

MARYLAND RULES OF PROCEDURE  
TITLE 15 - OTHER SPECIAL PROCEEDINGS  
CHAPTER 1400 - LIENS FOR UNPAID WAGES

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1401, as follows:

Rule 15-1401. APPLICABILITY; DEFINITIONS

(a) Applicability

This Chapter applies to the establishment of liens for unpaid wages governed by Code, Labor and Employment Article, Title 3, Subtitle 11. To the extent that the Commissioner of Labor and Industry, acting pursuant to Code, Labor and Employment Article, §3-1109, acts on behalf of an employee, the Commissioner shall be regarded as the employee for purposes of filing, sending, and serving notices, pleadings, and other papers.

(b) Definitions

In this Chapter, (1) the definitions in Code, Labor and Employment Article, §3-1101 apply except as expressly otherwise provided or as necessary implication requires, and (2) "LE" means the Labor and Employment Article of the Maryland Code.

Committee note: LE §3-1101 (b) defines "employer" as "includ[ing] a person who acts directly or indirectly in the interest of another employer with an employee." That language also appears in the definition of "employer" in the Federal Fair Labor Standards Act (29 U.S.C. §203 (d)), the Maryland Wage and Hour Law (LE §3-401 (b)), the Maryland Equal Pay Act (LE §3-301 (b)(2)), and the Maryland adoption, medical, and parental leave laws (LE §§3-801, 3-802, and 3-1201). The scope of that

provision is defined, with respect to both multiple employers and corporate officers and supervisory personnel, in Federal and Maryland case law and regulations. See, for example, *McFeeley v. Jackson Street Entertainment*, 825 F.3d 235 (4<sup>th</sup> Cir. 2016); *Perez v. Sanford-Orlando Kennel Club*, 515 F.3d 1150 (11<sup>th</sup> Cir. 2008); *Newell v. Runnels*, 407 Md. 578 (2009); 29 C.F.R. §825.104. Under those interpretations, depending on the facts, it is possible that more than one entity as well as certain officers or supervisory employees of an entity may be regarded as employers or additional employers for purposes of the unpaid wages lien law. Each such person against whom a lien is sought must be separately identified in, and served with, all notices, pleadings, and other papers affecting the person.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
TITLE 15 - OTHER SPECIAL PROCEEDINGS  
CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1402, as follows:

Rule 15-1402. NOTICE TO EMPLOYER - REQUIREMENTS

(a) Generally

To establish a lien for unpaid wages due and owing to an employee under LE Title 3, Subtitle 11, the employee shall serve on the employer a Notice to Employer of Intent to Claim Lien for Unpaid Wages that (1) complies with the requirements of section (b) of this Rule and with regulations adopted by the Commissioner of Labor and Industry, and (2) is under oath or supported by an affidavit. The oath or affidavit shall be made to the best of the employee's knowledge, information, and belief, except that an oath or affidavit as to the amount of unpaid wages due and owing shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(b) Contents

In addition to any other information required by regulations of the Commissioner of Labor and Industry, the notice shall contain (1) the name, address, telephone number (if

any), and e-mail address (if any) of the employee seeking the lien; (2) the name and address of the employer against whose property a lien is sought; (3) the dates of the employee's employment by the employer; (4) the dates for which wages are due and owing but were not paid; (5) the basis for the claim that wages were due and owing by the employer but were not paid; (6) the monetary amount of the lien sought; (7) a description of the real or personal property, or both, of the employer against which the lien is sought adequate to identify the property, the name of the owner, and the location of the property; and (8) notice to the employer of the employer's right to dispute the lien by filing a complaint in the circuit court for the county in which any of the listed property is located within 30 days after service of the notice.

Committee note: LE §3-1102 (3) requires that the notice to the employer contain "the information required by the Commissioner of Labor and Industry under §3-1110 of this Subtitle to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought." The list in section (b) is taken almost verbatim from COMAR 09.12.39.02B.

(c) Service

The notice shall be personally served in accordance with Rule 2-121.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
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CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1403, as follows:

Rule 15-1403. RIGHT OF EMPLOYER TO CONTEST PROPOSED LIEN;  
PROCEDURE; CONSEQUENCE OF FAILURE TO CONTEST

(a) Right to Contest Lien

Within 30 days after the employer is served with the notice pursuant to Rule 15-1402, the employer may contest the proposed lien by filing a complaint in the circuit court for any county in which any of the property identified in the employee's notice is located.

