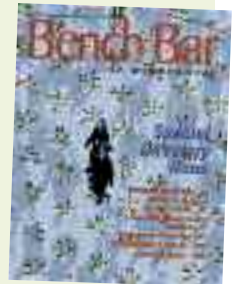
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