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**THE PENNSYLVANIA MECHANIC'S LIEN LAW:
SUMMARY OF CHANGES EFFECTIVE
JANUARY 1, 2007
(OWNER'S PERSPECTIVE)**

1. Existing law (through December 31, 2006).

1.1 Basic rule. Since 1963, a mechanic's lien waiver executed by a general contractor ("GC") and filed with the prothonotary within ten (10) days after execution of the general contract or at least ten (10) days before commencement of the work has been effective to bar the GC and all subcontractors and materialmen on the job from filing mechanic's liens against the property being improved.

1.2 When liens may be filed. If not barred by a lien waiver, a contractor intending to file a lien must give the owner written preliminary notice of its intent to file on or before the date of completion of its work, and thereafter must file its formal lien claim within four (4) months after completion of its work.

1.3 Who may file liens. Only subcontractors and materialmen having a direct contractual relationship with the general contractor may file mechanic's liens. An architect or engineer who has a role in supervising the work (as opposed to merely drafting design documents) may also file a lien.

1.4 What work may give rise to a lien. Mechanic's liens may be filed for unpaid work relating to the erection, construction, alteration or repair of improvements located on real estate, including the provision of materials, fixtures and equipment used therein (i.e., this is not only an issue in connection with major construction jobs; any repair work can result in a lien if not paid on time).

2. Changes effective January 1, 2007.

2.1 Effective date of changes. These changes apply to contracts entered into on or after January 1, 2007. *Note, however,* that even if a general contract has been signed prior to that date, if a subcontract is not signed until after January 1, 2007, it is arguable that the new provisions will apply with respect to that subcontract.

2.2 New restriction on GC's lien waiver. A lien waiver signed by a GC respecting a commercial construction job will only be effective to bar the lien claims of subs and materialmen *if* the GC has posted a bond in an amount adequate to pay all subs and materialmen working on the job. If no bond has been filed, the waiver is ineffective.

2.2.1 The subs and materialmen should be made aware that the bond has been posted, arguably by actually posting a copy of the bond at the job site.

2.2.2 If a bond is posted, the GC's waiver of liens, properly filed, will be completely effective, just as it is under the mechanic's lien act in 2006.

2.3 Owner's options if the job is not bonded. If a bond is not posted and a GC's waiver of liens is not filed as provided in 2.2 above, the best an owner can do is to obtain from the GC and each sub and materialman a release of liens for the work that has been performed and paid for to date, each time that the owner pays a draw under the general contract.

2.3.1 That is, each sub will sign the release of liens in exchange for receiving its payment for work performed to date.

2.3.2 This is typically accomplished by requiring the GC to furnish the owner with signed releases from all subs and materialmen confirming their payment out of the last installment paid by the owner, as a condition to the owner paying the next installment (this approach, of course, means the owner will always be "exposed" for the most recent installment throughout the job). Theoretically, the owner could pay the subs and materialmen directly and collect signed releases, but that would possibly be an administrative nightmare.

2.4 When liens may be filed. The preliminary notice of intent to file a mechanic's lien that presently must be delivered to the owner by completion of the work is no longer required. Also, the time within which a contractor may file its lien has been extended to six (6) months after completion of the work.

2.5 Who may file liens. Effective January 1, 2007, sub-subcontractors will also have a right to file liens. This will make the job of policing the receipt of releases of liens more difficult for the owner, as the owner will have to keep track of not only the subs but also the sub-subs.

2.6 Effect on mortgages. The new amendments provide that mechanic's liens will always be subordinate to mortgage loans that finance the purchase of the property or

the improvements being constructed. Nonetheless, expect mortgage lenders to require the job to be bonded, because this affords them the greatest protection.

2.7 Residential rules. If you are undertaking construction involving your personal residence, the good news is that the old rules permitting a contractor to file a waiver of mechanic's liens that will bind his subs and materialmen continue to apply, without the need to bond the job, for residential construction projects costing less than one million dollars. If you are having a home built or major alterations or renovations performed, make sure to obtain a signed mechanic's lien waiver from the contractor and file it with the prothonotary within ten (10) days after execution of the general contract or at least ten (10) days before commencement of the work, to protect yourself from liens.

3. Owner defensive strategies.

3.1 Limit lien claims to unpaid balance owed to GC. Provided that the subs and materialmen are made aware of the total amount of the contract between the owner and the GC before they begin work, the owner can, by motion with the court, limit mechanic's lien claims to the unpaid balance of the contract price.

3.1.1 If the total of the liens filed by multiple subs and materialmen exceeds the unpaid balance of the price, they are limited to their *pro rata* portions of the unpaid balance.

3.1.2 The subs and materialmen can be given notice of the amount of the contract either by literally giving each of them written notice of the contract sum or by filing with the prothonotary the pertinent portions of the GC's contract relating to the amount to be paid.

3.2 Tenant improvement limitation. In the case of improvements made to a tenant's premises, a lien is not permitted unless the owner has acknowledged in writing that the alteration or repair being undertaken was for the owner's "immediate use and benefit".

3.2.1 This is not as good as it sounds, because at least one court has held that if the owner provides a construction allowance, the alterations paid for using that allowance are for the owner's "use and benefit" for purposes of this provision. Nonetheless, in jobs in which an allowance is not provided, this provision should provide the landlord with a defense against the lien.

3.3 Limit property encumbered by the lien. If a contractor files a lien against more property than should "justly" be included, the court may limit the boundaries of the property subject to the lien upon motion by the owner. This is probably not an effective strategy in the case of an office building.

3.4 Set aside lien amount from sums owing to GC. After an owner has been served with notice of a subcontractor's lien, the owner may immediately set aside out of

any monies remaining to be paid to the GC “a sum sufficient to protect the owner from loss until such time as the claim is finally settled, released, defeated or discharged.” To do this, the owner gives written notice to the GC, identifying the party who filed the lien, the amount of the claim, and the amount being withheld from the GC by the owner. The GC then has thirty (30) days from receipt of the notice to settle the claim, or agree to defend the claim at the GC’s expense, or bond against the claim. If the GC does not pursue any of those options within the 30-day period, the owner may (a) pay the party who filed the lien and pursue the GC for reimbursement or (b) defend the claim at the GC’s expense.

3.4.1 This provision underscores the importance of providing in every general contract a provision requiring the GC to indemnify the owner against any mechanic’s lien claims that may be filed, including the costs of defending against those claims.

Many of the notices and defenses referenced above must meet specific requirements under the mechanic’s lien law relating to how notice must be given and where various documents must be filed. For legal advice or answers to specific questions, please contact legal counsel as soon as a lien is filed (or as soon as events begin to unfold that may lead to a filing of a lien, if you have advance notice of problems on the job), to ensure full protection of your rights. The information contained in this outline should not be construed as legal advice, is not a substitute for legal counsel, and should not be relied on as such.

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