(b) Requirements of Complaint

A complaint shall include or be accompanied by:

(1) a copy of the notice that was served on the employer in accordance with Rule 15-1402;

(2) the date that the notice was served on the employer;

(3) the names and addresses of the employer and employee named in the Notice of Intent to Claim Lien for Unpaid Wages;

(4) an explanation of why the wages claimed by the employee are not due and owing by the employer;

(5) a statement of any other defense to the proposed lien for unpaid wages;

(6) a statement of whether the employer has an ownership interest in the property identified in the notice and the nature of the interest;

(7) an affidavit containing a statement of facts that support any defenses raised;

(8) a description of supporting documents with the supporting documents attached;

(9) if the employer wants a hearing, a separate request for hearing in bolded lettering at or near the caption of the complaint;

(10) a statement that, within 10 days after service of the complaint, the employee may file (A) an answer to the complaint, (B) a motion to dismiss the complaint, or (C) a withdrawal of the Notice of Intent to Claim Unpaid Wages, and may request a hearing as part of a response or in a separate document; and

(11) any other statement or information required by regulation of the Commissioner of Labor and Industry adopted pursuant to Code, LE §§3-1104 and 3-1110.

(c) Service

The complaint shall be served on the employee pursuant to Rule 2-121.

(d) Response by Employee

Within ten days after being served with the complaint, the employee may file (1) an answer to the complaint, (2) a motion to dismiss the complaint, or (3) a withdrawal of the

Notice of Intent to Claim Lien for Unpaid Wages and may request a hearing as part of a response or in a separate document. A request for a hearing shall be made in bolded lettering at or near the caption of the response or document in which the hearing is requested. The court may not enter an order of default based upon an employee's failure to file a timely response to the complaint.

(e) Hearing

If a request for a hearing is filed by the employer or employee, the court shall hold a hearing no later than 30 days after the earlier of (1) service of a complaint that includes a request, or (2) the filing of a timely request by the employee.

(f) Determination

Within 45 days after service of the complaint, the circuit court shall determine whether to issue an order establishing a lien for unpaid wages in accordance with LE §3-1103. The employee has the burden of proof to establish the employee's right to the lien based a preponderance of the evidence. If there are any issues or claims raised by either party the resolution of which is not necessary to the determination of whether a lien should be established or the amount thereof, the court may defer determination of those issues.

Committee note: Rule 15-1403 (d) does not preclude an employee from asserting a counterclaim, including a wage claim under LE

§3-427 or §3-507.2. Such a counterclaim is subject to Rules 15-1403 (f) and 15-1403 (g) (3).

Cross reference: See *McCalls Ferry Power Co. v. Price*, 108 Md. 96 (1908); *Snyder v. Cearfoss*, 186 Md. 360 (1946), and *Tucker v. State*, 89 Md. App. 295 (1991), holding that when a statute prescribes a time limit for court action but provides no sanction or remedy for exceeding that limit, the time limit is regarded as directory rather than mandatory, and the court does not lose its authority to act after the expiration of the prescribed time.

(g) Order

(1) In Favor of Employer

If the court determines that the employee is not entitled to a lien in any amount for unpaid wages, it shall enter an order so stating. If the court determines that the employee's effort to establish a lien for unpaid wages was frivolous or made in bad faith, the court may award court costs and reasonable attorney's fees to the employer.

(2) In Favor of Employee

If the court determines that the employee is entitled to a lien in any amount, it shall enter an order (A) establishing the lien, (B) stating the amount of the lien and identifying each item of property that is subject to the lien, (C) awarding court costs and reasonable attorneys' fees, and (D) awarding such other relief as the court finds appropriate, including a stay of enforcement.

Cross reference: Rule 15-1403 (g) (2) is derived, in part, from LE §3-1103 (d) (2).

(3) Determination of Other Issues

If determination of the lien is not dispositive of all issues, the order shall direct that those issues be resolved in accordance with the court's case management plan.

(h) Consequence of Failure to File Timely Complaint

If the employer fails to file a timely complaint pursuant to section (a) of this Rule, the lien is established and the employee may record a Wage Lien Statement pursuant to Rule 15-1404.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1404, as follows:

Rule 15-1404. FILING AND RECORDING OF WAGE LIEN STATEMENTS

(a) Generally

If the court issues an order pursuant to Rule 15-1403 establishing a lien or if the employer fails to file a complaint within 30 days after service of the notice served pursuant to Rule 15-1402, the employee may file for recording a Wage Lien Statement as prescribed in this Rule.

(b) Time for Filing

A Wage Lien Statement shall be filed within 180 days after (1) entry of an order issued pursuant to Rule 15-1403 (g) (2), or (2) if the employer failed to file a timely complaint pursuant to Rule 15-1403 (h), the time for employer response has elapsed.

(c) Lien Against Real Property

A Wage Lien Statement that includes a lien against real property shall be in the form prescribed by the Commissioner of Labor and Industry and shall be filed with the Clerk of the Circuit Court for the county in which any portion of the property is located. The lien shall be recorded among the land

records of the county. The recording fee shall be equal to the fee for recording a District Court judgment as a lien.

Cross reference: See LE §3-1105 (c) (1) and COMAR 09.12.39.04.

(d) Lien Against Personal Property

A Wage Lien Statement that includes a lien against personal property shall be filed in the same manner, form, and place as a financing statement under Code, Commercial Law Article, Title 9, Subtitle 5.

