

The "New" Pennsylvania Mechanics' Lien Law

Presented by Robert R. Watson, Jr.

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The Mechanics' Lien Law of 1963

- When the Lien is perfected, the land, buildings and improvements of an owner become security
- The security is for payment of debts due by the owner to the contractor OR by the contractor to its subcontractors
- For labor or material furnished in erection or construction
- OR for labor or material furnished in the alteration or repair of an improvement

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Is a Lien the only recourse?

- NO!
- An aggrieved contractor or subcontractor still has the right to sue for breach of contract, violation of prompt payment laws, or to collect on a payment bond
- The Mechanics' Lien is a separate remedy which can be pursued at the same time as other claims
- A party defending a lien claim cannot assert a counterclaim in the lien action; may only state defenses to the claim

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What is an "improvement"?

- Any building, structure or improvement of any type erected or constructed on LAND
 - Includes fixtures and personal property which are attached to the "improvements" and better their use

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Who can claim a Lien?

- A contractor is defined as someone who has entered into a contract for erection, construction, alteration or improvement
 - The contract DOES NOT have to be written - IT CAN BE ORAL
- Someone who furnishes labor OR supplies material
- Includes architects or engineers whose duties include SUPERVISION of the work
- Subcontractors who contract with contractors are included
- The 2007 changes now INCLUDE second-tier subs!
 - Does not extend to third-tier subcontractors

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The 2007 Amendments make it a lot HARDER to Force a Contractor or Subcontractor to WAIVE this Right!

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- As of October 2009, the only instance where a contractor or subcontractor can outright waive a mechanics' lien will be RESIDENTIAL BUILDINGS with a total of 3 stories or less.
 - This waiver can be by written instrument or "conduct which operates equitably to estop such contractor from filing a claim"
 - "In the absence of an express covenant not to file a lien, the Implied covenant not to do so must be so clearly stated that the mechanic or materialman cannot fail to understand it" *Wood v. US Steel Corp.*, 383 Pa. 158, 118 A.2d 199, 200 (1955)

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- For RESIDENTIAL BUILDINGS >3 STORIES or COMMERCIAL CONSTRUCTION AT ANY PRICE...
 - A waiver by a *subcontractor* is only effective where the contractor has POSTED A BOND
 - The *contractor's* waiver can only be given in consideration for work, services, materials or equipment to the extent the contractor has ACTUALLY BEEN PAID (progress payment waivers)

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If not in the contract, how is the waiver "filed"?

- Indexed by County Prothonotary
- "Contractor v. Owner" AND "Owner v. Contractor"
 - It is up to the filer to assure proper Indexing
- THE SUBCONTRACTOR MUST SEARCH THE COUNTY DOCKET TO CHECK FOR WAIVERS
 - Easy step - often overlooked

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If you haven't been paid, what do you do next?

- ACT FAST
- Subcontractor MUST give ADVANCE NOTICE to the owner!
- All subcontractors must give written notice of intention to file lien 30 days before the lien is actually filed – or no later than 145 days after completion of the work under new law
 - Subcontractor must list name, contractor's name, amount due, nature of work and property description – include copy of claim to be filed
- Best to serve by certified mail, return receipt requested

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When do you file the Lien?

- The Mechanics' Lien must now be filed within 6 months after completion of the work
 - Not a day later!
- The owner must receive notice of the claim within 1 month after filing
- An affidavit of service is required 20 days after the owner is served with notice
- File in the County where the work was performed

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IF YOU'RE A CONTRACTOR OR
SUB AND MISS ANY OF THESE
DEADLINES, YOU ARE OUT OF
LUCK!!!

(you've been warned!)

What goes into the Lien Claim?

- Name of the claimant
- Whether claimant is contractor or subcontractor
- Owner's name and address
- Date when work was completed
- Subcontractors state name of contractor
- Date of formal notice of intention (for subs)
- Contractors Identify the contract and state type of work
- Describe the "improvement"
- State the amount claimed to be due

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WHAT'S NEXT?

- File complaint to enforce lien claim within 2 years of the date of the claim
- Proceeds like other civil actions, but limited in scope to the Lien itself
- An owner can force the complaint to be filed by providing 20 day "rule to file complaint"
- Trial will be scheduled and proceed like other civil actions

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*Owner's remedies against
Contractor when
Subcontractor files a lien*

- An owner who has been served with a sub's notice *of intention* or notice of lien filing may retain out of any monies due or to become due to a contractor a "sufficient" sum to protect the owner from loss until the claim is finally settled, released, defeated or discharged

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What are the owner's next steps?

- Written notice to its contractor
 - Name of sub, amount of claim and amount withheld by owner
 - *Unless the contractor within 30 days from service of the notice settles, undertakes to defend or provides owner with security, the owner may take advantage of ADDITIONAL REMEDIES provided by the Lien Law*
- Serve notice via mail (certified preferably)

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ADDITIONAL OWNER REMEDIES

IF THE CONTRACTOR FAILS TO SETTLE, DISCHARGE, DEFEND OR SECURE AGAINST THE CLAIM, THE OWNER MAY:

- (1) Pay the sub's claim, and have its rights subrogated to that of the sub; or
- (2) Defend against the claim, and hold the contractor liable for costs, expenses and charges (including attorneys' fees) *whether said defense be successful or not*



(Owner may still withhold payment from the Contractor until the matter is resolved)

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Right of Owner to Limit Claims to Unpaid Contract Balance

- 49 P.S. § 1405: If the subcontractor has actual notice of total amount of (i) contract price and (ii) times for payment before any labor or materials are furnished, or if the general contract or its pertinent provisions are filed with the Prothonotary, each claim is limited to its pro-rata share of the price remaining unpaid

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The 2007 Amendments Further Define Lien Priority

- It is now clear that a mechanics' lien will be subordinate to a purchase money mortgage OR an open-end mortgage to complete construction

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