Committee note: Code, Commercial Law Article, §9-501 requires financing statements to be filed with the State Department of Assessments and Taxation. Note §§9-509, 9-516, and 9-526 with respect to requirements that apply to the acceptance of financing statements.

(e) Priority

A lien for unpaid wages recorded under this Rule shall be considered a secured claim that has priority (1) if the lien was established by a court order pursuant to Rule 15-1403, from the date the order was docketed, or (2) if no complaint disputing the claim was filed, from the date the employee filed the Wage Lien Statement for recording.

Cross reference: See LE §3-1105 (f) providing constructive notice of an unpaid wage lien from the date the Wage Lien Statement is recorded.

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ADD new Rule 15-1405, as follows:

Rule 15-1405. EXTINGUISHMENT OR RELEASE OF LIEN

(a) Extinguishment

If an employee fails to record a Wage Lien Statement within 180 days after the lien for unpaid wages is established, the lien shall be extinguished without prejudice.

(b) Release

The employee shall file a release of the lien if (1) full payment of the amount of the lien is made, or (2) a bond or other security in that amount is filed in a manner consistent with the Rules in Title 1, Chapter 400.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
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CHAPTER 1400 - LIENS FOR UNPAID WAGES

ADD new Rule 15-1406, as follows:

Rule 15-1406. ENFORCEMENT OF LIEN

(a) Manner of Enforcement

Upon the entry of an order establishing a lien pursuant to Rule 15-1403 (g) (2) or a confirmatory order pursuant to section (b) of this Rule, the employee may enforce the lien in the manners set forth in Rules 2-641 through 2-647, except that the lien may be enforced only upon the property specified in the order and provided that the lien has not been extinguished pursuant to Rule 15-1404 (b) (2). Waiver of prepayment of costs for the enforcement proceeding is governed by Rule 1-325.

Cross reference: See LE §3-1106.

(b) Order Confirming Lien Established Pursuant to Rule 15-1403 (h)

(1) Generally

Upon the establishment and continued existence of a lien pursuant to Rule 15-1403 (h) through the timely filing of a Wage Lien Statement after the failure of the employer to file a timely complaint to contest the proposed lien, the employee may enforce the lien in the manner provided in section (a) of this

Rule after obtaining a confirmatory order pursuant to this section.

(2) Petition for Confirmatory Order

(A) Generally

The employee may seek an order confirming the lien by filing a petition for such an order. Unless prepayment of costs is waived pursuant to Rule 1-325, the petition shall be accompanied by a filing fee in an amount equal to the fee for filing a request for issuance of a writ of garnishment in the circuit court.

(B) Venue

If the petition seeks a confirmatory order enforcing the lien against real property, the petition shall be filed in the circuit court for the county where any part of the real property identified in the Wage Lien Statement is located. If the petition seeks a confirmatory order enforcing the lien against personal property, the petition shall be filed in the circuit court for the county where the property identified in the Wage Lien Statement is located. If the employee seeks to enforce the lien against both real and personal property, separate petitions may be filed, subject to transfer of the proceeding against personal property to the court where the proceeding against real property is pending.

(C) Contents

The petition shall be under oath or supported by affidavit and shall state or be accompanied by:

(i) the names and addresses of the employee and the employer;

(ii) the amount of the lien;

(iii) whether the lien remains in existence;

(iv) what, if any, payments have been made on the unpaid wages for which the lien was established;

(v) a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages;

(vi) the date and manner of service of the Notice and proof of such service;

(vii) the failure of the employer to file a timely complaint to contest the proposed lien;

(viii) a copy of the Wage Lien Statement recorded pursuant to Rule 15-1404 and each place where that Statement was filed and recorded; and

(ix) an adequate description of each item of property against which the lien is sought to be enforced, including the nature of the item and where it is located.

(D) Service; Proof of Service

The petition shall be served on the employer in accordance with Rule 2-121. Proof of service shall be filed in accordance with Rule 2-126.

(3) Consolidation Upon Transfer

Upon any transfer pursuant to subsection (b) (2) (B) of this Rule, the cases shall be consolidated unless the court, for good cause, orders otherwise.

(4) Determination and Order

After an opportunity for a hearing if one is requested, the court shall determine whether the employee is entitled to enforcement of the lien. Unless the court finds that service of the notice or petition was defective, or that there is a substantial and sufficient basis for an actual controversy as to the merits of the lien and that it is equitable to excuse the employer's failure to comply with Rule 15-1403, the determination shall be based on the sufficiency of the notice and petition. If the court determines that the employee is entitled to enforcement of the lien, the court shall enter an order confirming the lien. If the court determines that the employee is not entitled to enforcement of the lien, the court shall enter an appropriate order, which may include denying the petition without prejudice or dissolving the lien.

(5) Recordation of Confirmatory Order

The employee may record a confirmatory order in any circuit court in which enforcement of the lien is sought.

Source: This Rule is new.